



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**ELC SUIT NO. 122 OF 2017**

**MICHAEL KAMAL KINGA.....PLAINTIFF**

**VERSUS**

**JACKSON KARANJA NGUNJIRI.....1<sup>ST</sup> DEFENDANT**

**SAMUEL MWAI KARIUKI**

**DAVID KABOGO**

**FRANCIS GITAU**

**T/A MAHATIMA INVESTMENTS.....2<sup>ND</sup> DEFENDANT**

**JACINTA NYAMBURA NGERE.....INTERESTED PARTY**

**RULING**

The Plaintiff filed the application dated 17<sup>th</sup> February 2017 seeking an order of injunction to restrain the Defendants or their agents from selling, constructing or in any other manner dealing with the Plaintiff's parcels of land known as plot C 88, C 89 and C 90 all of which are situated in Kariobangi South in Nairobi County ("the Suit Property"), pending hearing determination of the suit.

The application is supported by the Plaintiff's affidavit in which he depones that he is the registered proprietor of the Suit Property having purchased this from Mahatima Investments. He annexed share certificate numbers 301,302 and 303 issued by Mahatima Investments for the respective plots. The Plaintiff further paid Mahatima Investments survey fees of Kshs. 10,000 per plot.

The Plaintiff claims that he has been in peaceful and quiet occupation of the Suit Property since 2002. Sometime in 2017 the 1<sup>st</sup> Defendant without any colour of right commenced acts of trespass on the Suit Property alleging that the plots belong to him. The 1<sup>st</sup> Defendant has erected illegal structures on the Suit Property denying the Plaintiff quiet and peaceful enjoyment of his plots. He avers that the 1<sup>st</sup> Defendant demolished the fence which he had put up around the Suit Property. The Plaintiff annexed copies of plot ownership certificates dated 4/5/2002 and 24/5/2002 which the 2<sup>nd</sup> Defendant issued to him. He also annexed clearance certificates issued by Mahatima Project Kariobangi South which confirm that he owns plot numbers 88, C 89 and C 90. He produced photographs of the structures that 1<sup>st</sup> Defendant has built on the Suit Property. He urges the court to grant orders of injunction to restrain the Defendants from further continuing with their unlawful acts.

Jacinta Nyambura Ngere joined the proceedings as the Interested Party. She claims to be the registered owner of the Suit Property situated within Nairobi City County. She claims she bought these plots at the request of the leadership of the Soul Harvesters Church Dandora Branch when they approached her and told her that the Church was not in a position to purchase the land since they were facing financial constraints. She offered to purchase the Suit Property on behalf of the church. She claims to have taken possession of the property in 2006 upon purchasing it. She entered into an agreement with a Maasai herdsman in which he allowed the herdsman to graze his goats and sheep on the Suit Property as he guards it. When Soul Harvesters Church refunded what she had spent on the plots, she allowed the church to construct on the Suit property. She annexed copies of the church constructed on the Suit Property. She attached copies of the Plot formalisation cards issued by the City Council of Nairobi showing that she is the owner of plot numbers C 88, C 89 and C 90. She also annexed copies of receipts issued by Nairobi City County on account of rates which she paid in February 2017 for these plots.

The 1<sup>st</sup> Defendant filed a Replying Affidavit in which he depones that he is the Bishop of Soul Harvesters Church International and is in charge of the branches around Nairobi. He maintains he was wrongly sued since he has no interest in the Suit

Property save for the position that he holds as bishop of the church. He depones that the Interested Party purchased the Suit Property at the request of the Church and erected a perimeter wall around the plots. He states that Soul Harvesters Church has already put up a sanctuary on the Suit Property which is in use serving the community within the area. He argues that it will serve no useful purpose to grant the orders the Plaintiff seeks which have already been overtaken by events.

The Advocate for the 1<sup>st</sup> Defendant and the Interested Party did not attend court when this application was argued. The court has considered the application, the Replying Affidavit, the Grounds of Opposition together with the submissions of the Plaintiff's Counsel. The court is of the view that it is prudent to restrain dealings with the Suit Property by either party until the suit is heard and determined. It is not in dispute that the structure being used by the church is already up and standing. The orders sought by the Plaintiff to stop construction altogether cannot be issued at this stage.

The court directs the parties to prepare the case for hearing so that a quick determination as to ownership of the Suit Property can be made by the court. None of the parties will deal with the Suit Property in the meantime save for the church which may continue to use structure as it stands now. Each party will bear its own costs.

Dated and delivered at Nairobi this 13<sup>th</sup> Day of November 2017.

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Kimathi for the Plaintiff

No appearance for the Defendants and Interested Party

Mr. V. Owuor- Court Assistant