



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 886 OF 2015

THE BOARD OF TRUSTEES,

P.A.G KANGEMI CHURCH.....1ST PLAINTIFF/APPLICANT

REV. CHARLES ADENYA.....2ND PLAINTIFF/APPLICANT

ADEKHERA ELKIA.....3RD PLAINTIFF/APPLICANT

VERSUS

REV. JOHN NGUSALE.....1ST DEFENDANT/RESPONDENT

KENNEDY KINYANGI.....2ND DEFENDANT/RESPONDENT

BROWNSON ADAGALA.....3RD DEFENDANT/RESPONDENT

GLADYS VIHENDA.....4TH DEFENDANT/RESPONDENT

RULING

The Plaintiffs brought this suit against the Defendants on 18th September 2015 seeking, a permanent injunction to restrain the Defendants from encroaching upon, trespassing onto, remaining on or in any way whatsoever interfering with all that parcel of land known as L.R No. 2340, Kengemi, Nairobi together with the developments thereon and general damages for trespass.

Together with the plaint, the Plaintiffs filed an application by way of Notice of Motion dated 15th September, 2015 seeking a temporary injunction to restrain the Defendants from encroaching upon, trespassing onto, remaining thereon and/or in any way whatsoever interfering with the suit property and the Plaintiffs' quiet enjoyment, use, possession and occupation thereof pending the hearing and determination of the suit. The application was brought on the grounds that the Plaintiffs were members of P.A.G Kangemi Church which was the registered owner of the suit property and that on diverse dates in the month of August 2015 the Defendants trespassed on the suit property and had persisted with such trespass without due regard to the Plaintiffs' proprietary rights over the property. The Plaintiff's contended that the Defendants had threatened to continue with the said acts of trespass that entailed the disruption of the 1st Defendants' services and barring of the Plaintiff's and their followers from conducting church services. The Plaintiffs contended that as a result of the Defendants' said acts of trespass, the Plaintiffs' church services and operations had been brought to a halt and there was a likelihood of the Defendant continuing with the said acts of trespass unless restrained by the court.

The Defendants neither entered appearance and nor filed a statement of defence. The Defendants did not also respond to the injunction application. However, on 18th November 2015, the Plaintiffs' advocate filed in court a consent signed by the Plaintiffs' advocates and the Defendants' advocates on record. The consent was on the following terms:-

“BY CONSENT:

- (i) The Plaintiffs/Applicants do utilize their premises at Kangemi P.A.G Church.*
- (ii) The Defendants/Respondents do utilize their premises at P.A.G Kabete Church.*
- (iii) The Applicants and Respondents pay their own legal costs.*
- (iv) The matter be marked as settled.”*

The said consent was adopted as an order of the court on 25th November 2015. What I now have before me is the Plaintiff's Notice of Motion dated 12th May 2016 seeking an order for committal of the Defendants to civil jail for a period not exceeding six (6) months for contempt of the said order which was made herein on 25th November 2015. In the alternative, the Plaintiffs have sought the attachment of the Defendants' property and sale of the same to compensate the Plaintiffs for the losses they have incurred as a result of the Defendants' acts of contempt complained of.

When the application came up for hearing on 6th June 2016 the Defendants sought leave to file a replying affidavit and were ordered to do so within 14 days from that date. The Defendants had not filed their response by the time the matter came up for hearing for the second time on 24th October, 2016. On that day, the Defendants did not also appear in court. The Plaintiffs' advocate informed the court that the Plaintiffs wished to rely entirely on the material on record in support of their application.

I have considered the Plaintiffs application together with the affidavit filed in support thereof. I am of the view that the Plaintiff's application has no merit for various reasons. First, the consent order made herein on 25th November 2015 which is sought to be enforced by the Plaintiffs was not extracted. As I have mentioned earlier, the parties had filed a consent letter in court on 18th November, 2015. The consent was adopted as an order of the court by the Deputy Registrar on 25th November 2015. From the record, the order by the Deputy Registrar was never extracted by either party. There was therefore no order which the Plaintiffs can claim to have been disobeyed. Secondly, the said order did not restrain the Defendants from doing any of the acts complained of by the Plaintiffs. In their plaint, the Plaintiffs had sought injunction to restrain the Defendants from encroaching upon, trespassing onto, remaining on or in any way interfering with the suit property or the developments thereon. The Plaintiffs sought similar reliefs in their injunction application. However, no injunctive relief was granted in the order of 25th November 2015. I am unable to see therefore how the Defendants can be said to have disobeyed an order which neither directed them to do any act nor restrained them from doing any act. Thirdly, the Plaintiffs have not set out with clarity the acts of contempt complained of either in the application or the affidavit in support thereof. The Plaintiffs have not given out the particulars of each of the Defendants acts of disobedience of the order of 25th April, 2015 with the dates and acts committed by each of them. Finally, there is no evidence that the Defendants were served with the order (this was not possible as the order was not extracted) or were aware of the terms of the order assuming that the order restrained them from committing the acts alleged against them.

The upshot of the foregoing is that the Notice of Motion dated 12th May, 2016 has no basis. The same is accordingly dismissed with no order as to costs.

Delivered and Signed at Nairobi this 31st day of March, 2017

S. OKONG'O

JUDGE

In the presence of

Ms. Moraa h/b for Omwenga for the Plaintiffs

N/A for the Defendants

Kajuju Court Assistant