



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 179 OF 2017

THE EVANGELICAL LUTHERAN CHURCH IN KENYA

REGISTERED TRUSTEES.....PLAINTIFF/APPLICANT

=VERSUS=

SEVENTH DAY ADVENTIST CHURCH (E.A)LTD.....DEFENDANT/RESPONDENT

RULING

1. The applicant filed a Notice of Motion dated 16th March 2017 in which it seeks an order of injunction restraining the respondent from interfering with its property known as **LR NO. Nairobi/Block 61/705** (suitland). The applicant contends that the suit land was an amalgamation of two separate parcels in addition to some parcel which was occupied by the applicant.
2. The applicant contends that in February 2017, the respondent removed beacons marking the boundaries of the suitland and put up a perimeter wall which is inside the suitland. That the respondent has even gone ahead to create an access road on the suitland. Efforts to solve the dispute has not succeeded. The applicant further contends that the respondent is intent on annexing part of its land by placing new beacons in place.
3. The respondent has opposed the application through a replying affidavit sworn on 10th April 2017. The respondent is the registered proprietor of LR No. Nairobi/Block 61/722. The respondent has denied allegations of invasion of the suitland as claimed by the applicant. The respondent contends that the part development plan affecting the suitland was amended to allow for creation of an access road linking the two to Kibera Drive. The respondent thereafter applied for approval of the construction of the access road which approval was granted.
4. I have gone through the applicant's application as well as the opposition to the same by the respondent. I have also gone through the further affidavit filed by the applicant. The only issue for determination in this matter is whether the applicant has proved that it has a prima facie case to warrant issuance of an injunction. There is no doubt that the dispute between the applicant and the respondent dates back to the 1990's. Documents availed show that there was a decision by the Commissioner of Lands to have an access road created on the suitland so that it could serve both the applicant and the respondent. Though the two had other access routes to their properties, it was thought that it would be prudent for creation of an access road through the suitland to connect the two to Kibera Drive.
5. Though the applicant tried to fight the creation of the access road through a Judicial Review

application, this application was dismissed because the Judge who handled the same found that the Commissioner of Lands was in order to create the same. This decision was made in 2008. The respondent was given permission to construct the access road which was to remain a public road.

6. The parties to this suit appeared before the National Land Commission which also reached the same verdict that there was a public access road which had been created on the suitland. The applicant in the further affidavit seems to suggest that they are not aware that the respondent is owner of LR No. Nairobi/Block 61/722 and that it is not aware of existence of any beacon certificate. The access road which was created has never been removed from the suitland. Even though there was a letter from the Director of Physical Planning which was against the creation of the access road on ground that there were other access roads, the Commissioner of Lands did not take that advice. This letter was written on 24th November 2003. Three years later, the applicant tried to have the decision of the Commissioner of Lands quashed without success.

7. The applicant has not shown that the respondent has fenced their plot beyond their boundaries or beyond the access road which was created by the Commissioner of Lands. The applicant's application has no merit in the circumstances. The same is hereby dismissed with costs to the respondent.

Dated, Signed and delivered at **Nairobi** on this **23rd** day of **October, 2017**.

E.O.OBAGA

JUDGE

In the presence of :

M/s Metto for Mr Magero for respondent

Court Assistant: Steve

E.O.OBAGA

JUDGE