



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC CASE NO. 161 OF 2016**

**KENYA EVANGELICAL LUTHERAN CHURCH.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**NGOWA MWERU.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**MARK EMANUEL GONZI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The application dated 26<sup>th</sup> September 2016 is seeking for orders:-

- 1) This application be certified urgent and be allocated an early date for inter-partes hearing.**
- 2) The defendants, Ngowa Mweru and Mark Emanuel Gonzi be cited with contempt of Court, their property be attached and both defendants be committed to prison for such term not exceeding six months as this Honourable Court may deem fit with or without the option of fines for wilfully disobeying orders of injunction given by this Honourable Court on 12.7.2016 and issued for service upon the defendants on 19.7.2016.**
- 3) The defendants be ordered to demolish or cause to be demolished at their cost, structures they erected on the suit premises in breach of the said orders in an attempt to interfere with the suit premises pending the hearing and determination of this suit.**
- 4) The 1<sup>st</sup> defendant be ordered to desist from brewing and selling illicit brew and from carrying out any similar activities on the suit premises pending the hearing and determination of this suit.**
- 5) Costs of this application be borne by the defendants in any event.**

2. The application was served on the Respondents on 11<sup>th</sup> January 2017 but they did not file any documents in response. The application has therefore proceeded unopposed. Given the seriousness of the orders sought, I chose to determine whether the applicant has proved that indeed the defendants have disobeyed the orders of this Court issued on 12<sup>th</sup> July 2016.

3. The applicant avers that the orders were served upon the Respondents on 19<sup>th</sup> July 2016. In the application for orders for injunction, annexure **KW9 (b)** are built mud houses with makuti roof while **KW9 (e)** is a photograph of people sitting under a makuti structure which the applicant states is where the local brew is taken.

4. In the current application for contempt, the applicant annexed a photograph of a structure which he says was built on the dug foundation. He has also annexed picture showing two gentlemen with a bucket in front of them (**annex KW 2**). It is not possible just by looking at **KW 2** for the Court to conclude that the 1<sup>st</sup> defendant is selling illicit brew on the suit premises because the two persons in the picture are not identified. What is visible as the contents of bucket is a white plastic bottle and a sieve. In my view

besides this photograph (*annex KW 2*), the applicant ought to have filed a report from the local administration and/or O.C.S Lunga Lunga Police Station to corroborate his averment.

5. The second aspect is proof that construction was still being undertaken by the 2<sup>nd</sup> defendant despite being served with the orders to stop doing so. The applicant annexed photograph of a structure. Weighing this vis-à-vis the photograph of the dug foundation, I am satisfied that the applicant has made sufficient proof of the disobedience as regards actions undertaken by the 2<sup>nd</sup> defendant. For this reasons, I do grant orders contained in prayer 3 of the motion. The structure to be demolished is the one shown in annexure marked as *KW 4* in the supporting affidavit. I decline to grant prayer 2 for lack of sufficient proof. As regards to prayer 4, the applicant is already enjoying the temporary orders which have not been set aside. They remain in force. The costs of the application are ordered in the cause.

**Dated, signed and delivered at Mombasa this 11<sup>th</sup> day of April 2017**

**A. OMOLLO**

**JUDGE**