



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC PETITION NO. 1062 OF 2015

PRESBYTERIAN FOUNDATION LIMITED..... PETITIONER

VERSUS

THE PRINCIPAL SECRETARY MINISTRY

OF INTERIOR & CO-ORDINATION.....1ST RESPONDENT

SUPREME COUNCIL OF KENYA MUSLIMS.....2ND RESPONDENT

THE COMMITTEE OF AL AQSA

MOSQUE AND ISLAMIC CENTRE.....3RD RESPONDENT

THE CHIEF LAND REGISTRAR.....4TH RESPONDENT

THE NATIONAL LAND COMMISSION..... 5TH RESPONDENT

THE ATTORNEY GENERAL.....6TH RESPONDENT

JUDGMENT

The Petitioner brought this petition on 23rd October, 2015. The petition was amended on 17th October, 2019. In the amended petition, the Petitioner sought the following reliefs;

1. A declaration that the fundamental rights of the Petitioner and specifically the members of the Presbyterian Church of East Africa under Articles 29(c), Article 32 and Article 40 of the Constitution have been violated and infringed upon by the 2nd and 3rd Respondents.
2. An order of mandamus compelling the 1st Respondent and specifically the County Commissioner Nairobi County to ensure fundamental rights of the Petitioner and specifically the members of the Presbyterian Church of East Africa (hereinafter referred to only as “PCEA”) under Article 29(c), Article 32 and Article 40 of the Constitution are not violated and infringed upon by the 2nd and 3rd Respondents.
3. An order of a mandatory injunction to compel the 3rd Respondent to immediately vacate the Petitioner’s property known as L.R No. Nairobi/Block/61/639 (hereinafter referred to only as “the suit property”) and remove any structures built thereon by the 3rd Respondent and specifically the Mosque and/or Madrassa and hand over vacant possession to the Petitioner.
4. An order of eviction of the 3rd Respondent from the suit property.
5. That costs of the petition be borne by the Respondents.

The Petitioner’s case:

The Petitioner averred that it was the registered proprietor of all that parcel of land known Nairobi/Block61/639(the suit property). The Petitioner averred that in August, 2015, the 3rd Respondent without any right or authority from the Petitioner began construction of a permanent structure which was either a Mosque and/or Madrassa on the suit property. The Petitioner averred that the acts of the 3rd

Respondent of constructing a mosque and/or a madrassa on land belonging to a church violated the Petitioner's constitutional rights protected under Articles 32 and 40 of the Constitution. The Petitioner contended that the said acts violated its right to freedom of worship and a right to own property. The Petitioner averred further that the conduct of the 3rd Respondent infringed on its right to freedom and security of the person as enshrined under Article 29(c) of the Constitution.

In conclusion the Petitioner contended that the 1st, 2nd and 5th Respondents had either failed and/or refused to ensure that the fundamental rights of the Petitioner under the Constitution were not infringed by the 3rd Respondent.

The evidence tendered by the Petitioner:

The petition was heard through viva voce evidence. Joseph Mungai Njoroge(PW1) testified on behalf of the petitioner. PW1 adopted his witness statement as part of his evidence in chief and produced the Petitioner's bundle of documents as exhibits. PW1 told the court that he was a member of PCEA Emmanuel Church Kibera (hereinafter referred to only as "the church"). He stated that the suit property belonged to the Petitioner. He stated that the petitioner had a lease and a certificate of lease confirming its title to the property. In his witness statement, he stated that he used to be the chairman of the church which is one of the churches of the petitioner. He stated that the Petitioner applied to the Government to be allocated land in 1993 and that the suit property was allocated to the petitioner and it was issued with a title deed in respect thereof. He stated that the petitioner had developed the suit property by putting up a church building, a nursery school, a pastor's house and several residential rooms. He stated that over the years, the church co-existed peacefully with the 3rd Respondent. He stated that on 17th August, 2007, the 3rd Respondent invaded the suit property, demolished the fence and burnt; four nursery school classrooms, 21 residential rooms and looted most of what was in the rooms. He stated that in August, 2015, the 3rd Respondent started construction of a mosque and/or madrassa on the suit property without the petitioner's permission. PW1 urged the court to grant the reliefs sought in the petition.

The submissions by the Petitioner:

After the close of evidence, the Petitioner filed its submissions on 1st July 2020. The Petitioner framed only one issue for determination by the court namely; whether an eviction order should issue against the 2nd and 3rd Respondents.

The Petitioner urged the court to grant the orders sought in the petition based on several grounds. The Petitioner submitted that it held a leasehold interest in the suit property and that it had been issued with a Certificate of Lease by the Government. Relying on Article 40 of the Constitution, the Petitioner argued that it had a right to own property in any part of Kenya including Kibera and that such right cannot be taken away by historical entitlement advanced by the 2nd and 3rd Respondents who did not adduce evidence of any title over the suit property. The Petitioner argued further that the 1st, 4th and 5th Respondents as the government agencies dealing with land matters were duty bound to ensure that the Petitioner's rights under Article 29(c) and Article 40 were protected. The Petitioner argued further that allegations of fraud and illegality in the allocation of the suit property to the Petitioner were not sufficiently proved.

In support of this submission, the Petitioner cited Vijay Morjaria v Nansingh Madhusingh Darbar & another [2000] eKLR, Central Kenya Ltd. v Trust Bank Limited & 4 others [1996] eKLR and Insurance Company of East Africa Ltd. v The Attorney General & Others [2001] eKLR. The Petitioner argued that whether or not there is fraud is a matter of evidence. The Petitioner submitted that the standard of proof of fraud is higher than that in ordinary civil cases. The Petitioner averred that the 2nd and 3rd Respondents had not adduced any convincing evidence to prove that the Petitioner's title was fraudulently or illegally acquired.

On the allegation that the suit property was mentioned in the Ndung'u Report among the illegally acquired land, the Petitioner argued that the Report contained only recommendations and not binding resolutions. The Petitioner argued that the 2nd and 3rd Respondents had not adduced any evidence of any further investigations after the report showing that the suit property was public utility land. In support of this submission, the Petitioner relied on Jared Benson Kangwana v Kenya Agricultural Research Institute [2014] eKLR and York Worldwide Holdings Limited v Kenya Forest Service & another, ELC Petition No. 48 of 2017.

In its further submissions filed on 2nd February, 2021, the Petitioner argued that the Court had jurisdiction to hear the matter as the dispute was one of land ownership and not boundary as claimed by the 2nd and 3rd Respondents in their submissions.

The 2nd and 3rd Respondents' case:

The 1st, 4th, 5th and 6th Respondents did not respond to the petition. The 2nd and 3rd Respondents filed a replying affidavit sworn by Abdallah Sebit on 15th December, 2015. In the affidavit, the 2nd and 3rd Respondents stated as follows in reply to the petition: The Petitioner's title to the suit property was acquired through fraudulent means and ought to be cancelled as the suit property was public utility land set apart for use by the community as a whole. The suit property was mentioned in the Ndung'u Report among the properties that were illegally acquired. The suit property arose from land previously known as L.R No. 11239 which upon conversion came to be known as NAIROBI/BLOCK 61. The leasehold titles that were issued in respect of the portions of NAIROBI/BLOCK 61 were for a term of 99 years commencing 1st November, 1963 while the Petitioner's lease is for a term of 99 years commencing 1st January, 1979.

The Nubians residing in Kibera are entitled to the land in Kibera following a forcible conscription into the British Army in the early 1900s. In 1904, the British colonial authorities assigned the Nubians Kibera as their home and issued them with Passes. In 1934, land in Kibera was subdivided into 397 plots or thereabouts which plots were allocated to Kenyan Nubians. In 1961, the colonial government came up with a housing project in Kibera for residents. Purchasers of the new houses under the project were required to forfeit their old houses to the government for demolition and thereafter would receive ex-gratia payments. The housing project was passed down from the colonial government to the Ministry of Health and Housing and finally to the National Housing Corporation which eventually issued discharges over the purchased properties. In the said housing project, the suit property was set a part for use as a public utility plot which could not be

allocated to individuals or organizations.

The evidence tendered by the 2nd and 3rd Respondents:

Abdallah Sebit (DW1) gave evidence on behalf of the 2nd and 3rd Respondents. DW1 adopted the contents his replying affidavit which I have highlighted above as his evidence in chief and produced the 2nd and 3rd Respondents' bundle of documents as exhibits. In his oral testimony, DW1 stated as follows: He was 83 years old and an elder in the 3rd Respondent. Al Aqsa Mosque (hereinafter referred to only as "the mosque") was built by the Salama Community which had houses in Kibera since 1962 when the government moved the community from mud houses to permanent houses built by the National Housing Corporation (NHC). The Salama Community was moved in Phase 1 of the development which involved L.R No. 11239. The houses constructed under Phase 1 were allocated to Nubians and that the church was in Phase 1 of the housing project.

DW1 stated further that L.R No. 11239 and Block 61 from which the Petitioner's title came from were the same. He reiterated that the suit property was to be held for the community. He stated that the church came into the scene in 1974 and occupied community land without consulting the community. He stated that the suit property was in the Ndung'u Report on Illegal/Irregular Allocation of Public Land.

The 2nd and 3rd Respondents' submissions:

The 2nd and 3rd Respondents filed their submissions on 24th November, 2020. The 2nd and 3rd Respondents framed the following three issues for determination by the court on which they submitted on;

1. Jurisdiction of the Court.
2. Burden of Proof in trespass.
3. Who among the parties ought to bear the costs of the suit.

On the first issue, the 2nd and 3rd Respondents cited Azzuri Limited v Pink Properties Limited [2018] eKLR, Esther Rita Mwelu Kyendo & Another v Kazungu Ngari [2016] eKLR and Sections 18 (2) of the Land Registration Act, 2012 and submitted that this court had no jurisdiction to determine the dispute between the parties since the dispute concerned the boundaries of the suit property that had neither been fixed nor determined by the Land Registrar. The 2nd and 3rd Respondents argued that the Petitioner had not demonstrated that the boundaries of the suit property had been fixed.

On the second issue, the 2nd and 3rd Respondents argued that the Petitioner had not properly identified the suit property for purposes of establishing trespass. They argued that no evidence had been led by the Petitioner in the form of a surveyor's report to demonstrate that the portion of land occupied by the Respondents fell within the boundaries of the suit property. In support of their submission, the 2nd and 3rd Respondents relied on section 107 of the Evidence Act, Chapter 80 Laws of Kenya.

On the issue of costs, the 2nd and 3rd Respondent argued that the Petitioner had failed to demonstrate that the 3rd Respondent's structures were within the suit property and as such the Petition should be dismissed with costs.

Determination:

The parties did not agree on the issues for determination by the court. As indicated earlier, each party framed its own issues. Some of the issues framed by the parties such as whether the court has jurisdiction to determine the petition were not raised in the petition or the replying affidavits. The court will nevertheless consider the issue of jurisdiction since the issue can be raised at any time. The other observation I wish to make is that this was a purely civil dispute over title to land. It is not clear why the petitioner abandoned a civil suit that it had filed in favour of this constitutional petition. I am of the view that the practice that is gaining root in our courts where parties are bringing all sorts of claims as constitutional petitions simply because a right guaranteed under the Constitution is alleged to have been infringed should stop. Litigants must appreciate the fact that nearly all disputes being brought to court have some form of constitutional flavour. That does not mean that they have to be brought to court as constitutional petitions.

In the petition before me, the issues that arise for determination are;

1. Whether the court has jurisdiction to determine the petition.
2. Whether the Petitioner is the lawful proprietor of the suit property.
3. Whether the 3rd Respondent has trespassed on the suit property.
4. Whether The Petitioner's rights under Article 29(c), Article 32 and Article 40 of the Constitution have been violated.
5. Whether the Petitioner is entitled to the reliefs sought in the amended petition.
6. Who is liable for the costs of the petition?

Whether the court has jurisdiction to determine the petition.

The 2nd and 3rd Respondents have argued in their submissions that the court does not have jurisdiction in this matter since the dispute between the parties is over boundary. They relied on Section 18(2) of the Land Registration Act, 2012 which provides as follows:

The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.

I find no merit in this contention by the 2nd and 3rd Respondents. I am not satisfied that what is before the court is a boundary dispute. As I have stated earlier, the dispute which is longstanding is over the ownership of the suit property which the Petitioner claims to be the absolute owner and the 3rd Respondent claims to have been acquired unlawfully. In my view, the issue of the boundary of the suit property would only become relevant when the court is considering the 3rd Respondent's alleged encroachment on the suit property but not as the subject matter of the dispute. This court is therefore seized of jurisdiction to hear and determine the petition.

Whether the Petitioner is the lawful proprietor of the suit property.

The suit property is registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). The Petitioner was registered as the owner of the suit property on 27th January, 1995 and was issued with a certificate of lease on the same date. The suit property measures 1.1488 hectares. According to the lease instrument dated 9th December, 1994, the suit property was leased to the Petitioner to use for a church, church hall, residence for the Minister in charge, Nursery School and teachers' houses. The Petitioner is in possession of the suit property. The Petitioner produced in evidence in proof of its ownership of the suit property among others, a lease instrument executed in its favour by the Government and a certificate of lease. Sections 27 and 28 of the Registered Land Act provides as follows:

27. Subject to this Act -

(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.

28. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject -

(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register:

Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.

Section 143(1) and (2) of the Registered Land Act on the other hand provides as follows:

(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

Article 40 of the Constitution provides that:

40. (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person—

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

From the foregoing, title to land can only be impeached in cases where the land is acquired through mistake, fraud or illegally. The Petitioner having demonstrated that it is the registered owner of the suit property, the burden shifted to the 2nd and 3rd Respondents who claimed that the Petitioner's title was acquired illegally and fraudulently to prove the alleged illegality and fraud.

In Railal Gordhanbhai Patel v Lalji Makanji [1957] E.A 314, the court stated as follows at page 317:

“Allegation of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”

In Virani t/a Kisumu Beach Resort v Phoenix of East Africa Assurance Co. Ltd [2004] 2 E.A KLR 269, the court held that:

“Fraud is a serious quasi-criminal imputation and it requires more than proof on a balance of probability though not beyond reasonable doubt”.

In Kampala Bottlers Ltd. v Damanico (UG) Ltd. [1990-1994] E. A141(SCU), the Supreme Court of Uganda held that:

“To impeach the title of a registered proprietor of land, fraud must be attributable to the transferee either directly or by necessary implication. The transferee must be guilty of some fraudulent act or must have known of some act by somebody else and taken advantage of such act. The burden of proof must be heavier than a balance of probabilities generally applied in civil matters.”

The 2nd and 3rd Respondents have contended that the suit property was created from land that was reserved for public use. I have considered all the documents that were placed before this court by the 2nd and 3rd Respondents. My finding is that there is none showing that land parcel Nairobi/Block61/639 (the suit property) was created from land that was reserved for public use. The extract of what is alleged to be from the Report of the Commission of Inquiry into Illegal/Irregular Allocation of Public land (the Ndungu Report) that was produced in evidence by the 2nd and 3rd Respondents to prove that the suit property was reserved as public utility plot and that the same was allocated to the Petitioner irregularly is incomplete and it does not refer to Nairobi/Block61/639 (the suit property). L.R No. 11239, Kibera cannot be the same as Nairobi/Block61/639 (the suit property). The incomplete extract of the Ndungu Report alone is in my view insufficient to establish that the suit property was reserved for public use and that it was allocated to the Petitioner fraudulently and illegally. I have looked at all the volumes of the Ndungu Report and I have been unable to find the extract that has been produced in court by the 2nd and 3rd Respondents.

What I have got from Annexes Volume II of the Ndungu Report under “**complaints from the public**” (pages 687 to 776) at page 693 is a complaint that was made to the commission by Salama Community, Kibera Nairobi against the Petitioner herein in respect of what is described as “**Several Public utilities out of L.R No. 11239 of 1962, Urban Land, Kibera**”. The complaint was that “**The Presbyterian Foundation Limited amalgamated several portions of land previously set aside for public purposes combining them to form 1.1488 Ha. The Survey Map No. 81329 of L.R No. 11239 of 1962 deposited in Survey Records Office in Nairobi has been tampered with to reflect these illegal allocations.**” To this complaint, the Ndungu Commission stated that “**The issue should be investigated to verify the facts.**” There was no finding by the Commission that the suit property was illegally or irregularly acquired by the Petitioner. In the absence of evidence that the Petitioner acquired the suit property illegally and fraudulently, it is my finding that the Petitioner is the lawful registered owner of the suit property.

Whether the 3rd Respondent has trespassed on the suit property.

Section 3 of Trespass Act, Chapter 294 Laws of Kenya provides as follows:

(1) Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.

(2) Where any person is charged with an offence under subsection (1) of this section the burden of proving that he had reasonable excuse or the consent of the occupier shall lie upon him.

Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, Clerk & Lindsell on Torts, 18th Edition, page 923, paragraph, 18-01. In Gitwany Investments Limited v Tajmal Limited & 3 others [2006] eKLR, it was held that title to land carries with it legal possession. This means that even if one does not have actual possession of land, so long as he has a title to the land, that is deemed as possession for the purposes of trespass. To establish trespass, the Petitioner had to prove that it was either lawfully in possession of the suit property or was the owner thereof and that the 3rd Respondent entered and occupied the property without any justifiable cause.

I have held that the Petitioner is the lawful proprietor of the suit property. The Petitioner claimed that the 3rd Respondent entered the suit property and started constructing thereon a mosque and/or a madrassa. In response to this allegation, the 3rd Respondent did not deny that it entered into some parcel of land and started putting up structures thereon. The Petitioner produced in evidence photographs of structures that the 3rd Respondent is said to have been putting up on the suit property when the Petitioner came to court. The 3rd Respondent contended in response that its construction works were on public land and not on the suit property.

The burden was on the 2nd and 3rd Respondents to demonstrate the existence of public land on which they alleged to have been constructing the mosque and/or madrassa complained of by the Petitioner. A part from their contention that the suit property was public land, no evidence was placed before the court by the 2nd and 3rd Respondents in proof of their allegation that the constructions that they were carrying out were on public land. I am of the view that even if the 3rd Respondent felt that the suit property was public land and that it had been acquired illegally, it was not open to the 3rd Respondent to forcefully seize a portion of the suit property and start putting up structures thereon. I wonder why the 3rd Respondent felt that it had a better right to use public land than the Petitioner. Even the Government of Kenya could not arbitrarily take away the suit property from the Petitioner assuming that it was acquired irregularly which has not been proved. In Evelyn College of Design Ltd v Director of Children's Department & another [2013] eKLR the court stated that:

“...if the land has been illegally acquired, then the State must use due process to recover it. The requirement of due process is underpinned by several provisions of the Constitution. First, it is implicit in Article 40(2)(a) which prohibits the legislature from passing legislation that arbitrarily deprives a person of any interest in or right over any property of any description. Second, Article 40(6) is clear that rights acquired under this Article do not extend to any property that is found to have been unlawfully acquired. Such “finding” cannot be by any other means other than due process. Third, Article 47(1) guarantees every person fair administrative action which includes due process.”

Due to the foregoing, it is my finding that the Petitioner has established that the 3rd Respondent entered and occupied the suit property which is lawfully owned by the Petitioner without any lawful cause. The Petitioner has therefore proved that the 3rd Respondent has trespassed on the suit property.

Whether The Petitioner's Rights Under Article 29(c), Article 32 and Article 40 of the Constitution have been violated?

Article 29 (c) of the Constitution states:

Every person has the right to freedom and security of the person, which includes the right not to be subjected to any form of violence from either public or private sources.

The Petitioner contended in its submissions that the encroachment by the 2nd and 3rd Respondents on the suit property was violent and led to loss of lives and properties. The Petitioner did not however lead any evidence during the trial linking the alleged violence and loss of life to the 2nd and 3rd Respondents. The assertion was therefore not established and likewise infringement of Article 29(c) of the Constitution.

With regard to the alleged infringement of Article 32 of the Constitution, the Petitioner did not state which sub-article of Article 32 had been violated. The Article generally deals with the freedom of conscience, religion, belief and opinion. The Petitioner did not demonstrate that any of these rights were violated by any of the Respondents. There is no evidence that any of the Respondents stopped the Petitioner's members from worshipping in the church building on the suit property. I therefore find that the rights protected under Article 32 of the Constitution were not violated.

With regard to the alleged violation of Article 40 of the Constitution, I am in agreement with the Petitioner that by entering the suit property without the Petitioner's permission, putting up structures on a portion thereof and occupying the same, the 3rd Respondent violated the Petitioner's right to own property guaranteed under Article 40(1) of the Constitution.

Whether the Petitioner is entitled to the reliefs sought.

From my findings above, the Petitioner is entitled to a declaration that its fundamental rights under Article 40(1) of the Constitution have

been violated by the 3rd Respondent. I am not satisfied however that the Petitioner is entitled to the order of Mandamus sought against the 1st Respondent. The dispute before the court as stated earlier was of a private nature. It concerned ownership of land. I see no reason why the 1st Respondent should be dragged into it the court having pronounced itself on the rights of the parties to the land in dispute. With regard to the order sought for possession of the suit property and in default, eviction of the 3rd Respondent, I am satisfied that the Petitioner is entitled to the same.

Who is liable for the costs of the petition?

Costs is at the discretion of the court. As a general rule, costs follow the event. The Petitioner has succeeded in its claim against the 2nd and 3rd Respondents. No reason has been advanced to warrant denying the Petitioner its costs of the petition. The petitioner shall have the costs of the petition.

Conclusion:

In conclusion, I hereby enter judgment for the Petitioner as follows;

1. I declare that the fundamental rights of the Petitioner under Article 40 of the Constitution have been violated by the 3rd Respondent.
2. The 3rd Respondent shall vacate and hand over possession of the portion of Nairobi/Block 61/639 (the suit property) which it occupies to the Petitioner and shall remove therefrom all the structures that it has put up thereon.
3. Due to the activities being undertaken by the 3rd Respondent on the said portion of the suit property which are of a religious nature and which may have to be moved to an alternative location, the 3rd Respondent shall vacate and hand over possession of the said portion of the suit property to the Petitioner on or before 5th April, 2022.
4. From the date hereof up to the time of handing over possession of the portion of the suit property under its occupation to the Petitioner, the 3rd Respondent shall not put up or construct any other or further permanent structures on the said portion of the suit property.
5. In the event that the 3rd Respondent fails and/or refuses to vacate the portion of the suit property under its occupation or to remove the structures thereon within the prescribed period, the Petitioner shall be at liberty to apply to court for an order for the 3rd Respondent's forceful eviction from the suit property without prejudice to any other rights that the Petitioner may have against the 3rd Respondent or its officials.
6. The Petitioner shall have the costs of the petition to be paid by the 3rd Respondent.

DELIVERED AND DATED AT NAIROBI THIS 5TH DAY OF OCTOBER, 2021

OKONG'O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Mungai for the Petitioner

Mr. Allan Kamau for the 1st, 4th and 6th Respondents

Ms. Nzuki h/b for Mr. Washika for 2nd and 3rd Respondents

N/A for the 5th Respondent

Ms. C. Nyokabi-Court Assistant