



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. 118 OF 2019**

**ABDULLAHI MOHAMED SHEIKH.....PLAINTIFF**

**VERSUS**

**ESHMAEL AFANDA YEDAH.....1<sup>ST</sup> DEFENDANT**

**AFRICA INLAND CHURCH (PASTOR MUNDE)..2<sup>ND</sup> DEFENDANT**

**RONALD MUNGUSA.....3<sup>RD</sup> DEFENDANT**

**ROSE NYAMBURA GITERE.....4<sup>TH</sup> DEFENDANT**

**THE NAIROBI CITY COUNTY.....5<sup>TH</sup> DEFENDANT**

**DOMINIC WAINAINA NJEHIA.....6<sup>TH</sup> DEFENDANT**

**RULING**

The Plaintiff's application dated 20/03/2019 seeks a restraining order against the Defendants either acting by themselves, their principals, goons from the outlawed "kam jeshi" militia, servants, contractors, guards or workmen or from entering, trespassing, alienating, constructing, excavating, harvesting and or dumping soil, transferring and or otherwise interfering with plot numbers 44 and 55 (being part of land reference number (L.R. No.) 209/7260/207 and L.R No. 209/7260/208/Eastleigh, Section III, Sewerage Area, Nairobi County, pending the hearing and determination of the application and the suit. The Plaintiff also sought to have the Officer Commanding (OCS) Shauri Moyo Police Station oversee the implementation and compliance of the orders. The application is based on the grounds on the face of the application and the Plaintiff's supporting affidavit sworn on 20/03/2019. The Plaintiff deponed that he purchased the suit plots from Rose Wangithi Mbugi and Martin Mutugi and that together with the former allottees, he cleared all the outstanding rates on the plot. He claimed that he registered a lease in respect of the suit land with the City Council of Nairobi on 05/05/2011 and that on 8/6/2012 the building plans for the proposed development on the suit property were approved in a meeting at City Hall. He averred that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants trespassed into his property in February 2019, and proceeded to construct kiosks and shanty temporary structures on the plots denying him peaceful occupation as he was to begin construction.

He annexed copies of the title, sale agreements, receipts, minutes of the Council's proceedings, application for and approval documents, letter dated 17/3/2016 and photographs of the trespass and the illegal structures.

The application was opposed by the 5<sup>th</sup> Respondent through the affidavit of its Director of Planning, Compliance and Enforcement. He deponed that the orders sought have do not affect the 5<sup>th</sup> Respondent as the Plaintiff has not given any particulars of wrongdoing by the 5<sup>th</sup> Respondent and urged that the application should be struck out with costs to the 5<sup>th</sup> Respondent. The other Respondents did not respond to the application.

The court has considered the application together with the affidavits filed and the evidence tendered by the parties. A closer observation of the photographs does not bear any evidence that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Defendants are constructing shops on the suit property. The photographs seem to suggest that the structures have been on the land for a long time as there is a permanent building on the plot made of stone on the ground floor while the first floor above it is constructed using iron sheets.

The court cannot find any threat to the suit land to necessitate the grant of the restraining orders sought by the Plaintiff. The application dated 20/03/2019 is dismissed. Costs shall be in the cause.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of December 2019**

**K.BOR**

**JUDGE**

**In the presence of:-**

Mr. V. Owuor - Court Assistant

In the absence of the Plaintiff and the Defendants