



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 1363 OF 2014**

**TRAMEX LIMITED.....PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNTY.....DEFENDANT**

**RULING**

1. The Plaintiff/ Applicant filed a Notice of motion dated 21<sup>st</sup> September, 2015 in which it sought the following reliefs:

***1. Spent***

***2. That the Honourable Court be pleased to grant leave for a site visit and inspection of the suit premises, and that upon the same happening, the notes and observation made thereon do form part of the proceedings herein, and the submissions be filed thereafter.***

***3. That the costs of this application be provided for.***

2. The Applicant is the allottee of Land known as LR No. 209/21025 situated along Githunguri Road in Kileleshwa within Nairobi City County ( suit land), In or around October 2014, the Applicant's employees were carrying out levelling and back filling on the suit land with the authority of the Respondent. The Respondent's agents came and harassed its employees and arrested some. The Respondent persisted in harassing the Applicant's employees prompting the Applicant to move to Court to seek protection.

3. The Applicants filed an application for Injunction dated 23<sup>rd</sup> October, 2014. The application was placed before Justice Mutungi on the 24<sup>th</sup> October 2014. The Judge directed that it be served for inter-partes hearing on 10<sup>th</sup> November 2014. When the matter came up on 10<sup>th</sup> November 2014, the Respondent in the Application had not filed a replying affidavit. The application was adjourned and the Judge granted temporary order of injunction pending hearing inter-partes of the application.

4. The application came up on a number of occasions but could not proceed for one reason or the other. On the 9<sup>th</sup> of July, 2015, the Judge directed that the application be disposed of by way of written submissions which were to be filed within 30 days. The Judge further made orders that the Applicant was to carry on its Church activities on the suit land but was not to effect any

development of a permanent nature and or in any other manner dispose of the suit land.

5. The Judge's orders of 9<sup>th</sup> July, 2015 were prompted by an application dated 10<sup>th</sup> June, 2015 brought by the Defendant in which the Defendant was complaining that the Plaintiff was carrying on developments on the suit land which were not approved by the Defendant. The Defendant wanted the Plaintiff to be restrained from continuing with construction which had not been approved by it. This is what prompted the Applicant to make the current application.

6. The Respondent opposed the Applicant's application through a replying affidavit sworn on 21<sup>st</sup> January, 2016. The Respondent contends that the Applicant's application is an afterthought and is only meant to delay the finalisation of this matter. That the Respondent has failed to file written submissions as directed by the Court.

7. I have carefully considered the Applicant's application and the opposition to the same by the Respondent. A reading of the Respondents replying affidavit clearly shows that the Respondent has misunderstood the applicant's application. The Applicant did not refuse to prepare submissions as alleged. The Applicant's application clearly states that the Court should visit the site after which submissions can be filed. The Applicant is not in contempt of the court order. I have indicated hereinabove that the Applicant's application was prompted by the Respondents allegations in its application of 10<sup>th</sup> June 2015 to the effect that there were ongoing constructions on the suit land.

8. A visit to a locus in quo is very important where one party feels that it is important for the court to visit before a determination on a matter is made. A court is at Liberty to visit a locus in quo at Interlocutory stage or even during the hearing of the main case. A visit would enable the Court to understand the issue in contention better and this will go a long way in ensuring that Justice is done to all parties in a fair manner. A request for visit to a locus in quo should not ordinarily be opposed unless it is clear that such visit may not be important to the determination of the issue before the court.

9. In the instant case, the applicant Is arguing that it is only maintaining the temporary structures which are for use by it for church activities. The Respondent on the other hand is claiming that there are ongoing constructions which have not been approved. In the circumstances, it is necessary for the court to visit the site before a ruling by the Applicant which is pending is rendered. I, therefore find that the Applicants application is well founded. I direct that there shall be a visit to the suit land by the court within the first 30 days of the new term. Such visit should be organised in the afternoon by the Deputy Registrar in consultation with the Court and the Advocates for the parties. Costs of this application shall be in the cause.

It is so ordered.

Dated, signed and delivered at Nairobi on this 28<sup>th</sup> day of **June 2017**.

**E.O. OBAGA**

**JUDGE**

In the presence of :-

Mr Kinyanjui for Mr Njeru for Plaintiff/Applicant

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**