



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**MILIMANI LAW COURTS**  
**ELC. CASE NO. 12 OF 2011**

**MARION WAKANYI KAMAU..... PLAINTIFF**

**VERSUS**

**DELIVERANCE CHURCH**

**REGISTERED TRUSTEES .....1<sup>ST</sup> DEFENDANT**

**GEOFFREY KAMAU NJUGUNA.....2<sup>ND</sup> DEFENDANT**

**RULING**

Coming up before me for determination are two applications, namely the Notice of Motion dated 3<sup>rd</sup> December 2015 (the “First Application”) and the Notice of Motion dated 18<sup>th</sup> December 2015 (the “Second Application”), both filed by the Plaintiff. In the First Application, the Plaintiff/Applicant is seeking for the following orders:

1. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants produce the original Deed of Exchange dated 8<sup>th</sup> October 2008 to allow investigations to be conducted on it.
2. That the Directorate of Criminal Investigations to carry out investigations on the authenticity of the Deed of Exchange dated 8<sup>th</sup> October 2008 and circumstances surrounding its making and prepare and file their report in court.
3. That costs of the First Application be provided for.

In the Second Application, the Plaintiff/Applicant is seeking for an order setting aside the temporary injunction issued against her by Lady Justice Ougo on 24<sup>th</sup> July 2012 and that the entry made in the title for L.R. No. 209/9938 pursuant to a court order issued in **CMCC No. 10578 of 2006** restraining the Plaintiff from evicting the Defendants in respect of L.R. No. 209/9938/2 be removed.

The prayers sought by the Plaintiff/Applicant in the First Application cannot be granted owing to the fact that the hearing of this suit commenced on 23<sup>rd</sup> May 2013 and this matter is a part heard before this court. It is too late in the day for the Plaintiff to seek production of a document and investigations by the Directorate of Criminal Investigations at this stage when the Plaintiff has already given her evidence-in-chief. On this ground, I hereby dismiss the First Application with costs to the Defendants.

The prayers sought in the Second Application shall also not be granted by this court because this suit is part heard by this court. The court considers it a better use of judicial resources to focus on concluding this part heard suit once and for all instead of turning focus on a prayer to set aside the interim injunction subsisting herein. Further, the prayer to remove an order issued in **CMCC No. 10578 of 2006** cannot be issued by this court as there is no appeal before this court. The Second Applications is accordingly similarly dismissed with costs to the Defendants.

The Plaintiff is directed to fix this part heard suit for further hearing to facilitate the full and final

determination thereof.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 1<sup>ST</sup> DAY OF SEPTEMBER 2017.**

**MARY M. GITUMBI**

**JUDGE**