



REPUBLIC OF KENYA

IN THE ENIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 118 OF 2019

REV. PATRICK LIHANDA (suing on behalf of PENTECOSTAL

ASSEMBLIES OF GOD KENYA).....PLAINTIFF/APPLICANT

VERSUS

FREDRICK MANOA EGUNZA.....DEFENDANT/RESPONDENT

RULING

The application is dated 30th October 2019 and is brought under order 40 rule 1 and 4 of the Civil Procedure Rules and sections 1A, 1B, 3, 3A and 63E of the Civil Act seeking the following orders;

1. That this application be certified urgent and heard ex parte in the first instance.
2. That a temporary injunction do issue restraining the respondent, his agents, servants from selling, disposing and/or interfering with land parcel o. South Maragoli/Kegoye/709 in whatsoever manner and the respondent be further restrained from attaching and selling the applicants properties pending the hearing of this application inter partes.
3. That a temporary injunction do issue restraining the respondent, his agents, servants from selling, disposing and/or interfering with land parcel South Maragoli/Kegoye/709 in whatsoever manner and the respondent be further restrained from attaching and selling the applicants properties pending the hearing of this suit.
4. That any other order that this Honourable Court may deem just and expedient to grant
5. That the costs of this application be provided for.

It is based on the grounds that, the applicant purchased L.R. No. South Maragoli/709 sometimes in 1970s. That the respondent surrendered the title document to the church. That the respondent has never used this land from the date of the sale. The applicant built a permanent church building on the said land. That the church has been in continuous use and occupation of the said land from the date of purchase to date. The church is not a tenant to the respondent. The respondent has unlawfully proclaimed the applicant's properties. The applicant stands to suffer irreparable loss and damage.

The respondent submitted that he is the absolute registered owner of land parcel No. South Maragoli/Kegoye/709 measuring 0.05 Ha which he bought from Wilson Kakaiga Gudahi at Kshs.3000/= sometimes in September 1978. That upon purchase of the said parcel of land aforesaid the same was transferred in his

name and a land certificate issued. Annexed hereto and marked FMEI and 2 is a copy of the green card and a search certificate to that effect. That he has constructed on the said land a permanent house and a toilet which are still there todate wherein he started residing. That when he bought the parcel of land aforesaid, Vumale P.A.G. Church was conducting their church services in one of the classrooms of Vumale Primary school which shares a common border/is adjacent to the said parcel of land. That in 1981 he was identified by the Kenya Government to proceed for studies in Britain. That before leaving the country the then pastor and in charge of Vumale P.A.G church Mr. Mulindi approached him with information that he had been requested by the church management to discuss the possibility of leasing his plot and his permanent house where they will be conducting their services. That they agreed that they will be paying one monthly rent of Kshs.2,000.00 for the use of his plot and house which was earmarked to host the said pastor. That since he was leaving the country they agreed on the terms aforesaid above and he allowed the church to use his property as a tenant and not as a purchaser.

That he briefly came back to the country in 1983 and he remembers demanding the outstanding rent arrears then amounting to Kshs.72,000/=

both from the church leadership at Vumale annexed hereto and marked FMW 3 is a copy of the demand dated 3rd January, 1983 for rent. That he was appointed the second Secretary attached to the Kenya High Commission based in London sometimes in 1984 which position demanded that he be permanently stationed in London until otherwise directed by the government annexed hereto and marked FMEA 4 are copies of his passport. That all this period that he was away the applicants were not remitting rent to him and he kept on reminding them through various correspondence of the rent due, annexed hereto and marked FME 4a, b, c, and d are copies of the different correspondences over the issues with the Church. That the applicant took advantage of his long absence and constructed a permanent church building on his plot and he could not have stopped it since he was permanently stationed outside the country. That sometimes in October 2019 just after he had permanently relocated back home he was summoned by Vihiga County Land Registrar who was inquiring about certain application forms which had been presented to her by the applicant in respect of his property annexed and marked FME 5a and b are copies of the application to Vihiga County Land Control Board and transfer form presented by the church to the Land Registrar. That the Land Registrar specifically wanted to know why the said forms were being presented to her without his signatures and details.

This court has considered the application and the submissions therein. The application being one that seeks injunctions, has to be considered within the principles set out in the case of *GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358* and which are:-

1. *The applicant must show a prima facie case with a probability of success at the trial*
2. *The applicant must show that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages and,*
3. *If in doubt, the Court will decide the application on a balance of convenience.*

It must also be added that an interlocutory injunction is an equitable relief and the Court may decline to grant it if it can be shown that the applicant's conduct pertinent to the subject matter of the suit does not meet the approval of a court of equity.

The applicant submitted that, they purchased L.R. No. South Maragoli/709 sometimes in 1970s. That the respondent surrendered the title document to the church. That the respondent has never used this land from the date of the sale. The applicant built a permanent church building on the said land. That the church has been in continuous use and occupation of the said land from the date of purchase to date. The church is not a tenant to the respondent. The respondent has unlawfully proclaimed the applicant's properties. The respondent submitted that he is the absolute registered owner of land parcel No. South Maragoli/Kegoye/709 measuring 0.05 Ha. That he has constructed on the said land permanent house and a toilet which are still there to date wherein he started residing. That when he bought the parcel of land aforesaid, Vumale P.A.G. Church was conducting their church services in one of the classrooms of Vumale Primary school which shares a common border/is adjacent to the said parcel of land. That before leaving the country the then pastor and in charge of Vumale P.A.G church Mr. Mulindi approached him with information that he had been requested by the church management to discuss the possibility of leasing his plot and his permanent house where they will be conducting their services. That they agreed that they will be paying one monthly rent of Kshs.2,000.00 for the use of his plot and house which was earmarked to host the said pastor. That he allowed the church to use his property as a tenant and not as a purchaser. This court has perused the documentary evidence adduced in this application and the replying affidavit. At this stage it is difficult to ascertain the relationship between the parties. The applicant states that they have been in occupation since the 1970s. I find that the applicant has established a prima facie case against the respondent and I order that the status quo be maintained pending the hearing and determination of this case, costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 18TH DECEMBER 2019.

N.A. MATHEKA

JUDGE