



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT MILIMANI
ELC NO. 523 OF 2008

GRACE NJAMBI NGUGI.....PLAINTIFF

=VERSUS=

MONTANA KIMANI MBOGO.....1ST DEFENDANT

JOSEPH NJENGA WACHAIYU.....2ND DEFENDANT

HANNAH WAMAITHA NJENGA.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

COMMISSIONER OF LANDS.....5TH DEFENDANT

CHIEF LAND REGISTRAR.....6TH DEFENDANT

RULING

1. The Plaintiff /Applicant filed a Notice of Motion dated **18th March 2016**, in which she sought the following reliefs:-

i. Spent

ii. Spent

iii. Spent

iv. That the first, second and third Respondents, their servants, agents and all those claiming under them be restrained by an order of temporary injunction from entering ,occupying ,erecting structures thereon, transferring, disposing, wasting, carrying on any activities in or in any other way dealing with the suit property until the hearing and determination of this suit.

v. That the costs of this application be provided for.

2. The applicant is the registered owner of **LR No. Dagoretti/Ruthimitu/T 249 (suitland)**. The applicant contends that the first, second and third Respondents invaded the suit land in **February 2016**, and erected structures on it. That the Respondents are operating a church which was causing noise pollution as she

lives on the suit land with her husband and children.

3. The applicant's application is opposed by the Respondent's through a replying affidavit sworn on 25th January 2017. The Respondents contend that the applicant's application is an abuse of the process of the Court. That the Respondents have been on the suit land since 1980. The applicant found them on the suit land when she came there and that when she filed this suit, she prayed for an order of their eviction. They therefore contend that the applicant is not being honest when she claims that they invaded the suit land in February 2016.

4. I have considered the applicant's application as well as the opposition to the same by the Respondents. I must say at the outset that this application is an abuse of the process of the court. The applicant filed this suit on 25th July 2007. Her prayers in the Plaint were for an order of permanent injunction and eviction order against the Respondents. It is therefore ironical for the applicant to come to court eight years later and claim that the Respondents invaded the suit land, in February 2016.

5. When the present application was filed, the suit had already been fixed for hearing which was scheduled for 2nd June 2017. The case could not proceed due to the application herein which was pending for Ruling. The purpose of an injunction is to prevent that which has not occurred or to restrain further injury to a property. It is never given to restrain that which has already happened. The Respondents are not in a position to dispose of the suit land because it is registered in the name of the applicant. The Respondents are claiming that the registration of the suit land in the name of the applicant was fraudulent. The buildings which the applicant is complaining about were in place when the suit was filed and her pleading clearly attest to this. If there was need for injunction, the applicant would have filed an application for it when she filed the suit. I do not find any merit in the applicant's application which is hereby dismissed with costs to the second and third Respondents. This case should be set down for hearing without any further delay.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* on this **31st** day of **July, 2017**

E.O.OBAGA

JUDGE

In the Presence of :-

Mr Kiprono for M/s Chirchir for 1st,2nd & 3rd Respondents

Mr Angaya for Mr Chege for Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE