



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT CHUKA

CHUKA ELC CASE NO 288 OF 2017

SEVENTH DAY ADVENTIST CHURCH

EAST AFRICA LIMITED REGISTERED TRUSTEES SUING

THROUGH RUUNGU SDA.....CHURCHPLAINTIFF

VERSUS

PHARES MUNYAMBU RIMBERIA.....1ST DEFENDANT

CHARLES KITHINE RIMBERIA.....2ND DEFENDANT

RULING

1. This application is dated 22nd September, 2017 and seeks orders:

1. THAT this application be certified as urgent and be heard Ex-parte in the first instance.
2. THAT pending the hearing of this application inter-partes, this honourable court be pleased to issue temporary orders of injunction restraining the 1st and 2nd defendants, their agents, servants, employees ad whomsoever acting on their behalf or instructions from entering, extracting murrum, constructing, cultivating, erecting any structures, trespassing, using, selling or in any manner whatsoever from dealing with Land Parcel No. 517 – KAROCHO ADJUDICATION SECTION.
3. THAT pending the hearing and determination of this suit, this honourable court be pleased to issue temporary orders of injunction restraining the 1st and 2nd defendants, their agents, servants, employees and whomsoever acting on their behalf or instructions from entering, constructing, cultivating, erecting any structures, trespassing, using, extracting murrum, selling or in any manner whatsoever from dealing with Lnad Parcel NO. 517-KAROCHO ADJUDICATION SECTION.
4. THAT the costs of this application be provided for.

2. The application is buttressed by the affidavit of JACOB MBII MWATHI and has the following grounds:

- a) THAT the plaintiff/applicant is the registered proprietor of Land ParcelNo. 517- KAROCHO ADJUDICATION SECTION.
- b) THAT the plaintiff has been in occupation and use of the said land from the year 1977 to date on which they have established RUUNGU SDA Church, Dispensary and Educational institutions.
- c) THAT on or about the 6th September, 2017 the 1st defendant with the permission and authority from the 2nd defendant commenced extraction of murrum on the plaintiff's Land Parcel No. Land Parcel No. 517 – KAROCHO ADJUDICATION SECTION without the plaintiff's authority, permission and / or consent.
- d) THAT the Defendants/Respondents have been trespassing on the plaintiff's parcel of land.
- e) THAT the Defendants have been making false claims against the plaintiff's parcel of land and intend to have the Plaintiff's parcel of land transferred illegally to them.
- f) THAT the Applicant stands to suffer irreparable loss and damage.

3. On 27.9.2017, when the application was heard exparte the court declined to issue interim injunctive orders. It noted that the plaintiff had not annexed proceedings concerning Marimanti Law Courts Civil Case No. 26 of 2014 alluded to in paragraph 11 of the supporting affidavit. The court felt that it was necessary to hear all the parties before making a decision concerning interim orders. Court ordered that the application be heard interpartes on 3.10.2016.
4. On 3.10.2016, the parties did not come to court. There is no affidavit of service showing that the defendants/respondents had been served. Perhaps, they were not aware that the application was to be heard interpartes on 3.10.2017.
5. This application merits dismissal for non-prosecution.
6. This application is dismissed.
7. No costs are awarded
8. The plaintiff is ordered to fully comply with order 11, CPR, within 14 days of today and the defendants are to do so within 14 days after receipt of the plaintiff's compliance documents.
9. Parties will come to court for directions on 2nd November, 2017.
10. It is so ordered

Delivered in open court at Chuka this 3rd day of October, 2017 in the presence of:

CA: Ndegwa

Parties not present

P.M. NJORGE

JUDGE