



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 131 OF 2019

MAGI HOLDINGS LIMITED.....PLAINTIFF/APPLICANT

=VERSUS=

JESUS MANIFESTATION CHURCH.....DEFENDANT/1ST RESPONDENT

PRINCE WILLIAM MWANGANGI.....DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 28th February 2020 brought under section 1A, (1), (2), 3A, 63 (c) and (e) of the Civil procedure Act (Cap 21), and orders 40 rules 1(A), 3, 4(1) of the Civil Procedure Rules (2010) and all other enabling provisions of the law.

2. It seeks orders:-

1. Spent.

2. Spent.

3. That pending the hearing and determination of the main suit, this honourable court be pleased to grant the plaintiff/applicant a temporary order of injunction directed at the 2nd defendant alone, his servants or agents or nominees or through any person claiming a right through or under him compelling the 2nd Defendant to stop holding crusades at night on LR NO 57/882 which is within a radius of 30 metres next to the Plaintiff's residential houses constructed on LR NO 57/881, located at Kasarani, Off Thika Road within Nairobi Country.

4. Cost of this application be provided for.

3. The grounds are on the face of the Application and are set out in paragraphs 1 to 4.

4. The application is supported by the affidavit of Elizabeth Wanjiku Nguchuga, the Plaintiff/Applicant herein, sworn on the 28th February 2020.

5. On the 22nd July 2020 the court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.

6. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit and the submissions filed on behalf of the parties. The issue for determination is whether this application is merited.

7. It is the Plaintiff's/Applicant's case that the noise generated from preaching, singing and shouting by the Church has affected the tenants on the Plaintiff's premises. It is stated that tenants have threatened to vacate.

8. The 2nd Defendant/Respondent on the other hand states that Church activities have been conducted in a modest way. Further that there have been no night crusades owing to the Covid 19 protocols which are in place.

9. The Plaintiff/Applicant raises issues of noise pollution and that as a result her tenants have threatened to vacate the premises.

10. Whoever alleges must prove. It is incumbent upon the Plaintiff/Applicant to place before this court the quantification of noise generated by the 1st Defendant. She ought to have engaged the services of expert to prepare a report. In any case this would be evidence that is likely to be tendered at the trial.

11. There is no evidence that some tenants have vacated owing to the alleged noise.

12. In conclusion, I find that the Plaintiff/Applicant has failed to demonstrate that she deserves the orders sought. I find no merit in this application and the same is dismissed with costs to the 2nd Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 18TH DAY OF NOVEMBER 2021.

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L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the Defendant

Steve - Court Assistant