



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

CIVIL CASE NO. 221 OF 2016

**GODFREY KITHINJI (CHAIRMAN), FRANKLINE KINOTI RUKARIA
(SECRETARY), CAROL MWIRIGI (TREASURER) suing for and on behalf of
P.C.E.A. GANGARA CHURCH – NGIRINE PARISH.....PLAINTIFF**

VERSUS

GILBERT KIRIMI KANAMPIU.....1ST DEFENDANT

BENSON KIMATHI KIARA.....2ND DEFENDANT

JOHN KITHINJI.....3RD DEFENDANT

RULING

1. The Notice of Motion dated 9th November, 2016 seeks the following orders:-

- (1) THAT the application be certified urgent and service of the same be dispensed with in the first instance.
- (2) THAT the Honourable Court be pleased to grant orders of injunction restraining the defendants, their agents or assignees from entering, remaining or in any other way interfering with parcel No. ABOGETA/U-KITHANGARI/2482 until this Honourable Court issues further orders or until this application is heard interparties.
- (3) THAT the OCS Murungurune police station do provide security during the re-fencing herein of the cut barbed wire.
- (4) THAT the Honourable Court do confirm prayer (2) above until this suit is heard and determined.
- (5) THAT cost of this application be provided.

2. The grounds in support of the application are:-

- (1) The plaintiff has easement right over the parcel herein.
- (2) The defendants now are planning to invade the same.
- (3) The defendants did did a lot of destruction on 22/10/2016 especially cutting down the trees.

(4) Since 22/10/2016 the defendants have been restrained by the provincial administration.

(5) The provincial administration asked for this order hence the urgency herein.

(6) The defendants will not be prejudiced with this orders since they have no lots or right to this parcel.

3. The application is further supported by the Affidavit of GODGREY KITHINJI who has deponed as follows:-

(1) THAT I am the chairman of the church hence capable of swearing the affidavit.

(2) THAT the church has an easement right over parcel No. ABOGETA/U-KITHANGARI/2482 (See EOK I).

(3) THAT on 22/10/2016 the defendants invaded the above parcel and did a lot of destruction. (see EOK 2).

(4) THAT the defendants tried to put up temporary structures but were restrained by the provincial administration. (see EOK 3).

(5) THAT the provincial administration (chief) request for a court order hence this application.

(6) THAT the defendants did damages as per the the agricultural officer report.

(7) THAT now we are praying for the restraining orders as prayed in the plaint.

(8) THAT the defendants were restrained but may come back anytime hence this application.

4. The Respondents have been served but they have not filed any response. The application is hence unopposed. I however find that the orders sought for are injunctive in nature. The remedy is a discretionary and the court has to analyze the facts presented to establish if the prayers are meritorious or not.

5. In **Charter House Investment Ltd vs Simon K. Sang & 3 Others (2010) Eklr** the court of appeal had observed that;

“Injunction is an equitable and discretionary remedy.....the award of temporary injunction by a court of equity has never been guaranteed as a matter of right”.

6. The court has seen the second page of the Title deed of the applicant (annexure E.O.K.1), where the particulars of the easement are captured. In essence plaintiffs claim is the easement rights over parcel No. ABOGETA/ U-KITHANGARI/2482.

7. The particulars of destruction are also captured in annexures E.O.K 2,3,and 4.

8. It follows that plaintiff has established a prima facie case and that damages may not suffice to compensate the plaintiff if orders are not granted .

9. The application is allowed in terms of prayer 2 BUT FOR A PERIOD OF EIGHT MONTHS.

DELIVERED IN OPEN COURT AT MERU THIS 5TH DAY OF APRIL, 2017 IN PRESENCE OF:-

C:A Janet

Miss Njenga H/B for Ogoti for Applicant

L.N. MBUGUA

JUDGE