



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA

THIKA LAW COURTS

ELC CASE NO.263 OF 2017

JOAB KAMAU NJOROGE.....PLAINTIFF/APPLICANT

-VERSUS-

**ARCHDIOCESE OF NAIROBI KENYA REGISTERED
TRUSTEES....DEFENDANT/RESPONDENT**

RULING

By an *Amended Plaint* dated *6th March 2012*, the Plaintiff/ Applicant herein sought for Judgement against the Defendant/Respondent and among the orders sought were:-

- a. **An order for the removal of the Defendant's temporary structure from the Plaintiff's parcel of land LR.No.22404 in Thindigua area, Kiambu District.**
- b. **An order for a permanent injunction, restraining the Defendant, by themselves, their servants and or agents from entering into, remaining thereon, or in any other manner interfering with the Plaintiff's quiet possession and enjoyment of the parcel of land LR.No.22404 aforesaid.**
- c. **General damages for trespass.**

The Defendant had in its earlier defence denied all the allegations made by the Plaintiff in the Plaint and further averred that the suit property *LR.NO.76/32/7* is public utility plot set aside for use by the residents of *Thindigua Estate* as a *Community Center*. The Defendant further averred that the structures erected and being on the suit property were constructed through fundraising efforts by the residents of

Thindigua Estate for use by the said residents and that was well before the Plaintiff/Applicant purported ownership of the suit property.

The Defendant therefore denied the Plaintiff's allegations as contained in the Plaint and urged the Court to dismiss the suit.

After various interlocutory applications, the Plaintiff/Applicant filed the instant *Notice of Motion* dated *20th May 2015*, and sought for the following orders:-

1. **That Judgement be and is hereby entered against the Defendants for an order for the removal of the temporary structures put up by the Defendant on the Plaintiff's parcel of land**

being LR.No.22404 in Thindigua area, Kiambu County.

2. That Judgement be and is hereby entered against the Defendant for an order for a permanent injunction, restraining the Defendants by themselves, their servants and or agents, from entering onto, remaining thereon, or in any other manner whatsoever interfering with the Plaintiff's quiet possession and enjoyment of the parcel of the said parcel of land LR.No.22404, Thindigua area of Kiambu County.

3. That Judgement be and is hereby entered against the Defendants for general damages for trespass.

4. That the Defendants be and is hereby ordered to pay the costs of the suit, and the costs of this application.

The said application is supported by the grounds stated on the face of the application and these grounds are:-

a. The Defendant have admitted that the Plaintiff is the registered proprietor of the suit property.

b. The Defendants have unequivocally stated that they do not have any proprietary interest to the suit property.

c. The Defendants have unequivocally admitted that they put up the semi-permanent structure (Social Hall) on the suit property.

d. The Defendants have unequivocally stated that they are in the process of cementing the semi-permanent structure, and are also in the process of constructing toilets on the suit property.

Further, the application is supported by the affidavit of *Joab Kamau Njoroge*, the Applicant herein. He averred that he has been informed by his advocate on record that the statement of Defence filed by the Defendant in court on **18th July 2007**, admitted that the Plaintiff/Applicant is the registered owner of the suit property LR.No.22404 in Thindigua Kiambu. Further that the Defendant through the further affidavit of *Peter Irungu Kabiru* sworn on **25th June 2007**, contains unequivocal admission to the effect that the Defendant did put up the semi-permanent **Social Hall** on the suit property in collaboration with '**Thindigua Community**'. Further that the Defendant was in the process of cementing the said Social Hall in collaboration with **St. Peters & Paul Catholic Church, Kiambu** and also in the process of constructing public toilet on the suit property.

It was his further averment that he had been advised by his advocate on record that in view of the above stated admissions, the other denials in the statement of Defence cannot stand and that there was nothing else in the said statement of Defence that would merit going for trial. He urged the Court to enter Judgement against the Defendant in view of the said admission.

The application is contested and *Rev. Fr. Peter G. Mburu*, the Father-in-charge of **St. Peter & Paul Catholic Church, Kiambu** which is owned by the Defendant herein swore a **Replying Affidavit** and averred that LR.No.22404 (Original 76/32/7) the suit property herein was rightfully allocated to the Defendant. It was his averments that in early **1970's Thindigua Farm** known as LR.No.76/32, through its office bearers had applied for subdivision of the said parcel of land into various portions for its members. The subdivisions were approved by the then Commissioner of Lands subject to surrender of 11 sub-plots for public utility to the then **Kiambu Town Council** as evident from **annexture RFPG-1**. He further averred that in the **1990**, the said **Thindigua Co. Ltd** allocated the said public utility sub-plots to various main stream churches to hold as trustees to avert possibility of the said plots being grabbed by private individuals.

For the above reason, the suit property which was earmarked for development of **Community Centre** was allocated the **Catholic Church** for development of public utility **Social Hall**. However after the said allocation, some of the deed plans went missing or were misplaced. It was his further averments that while awaiting the process of issuance of the title deed for **LR.No.76/32/7**, currently **LR.No.22404**, the Development

Committee of **St. Peter & Paul Catholic Church** in collaboration with **Thindigua Community** carried out various fundraising to which they developed semi-permanent **Social Hall** for use by **Thindigua Community**. However, while in the process of cementing the **Social Hall**, the said Committee of **St. Peter & Paul Catholic Church** discovered that the suit property had been illegally and fraudulently transferred to the Plaintiff herein. Indeed the suit property was in the **Ndungu Report** as one that was illegally and fraudulently acquired. Further that even if the Plaintiff is indicated as the registered owner of the suit property, the Defendant intends to challenge the validity of the title held by the Plaintiff and the Defendant has therefore not admitted that the Plaintiff is the rightful owner of the suit property. He urged the Court to allow this matter to proceed for hearing and determination of issue concerning ownership of the suit property for the interest of justice and fair administration of this matter. He urged the Court to dismiss the instant application.

The application was canvassed by way of **written submissions** which this Court has carefully read and considered. The Court has also considered the pleadings in general and the annexures thereto. Further, the Court has considered the relevant provisions of law and the cited authorities and it renders itself as follows;-

The application herein is anchored under **Order 13 Rule 2** of the **Civil Procedure Rules**, which provides:-

“Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court admissions for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just.”

From the above provisions of law, it is evident that the Court has discretion at any stage of the proceedings to enter Judgement on admissions as long as there is an application to court by any of the party. However as usual, such discretion must be exercised judicially and the admissions must be unequivocal and be construed as a whole to determine their effect. See the case of **Agricultural Finance Corporation....Vs...**

Kenya National Assurance Co. Ltd, Civil Appeal No.271 of 1996, where the Court held that:-

“..... Final Judgement ought not to be passed on admission unless they are clear, unambiguous and unconditional. A Judgement on admission is not a matter of right, rather it is a matter of discretion of the court and where a defendant has raised objection which go to the root of the case, it would be proper to exercise this discretion”.

The application is also anchored under **Section 3A** of the **Civil Procedure Act**, which states as follows:-

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.

It is therefore clear also from the above provisions of law that the Court has inherent power to make orders that are necessary in ensuring that end of justice is met and also to prevent abuse of the court process.

The bone of contention herein is the suit property **LR.No.22404 (Original 76/32/7)** which is registered in the name of **Joab Kamau Njoroge**, the Plaintiff/Applicant herein having been registered as such on

29th December 2005.

However, the Defendant has alleged that though the said suit property is in the name of Plaintiff, the said property was surrendered to **Kiambu Town Council** for public utility. However, the said **Kiambu Town Council** through its **Town Planning Committee** meeting allocated the suit property to the Catholic Church to avert the risk of it being grabbed by private individuals. The Defendant further averred that any development on the suit property was erected in collaboration with **Thindigua Community** after several Fundraising and therefore, the Defendant is only a trustee of the **Thindigua Community**.

The Plaintiff has averred that the Defendant has admitted that the Plaintiff is the registered owner of the suit property and that it has no proprietary interest on the suit property. Further that the Defendant has unequivocally admitted that it has put up a semi-permanent **Social Hall** and cemented the same and therefore the Court should order removal of the said structures.

It is evident that for the Court to enter any Judgement on admission, the said admission should be clear, unambiguous and unconditional. Further the pleadings amounting to admissions must be construed as a whole.

Though the applicant has alleged that the Defendant/Respondent did admit that the suit property was registered in the name of the Plaintiff. It further stated that the suit property was set aside as a public utility plot for use by the residents of Thindigua Estate well before the Plaintiff purported ownership. Therefore the above portion of the Defendant's defence is not an unequivocal admission that the Plaintiff is the rightful owner of the suit property.

Since before Judgement is entered on admission, the pleadings allegedly amounting to admissions must be construed as a whole and determine its effect, it is clear from the affidavit of **Peter Irungu Kabiru** sworn on 25th June 2007 that even after stating that **St. Peter & Paul Catholic Church** in collaboration with **Thindigua Community** has constructed a Social Hall and cemented it, he further stated that the said land was illegally and fraudulently transferred to the Plaintiff. From the Defence of **Peter Irungu Kabiru**, it is not a clear and unconditional admission that the Plaintiff/Applicant is the registered owner. It is only stated that Plaintiff/Applicant is a registered owner but whose transfer the Defendant terms as illegal and fraudulent and which can only be determined by calling of evidence.

Further, though the Defendant also alleged that it has no proprietary interest. It has been pleaded all along that the Defendant was allocated the subject parcel of land to hold the same as custodian for **Thindigua Community** and assist in development of a **Community Centre** for the benefit of the people of **Thindigua**. The above averment is not an admission that the suit property belongs to the Plaintiff herein. Further the Defendant has alleged that though the suit property is registered in the name of the Plaintiff, the said title can be challenged in court as it was acquired fraudulently. The above averment is not an unequivocal admission that the Plaintiff herein is the rightful owner of the suit property and that Judgement should be entered in his favour.

The Defendant has admitted that it has put up a **Social Hall** on the suit property and even began the process of cementing the same. It has contended that it was justified in doing so since the suit property is a public utility meant for **Thindigua Community** and as its Trustee and custodian, it did what was required of it. Therefore the said averment was not admission that the structures erected thereon by the Defendant was illegal structures and should be removed as pleaded by the Applicant herein.

The Court has considered the pleadings in general and has noted that the alleged admissions by the Defendant are not unequivocal and are conditional that the Plaintiff though registered as the proprietor of the suit property, the said registration was fraudulent. Therefore this Court finds that Judgement on admission cannot be entered under the circumstances herein. See the case of **Consolidated Bank of Kenya Ltd...Vs...Mombasa Development Ltd & Another, Civil Appeal NO.79 of 1995**, where the Court held that:-

“A Court can only enter Judgement on admission when the admission is clear,

unambiguous, unequivocal and sufficient i.e the admission must be plain and obvious”.

Having now carefully considered the instant *Notice of Motion*, the *Court finds it not merited and it is dismissed entirely with costs to the Defendant/Respondent*.

Further, the Court has noted that this is a *2007 matter*. The *Plaintiff should set the suit down for hearing* within a period of *30 days* from the date hereof and this is one of the suits that should be finalized before the end of this year.

It is so ordered.

Dated, Signed and Delivered at Thika this 19th day of June 2018.

L. GACHERU

JUDGE

In the presence of

M/S Wanjiru Mwangi holding brief for Mr. Kangata for Plaintiff/Applicant

No appearance for Defendant/Respondent

Lucy - Court clerk.

L. GACHERU

JUDGE

Court – Ruling read in open court in the presence of the above advocate.

L. GACHERU

JUDGE

19/6/2018