



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC. CASE NO. 378 OF 2019**

**ANDREW MWITI MPUNGU.....PLAINTIFF**

**- VERSUS -**

**HARON KIMIYU.....DEFENDANT**

**RULING**

1. This ruling relates to the application dated 25.11.2019 where Plaintiff/Applicant is seeking injunctive orders against the Defendant. The Defendant on the other hand has filed a preliminary objection dated 17.2.2021 seeking the dismissal of the application.

**Notice of Preliminary Objection**

2. The Defendant is seeking for dismissal of the application on the basis that the court lacks jurisdiction to determine the case as the same should be handled by the Magistrates Court in line with the provisions of **Article 169(1)(a) and (2) of the Constitution of Kenya, Section 26 (3) and 4 of the Environment and Land Act, 2011 and Section 7 (1) of the Magistrates Court Act.**

3. In response thereof, the Plaintiff contends that the firm of Messrs Masaka & Company Advocates are strangers in the suit as they are not on record in line with the provisions of **Order 9 rules 7 of the Civil Procedure Rules.** They also contend that a valuation report pegs the value of the suit property at Kshs 25,000,000.

**The Notice of Motion dated 23.11.2019**

4. The Plaintiff/Applicant seeks orders that “

**“The court be pleased to grant an injunction restraining the Respondent whether by himself, his agents and/or his servants from trespassing on, wasting, constructing on, alienation or otherwise interfering or dealing with the Plaintiff’s property being Land Parcel Number LR. No. 209/10940 pending hearing and determination of this suit.”**

5. In responses thereof, the Defendant avers that he is the beneficial owner of the suit land whereby he constructed the School in the year 2005 and was issued with a relevant certificate of registration. He contends that before the year 2019, the Plaintiff has never interfered with the School.

6. I have considered the arguments advanced by the rival parties. I note that there is a notice of appointment by the defence advocates dated 30.6.2020 filed in the *Court Tracting System (CTS)*. If the same was not served upon the Plaintiff Advocates, then the defence should endeavour to serve the same forthwith.

7. On the question of jurisdiction, the defence has quoted the law at length on the proposition that the matter ought to have been filed before the Magistrate’s Court. However, he has not provided the basis of his claim. He has not filed any pleadings to counter the claim of the Plaintiff, nor has he availed any valuation report to support his claim. As such, the Notice of Preliminary Objection is found to be unmerited.

8. As regards the prayers for injunctive orders, I find that the same are not in tandem with the prayers in the plaint. It is quite apparent that Defendant is on the suit land where he operates as school. In prayer (c) of the Plaint, the Plaintiff is seeking:

**“ an order of eviction against the Defendant and the said School Twinstar Primary School & Secondary from the said premises”**

9. It follows that granting of injunctive orders would amount to issuance of a major relief before the hearing of the case – see **Daniel Atibu Jogimba v Ainea Sandanyi Mogara [2013] eKLR**

10. In the circumstances, I decline to grant any orders of injunction at this stage.

11. In the final analysis, both the Notice of Preliminary Objection dated 17.2.2021 and the Application dated 25.11.2019 are dismissed with each party bearing their own costs. The parties are to take steps to have the matter prosecuted speedily.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER, 2021 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Mr. Odinya for the Plaintiff/Applicant

Ms Odango holding brief for D. Omari for the Defendant

Court Assistant: Eddel

**HON. LUCY N. MBUGUA**

**ELC JUDGE**