



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CIVIL NO 92 OF 2010 (OS)

LAWRENCE GITONGA NJERU.....APPLICANT

VERSUS

DIOCESE OF MERU TRUSTEES.....RESPONDENT

R U L I N G

1. This application states that it has been brought to Court pursuant to Article 159(d) of the Constitution of Kenya 2010, Section 1A, 1B and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya, Order 17 Rule (2) (2) of the Civil Procedure Rules, 2010, Orders 40 Rules 1 (a) and (b) of the Land Registration Act No. 3 of 2012 and any other enabling provision of the law. The application is dated 31st August, 2016 and seeks orders:-

(1) Service of this application may be dispensed with in the first instance.

(2) This Honourable Court be pleased to set aside the order issued on 9th July, 2015 in which the suit was dismissed for want of prosecution.

(3) THAT this Honourable Court be pleased to reinstitute and restore this suit to be heard on merit.

(4) THAT this Honourable Court be pleased to issue an Inhibition order inhibiting any dealings with the title to land registration number MUTHAMBI/GATUA/740 until the hearing and determination of this application.

(5) THAT this Honourable Court be pleased to issue an inhibition order inhibiting any dealings with the title to land registration number MUTHAMBI/GATUA/740 until the hearing and determination of this suit.

(6) THAT this Honourable Court be pleased to issue a Temporary Injunction restraining the Defendant by itself, its adherents, agents, employees and/or servant from wasting, damaging, alienation, sale, removal, disposition of the suit property and/or in any way obstructing the applicant from his quiet enjoyment of the suit premises until the determination of this application.

(7) THAT this Honourable Court be pleased to issue a temporary Injunction restraining the defendant by itself, its adherents, agents, employees and/or servant from wasting, damaging, alienation, sale, removal disposition of the suit property and/or in any way obstructing the applicant from his quiet enjoyment of the suit premises until the hearing and determination of this suit.

2. The application is supported by the Affidavit of LAWRENCE GITONGA NJERU, the applicant and has one ground which reads as follows:-

(a) The Respondent has threatened to forcefully enter the suit and evict premises (sic) and eject out the Applicant and his family on 3rd September, 2016 without any Court Order to that effect.

3. Mr. Riungu for the Applicant invited the Court to peruse the applicant's pleadings and find that the application is urgent and the Interim Orders sought are meritorious. He told the Court that the Catholic Church had on 28/08/2016 announced that its members would evict the applicant from his home on 03/09/2016 just 2 days before this application was heard exparte. He told the Court that it is only after this announcement was made that the applicant learnt that his suit had been dismissed for non-prosecution.

4. He told the Court that Mr. I.C Mugo had all along assured the applicant that he was seeking a hearing date for the suit. Mr. Riungu opined that an error committed by an Advocate should not be visited upon his client.

5. I have perused the pleadings. I find that the application has urgency and its prayers 4 and 6 should be granted at this exparte stage.

6. Prayers 4 and 6 are granted in terms of Section 63, CPA.

7. Costs shall be in the cause.

8. Interpartes hearing on 13/09/2016.

9. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 1ST DAY OF SEPTEMBER, 2016 IN THE PRESENCE OF:-

CC: Lilian/Daniel

Riungu for the Applicant

P.M. NJOROGE

JUDGE