



**REPUBLIC OF KENYA**

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

**ELC CIVIL SUIT NO. 68 OF 2016**

**BISHOP PAUL MBOKO MUTUA**

**REV. JOHN BANKOSKY KITONGA**

**BISHOP ARTHUR KITONGA** (*Suing as Registered Trustees*

**REDEEMED GOSPEL CHURCH INC.).....PLAINTIFF/APPLICANT**

**VERSUS**

**LAZALOUS MAMBO .....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**BENARD KALITU .....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**GEORGE KITETU MAVINDU .....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**MRS. ELIZABETH NZILA .....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. What is before me is the Plaintiff's Application dated 29<sup>th</sup> July, 2016 seeking for the following orders:

***a. That this Honourable Court be pleased to grant a temporary injunction restraining the Defendant/ Respondents or his servants/Agents and/or Licensees from threatening to invade and erect illegal structures on the Land Reference No. Emali Township Block 1/126 causing the same to be sub-divided to smaller portions pending the hearing and determination of this suit.***

***b. That this Honourable Court be pleased to grant a temporary injunction restraining the Defendants/ Respondents or his servants/Agents and/or Licensees from interfering with the peaceful enjoyment of the Plaintiff's property known as Land Reference No. Emali Township Block 1/126 until the hearing and determination of this suit.***

***c. That the O.C.S Emali be directed to enforce the said order.***

***d. That costs of the Application be provided for.***

2. The Application is premised on the grounds that the Plaintiff's is the registered proprietor of parcel of land number Emali Township Block 1/126; that the Respondents have threatened to invade the suit property and that the Plaintiff has been in possession of the land.

3. According to the Affidavit of the 1<sup>st</sup> Plaintiff, the Defendants have encroached on the suit land, subdivided a portion of it are now allocating it to the Hawkers.
4. In response, the 4<sup>th</sup> Defendant deponed that she has been occupation of parcel of land known as Plot No. 408A Emali since the year 1965; that her late husband was issued with an allotment letter for the land in 1999 and that she has constructed a permanent structure on the said plot.
5. It is the 4<sup>th</sup> Defendant's case that the Plaintiff's acquired its Certificate of Lease unprocedurally and that there exists another suit being Makindu PMCC No. 239 of 2008 in respect to the suit property.
6. The 3<sup>rd</sup> Defendant deponed that he has been in possession of his land known as MKN /70/98/24 in Emali Town since the year 1965; that the land was allocated to him in the year 1999 by the then County Council of Makueni and that the Certificate of Lease held by the Plaintiff was irregularly and unprocedurally acquired.
7. On his part, the 2<sup>nd</sup> Defendant deponed that he purchased plot number MKN/70/99/5B from the 1<sup>st</sup> Defendant; that he took possession of the land and that he has put permanent structures on the said land.
8. The 1<sup>st</sup> Defendant deponed that he purchased a portion of land known as MKN/70/99/5B measuring 25 by 100ft and plot No. A Emali measuring 50 by 100ft from Albert Mulinge Mbithi.
9. According to the 1<sup>st</sup> Defendant, the Plaintiffs sued Albert Mulinge in Machakos ELC No. 216 of 2010 in which the Plaintiff was denied the orders of injunction; that the Applicant has instituted several suits and that the Applicant has previously misrepresented facts to the County Government of Makueni.
10. The advocates for both parties filed written submissions which I have considered.
11. In its Complaint dated 29<sup>th</sup> July, 2016, the Plaintiff is seeking for an order of permanent injunction restraining the Defendants from interfering with parcel of land known as Emali Township Block 1/126. In the meantime, the Plaintiff is seeking for an interim injunction pending the hearing of the suit.
12. I have perused the Complaint. At paragraph 12, the Plaintiff has averred that there is no suit pending and there have been no previous proceedings in any court between the Plaintiffs and the Defendants in their respective capacities over the same subject matter.
13. Contrary to the above averment, the evidence before this court shows that the Plaintiff has filed two suits in different courts over the same suit property involving some of the Defendants herein.
14. The first suit was filed in Makindu PMCC No. 239 of 2008 in which the Plaintiff sued eight Defendants. In that suit, the 4<sup>th</sup> Defendant herein is also a Defendant.
15. The Plaintiff then filed another suit being Machakos HCCC No. 216 of 2010 in which Albert Mbithi Muhidi is a Defendant.
16. The said suit is in respect of the suit property and the said Albert Muhidi is said to have sold portions of the suit property to some of the Defendants in this matter.
17. Vide a Ruling of 27<sup>th</sup> January, 2015, Mutende J ordered that the *status quo* in respect of the suit property should be maintained pending the hearing of the suit by the Environment and Land Court.
18. Instead of pursuing that suit by amending it to join the other parties, the Plaintiff has gone ahead to file a fresh suit in respect to the same suit property.
19. Clearly, the Plaintiff's action of filing the current suit without disclosing that there are other suits in

respect to the same suit property is an abuse of the court process.

20. The Plaintiff should make up its “*mind*” and decide which of the three (3) suits it wants to pursue.

21. Having found that the current suit is an abuse of the court process, and in view of the order of the court in Machakos ELC No. 216 of 2010 to the effect that the *status quo* should be maintained, I dismiss the Plaintiff’s Application dated 29<sup>th</sup> July, 2016 with costs.

**DATED AND DELIVERED AT MACHAKOS THIS 3<sup>RD</sup> DAY OF MARCH, 2017**

**OSCAR A. ANGOTE**

**JUDGE**