



Too & 14 others v Kabokyek Seventh Day Adventist Mission & 2 others (Environment & Land Case E012 of 2024) [2025] KEELC 1372 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1372 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE E012 OF 2024**

**LA OMOLLO, J
MARCH 20, 2025**

BETWEEN

- KIPKOROS ARAP TOO 1ST PLAINTIFF**
- JOSEPH KOECH 2ND PLAINTIFF**
- KIPKIRUI ARAP YEBEI 3RD PLAINTIFF**
- JOHN ARAP KOSKE 4TH PLAINTIFF**
- KIBII ARAP TOO 5TH PLAINTIFF**
- JONATHAN ARAP NGENY 6TH PLAINTIFF**
- DANIEL SOI 7TH PLAINTIFF**
- MOSES TOO 8TH PLAINTIFF**
- CHEPKWONY ARAP RONO 9TH PLAINTIFF**
- ANDREA ARAP NGENO 10TH PLAINTIFF**
- DAVID KOSKE 11TH PLAINTIFF**
- PETER NGENO 12TH PLAINTIFF**
- RICHARD ARAP SOI 13TH PLAINTIFF**
- JOSEPH LANGAT 14TH PLAINTIFF**
- JOSEAH SANG 15TH PLAINTIFF**

AND

- KABOKYEK SEVENTH DAY ADVENTIST MISSION 1ST DEFENDANT**
- BOARD OF MANAGEMENT KABOKYEK PRIMARY SCHOOL 2ND DEFENDANT**



RULING

Introduction.

1. This ruling is in respect of the Plaintiffs/Applicants Notice of Motion application dated 22nd July, 2024. The application is expressed to be brought under Order 40 Rules (1) & (4), Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 3A & 63(e) of the *Civil Procedure Act*.
2. The Plaintiffs/Applicants seek the following orders;
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit the Honourable (sic) may be pleased to grant temporary injunction restraining the Defendants/Respondents either by themselves or through their agents, labourers, (sic) contractors assigns and/or any other persons acting through them from constructing building thereon, demolishing other classrooms, alienating, disposing, cutting down trees and/or interfering or dealing in anyway, the suit property known as Kericho/Kiptugumo/230.
 - d. That costs of this application be provided for.
3. The application is based on the grounds on its face and the supporting affidavit of one Joseph Koech, 2nd Plaintiff/Applicant, sworn on 22nd July, 2024.

Factual Background.

4. The Plaintiffs/Applicants commenced the present proceedings vide the Plaint dated 22nd July, 2024 where they seek the following orders;
 - a. That the permanent and/or perpetual injunction restraining the Defendants either by themselves or through their agents, labourers (sic), assigns, contractors, and/or any persons from entering, building any structure therein, demolishing classrooms, cutting down trees and/or dealing in anyway the suit property known as Kericho/Kiptugumo/230 measuring six (60) (sic) Hectares therein.
 - b. That an order of eviction against the 1st Defendant from the suit land known as Kericho/Kiptugumo/230.
 - c. Damages aforesaid.
 - d. Costs of the suit.
 - e. Interest.
 - f. Any other or further reliefs the Honourable Court may deem fit to grant.
5. As at the time of ruling, the Defendants/Respondents have not filed their Statements of Defence.
6. The application under consideration first came up for hearing on 23rd July, 2024 when the Court directed that it be served upon the Defendants/Respondents. The Court also issued orders that the



status quo obtaining as at that date be maintained pending the hearing and determination of this application.

7. On 7th October, 2024 the application came up for inter partes hearing. The 1st and 3rd Defendants/ Respondents were absent. The Court granted a temporary injunction restraining the Defendants/ Respondents from interfering in any way with the suit parcel pending the hearing and determination of the application under consideration.
8. On 4th November, 2024 the Court directed that the application be heard by way of written submissions. It was mentioned to confirm filing of submissions and reserved for ruling on 10th February, 2025.

Plaintiffs/Applicants contention.

9. The supporting affidavit is sworn by Joseph Koech the 2nd Plaintiff/Applicant.
10. He contends that he has the authority of his Co-Plaintiffs/Applicants to swear the affidavit.
11. He also contends that the Plaintiffs/Applicants are parents and co-founders of Kabokyek Primary School while the 2nd Defendant/Respondent is the board of management of the said school. He adds that they are bonafide stakeholders of the said public school.
12. He further contends that Kabokyek Primary School is registered as the owner of land parcel No. Kericho/Kiptugumo/230 measuring 6 Ha through the County Council of Kipsigis.
13. It is his contention that the 1st Defendant/Respondent is the Seventh Day Adventist Church and/or mission which has its own distinct parcel of land and that the said parcel of land is Kericho/ Kiptugumo/778 and measures 3.6 Ha. He goes on to state that it shares a common boundary with Kabokyek Primary School.
14. It is also his contention that on 11th February, 2024 the 1st Defendant/Respondent in collusion with the 2nd and 3rd Defendants/Respondents encroached onto the land belonging to Kabokyek Primary School, demolished three classrooms and cut down trees within the school compound without any justifiable cause.
15. It is further his contention that in mid-July, 2024 the 1st Defendant/Respondent illegally commenced construction of a church building which is now at the foundation stage.
16. He contends that they will suffer irreparable loss and damage if the orders sought are not granted and adds that the land belonging to the school will be wasted, alienated and/or disposed as a result of the said encroachment.
17. He ends his deposition by stating that the application should be allowed in the interest of justice.

The 2nd Defendant/Respondent's Response.

18. In response to the Plaintiffs/Applicants application, the 2nd Defendant/Respondent filed Grounds of Opposition dated 31st October, 2024. The grounds are as follows;
 - a. That the Applicants have not satisfied the conditions required to grant injunctions as set out in *Giella v Cassman Brown* [1973] EA 358, which stated;
 - a. An applicant must show a prima facie case with a probability of success;



- b. An interlocutory injunction shall not be granted unless the Applicants might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.
- c. If the Court is in doubt, it will decide an application on the balance of convenience.
- b. That the Applicants have not demonstrated the existence of a prima facie case, as per the definition in *Mrao v First American Bank of Kenya and 2 Others* [2003] KLR 125.
- c. That by the Applicants own admission, the 2nd Respondent is the absolute and indefeasible owner of the property known as Kericho/Kiptugumo/230.
- d. That as the absolute and indefeasible owner, the 2nd Respondent is entitled to administer and manage the resources of Kabokyek Primary School, as provided under Section 19 of the fourth schedule of the *Basic Education Act* Cap 11, which stipulates;
- e. “All such immovable property, shares, funds and securities as may from time to time become the property of a public institution of basic education shall be in the name of the institution and shall be dealt with in such manner as the board of management of the institution may from time to time determine.”
- f. That the Applicants have not established a prima facie case on the point essential to entitle the Applicants to complain of the 2nd Respondent’s proposed activities, or to defeat the proprietorship rights of the 2nd Respondent, enshrined under Section 25 of the *Land Registration Act*.
- g. That the Applicants shall not suffer irreparable injury if the orders are not granted. The Applicants do not have proprietary interest in the parcel known as Kericho/Kiptugumo/230.
- h. That on a balance of probability, the Application shall frustrate the efforts of the Board of Management in ensuring proper running of the affairs of the school.
- i. That the application is frivolous, vexatious and an abuse of Court process and ought to be dismissed with costs to the Respondents.

Issues for Determination.

19. The Plaintiffs/Applicants filed their submissions on 5th February, 2025 while the 2nd Defendant/Respondent filed its submissions on 12th February, 2025.
20. The Plaintiffs/Applicants rely on the judicial decisions of *Giella versus Cassman Brown* (citation not given), *Mrao vs First American Bank of Kenya* (citation not given) and submit that they have satisfied the threshold of injunctive orders as set out in the above cited judicial decisions.
21. The Plaintiffs/Applicants submit that they are parents and stakeholders of the 2nd Defendant/Respondent. They also submit that the 2nd Defendant/Respondent is run by a Board of Management which owes them a duty to inform and involve them as parents on the day to day development and running of the school including any projects being undertaken.
22. It is the Plaintiffs/Applicants submissions that Section 55(1) of the *Basic Education Act* establishes the board of management of public schools while Section 55(2) of the said Act provides for parents’ associations.



23. It is also the Plaintiffs/Applicants submissions that paragraph 2(b) of the third schedule of the Basic Education Regulations, 2015 sets out the functions of the parents' associations which include involving the parents in decision-making on developments and any grievances affecting the school.
24. It is further the Plaintiffs/Applicants submissions that the 2nd Defendant/Respondent did not involve them as parents of the school in giving out land belonging to the school to the 1st Defendant/Respondent.
25. The Plaintiffs/Applicants submit that they were also not involved in sorting out the encroachment and destruction of the school's property and the 1st Defendant/Respondent's trespass.
26. The Plaintiffs/Applicants also submit that they are before this Court in a bid to save the school properties from wastage and encroachment by the 1st Defendant/Respondent.
27. The Plaintiffs/Applicants further submit that the 3rd Defendant/Respondent is the Chief of the area who has abetted the 1st Defendant/Respondent in promoting the said encroachment.
28. It is their submissions that the 1st Defendant/Respondent has commenced construction of a building on the school land which construction unless stayed will lead to the school land being permanently grabbed.
29. The Plaintiffs/Applicants reiterate the averments in the affidavit in support of the application and submit that the 2nd Defendant/Respondent has colluded with the 1st Defendant/Respondent to encroach onto land parcel No. Kericho/Kiptugumo/230 which belongs to the school and yet the 1st Defendant/Respondent has its own parcel of land.
30. The Plaintiffs/Applicants rely on the judicial decision of Ndeffo Co. Ltd v Ndegwa & 4 Others (Civil Suit E024 of 2023) [2024] KEHC 4436 (KLR) (30 April 2024) (Ruling) and urge the Court to allow their application as prayed.
31. The 2nd Defendant/Respondent submits on whether the Plaintiffs/Applicants have met the threshold for grant of an interlocutory injunction.
32. It is the 2nd Defendant/Respondent's submissions that the principles for grant of orders of temporary injunction are set out in the judicial decision of Giella vs Cassman Brown (1973) EA 358 and reiterated in Nguruman Limited vs Jan Bonde Nielsen & 2 Others [CA No. 77 of 2012](#) [2014] eKLR.
33. The 2nd Defendant/Respondent submits that the Plaintiffs/Applicants must demonstrate that they have a prima facie case.
34. The 2nd Defendant/Respondent relies on the judicial decisions of Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 123, Nguruman Limited vs Jan Bonde Nielsen & 2 Others [CA No. 77 of 2012](#) [2014] eKLR and submits that the Plaintiffs/Applicants must demonstrate they have a right in need of protection.
35. The 2nd Defendant/Respondent submits that the Plaintiffs/Applicants admit that the school is the registered owner of the suit property.
36. The 2nd Defendant/Respondent relies on Section 25 of the Land Registration Act, the judicial decision of Mathias Ouko Onditi Odera vs Hannington Kyalo Mutie [2018] KEELC 2711 (KLR) and submits that the school's rights as the registered proprietor of the suit parcel are provided for under Section 25 of the [Land Registration Act](#).



37. The 2nd Defendant/Respondent also submits that it is established under the Fourth Schedule of the *Basic Education Act* which vests it with powers to hold and dispose of movable and immovable property. The 2nd Defendant/Respondent refers to paragraphs 1 and 19 of the said schedule and submits that it has every right to deal with the suit property as it deems fit.
38. It is the 2nd Defendant/Respondent's submissions that the Plaintiffs/Applicants have not demonstrated that they have a right over the suit property. The pictures and the other materials annexed to their application do not demonstrate any infringement of their rights.
39. It is also the 2nd Defendant/Respondent's submissions that the developments of the school property are transparently deliberated and shared during the Annual General meeting. The Plaintiffs/Applicants, parents and pupils have never raised any objections to the said developments to the 2nd Defendant/Respondent directly and that consequently, the Plaintiffs/Applicants have failed to prove the existence of a prima facie case.
40. The 2nd Defendant/Respondent relies on Peter Kairu Gitu vs KCB Bank Kenya Limited & another [2021] eKLR and submits that the Plaintiffs/Applicants will not suffer any injury if the orders are not granted as they do not have a right over the suit property.
41. The 2nd Defendant/Respondent submits that the suit property is not at risk of being wasted as it is developing the structures to better serve the students.
42. It is the 2nd Defendant/Respondent's submissions that it will be prejudiced if the injunction is granted as the developments made thereon are to enhance service delivery in accordance with the school's mandate.
43. The 2nd Defendant/Respondent admits that the Plaintiffs/Applicants are members of the Parents' Association established under the third schedule of the *Basic Education Act*, Cap 211 and submits that if they are aggrieved by its decisions, they have avenues to channel their complaints.
44. The 2nd Defendant/Respondent therefore urges the Court to dismiss the Plaintiffs/Applicants application.

Analysis and determination.

45. I have considered the application, the response thereto and the submissions. It is my view that the only issue that arises for determination is whether the Plaintiffs/Applicants are entitled to an order of temporary injunction pending the hearing and determination of this suit.
46. In the judicial decision of *Giella vs. Cassman Brown* [1973] EA 358, the Court set out the conditions for grant of interlocutory injunctions. They are as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the Court is in doubt it will decide an application on the balance of convenience.”



47. The Plaintiffs/Applicants must first establish a prima facie case. A prima facie case was defined in the judicial decision of *Mrao Limited vs. First American Bank of Kenya & 2 Others* [2003] eKLR as follows;
- “A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.” [Emphasis mine]
48. The Plaintiffs/Applicants contend that they are parents and stakeholders of Kabokyek Primary School. They also contend that the Board of Management of the said school, the 2nd Defendant/Respondent, has allowed the 1st Defendant/Respondent to trespass onto land parcel No. Kericho/Kiptugumo/230 which belongs to Kabokyek Primary School.
49. The Plaintiffs/Applicants also contend that the 1st Defendant/Respondent demolished three class rooms, cut down trees and has begun constructing a church building on the suit property.
50. The Plaintiffs/Applicants further contend that they stand to suffer irreparable loss and damage if the school land will continue being alienated as a result of the said encroachment.
51. In response the 2nd Defendant/Respondent admits that the Plaintiffs/Applicants are members of the Parents’ Association of Kabokyek Primary School.
52. The 2nd Defendant/Respondent also admits that it is developing structures on the suit property that are meant to serve the students and that no concerns about the said developments have been brought to it.
53. The Plaintiffs/Applicants have attached to their affidavit in support of the application a copy of a Certificate of search for land parcel No. Kericho/Kiptugumo/230. It shows that the proprietor is the County Council of Kipsigis. It was registered as the owner on 21st June, 1976 and the land is reserved for Kabokyek Primary.
54. The Plaintiffs/Applicants have also annexed black and white photographs of what appears to be buildings under construction.
55. It is important to note that the 2nd Defendant/Respondent does not deny that there is construction being undertaken on the suit property.
56. The Plaintiffs/Applicants main contention is that they were not consulted before the construction begun. The question whether or not the Plaintiffs/Applicants were consulted or whether they should have been consulted are questions of governance.
57. I find that the Plaintiff/Applicants have failed to demonstrate any violation of right whose adjudication falls within the jurisdiction of this court. In other words, the Plaintiffs/Applicants have not demonstrated that they have a prima facie case.
58. The second condition for grant of orders of temporary injunction is that the Plaintiffs/Applicants must demonstrate that they will suffer irreparable injury that would not be adequately compensated by way of damages.



59. In *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal pronounced itself as follows:

“On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

60. The decision in *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR provides an explanation of what is meant by irreparable injury. It is as follows;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.” (Emphasis mine)

61. The Plaintiffs/Applicants contend that they are likely to suffer irreparable loss if the orders sought are not granted as the school property will continue being wasted.

62. In response, the 2nd Defendant/Respondent contends that the structures being put up on the suit property are for the benefit of the students of the school.

63. My view is that the Plaintiffs/Applicants have not demonstrated that they are likely to suffer irreparable loss which cannot be compensated by way of damages.

64. The third condition is that the Plaintiff/Applicant must demonstrate that the balance of convenience tilts in their favour. In *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* (supra) the Court held as follows;

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer. In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it” [Emphasis mine]

65. In *Paul Gitonga Wanjau vs Gathuthis Tea Factory Company Ltd & 2 others* [2016] eKLR the Court while dealing with the question of balance of convenience expressed itself thus;

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should



be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the Court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The Court will seek to maintain the status quo in determining where the balance of convenience lies.” [Emphasis mine]

66. As was held in the above cited judicial decisions, the Courts while considering the balance of convenience should consider the route with a lower risk.
67. In the present matter, it is not in dispute that there are developments being made on the suit property. On one hand the Plaintiffs/Applicants allege the said developments are being undertaken by the 1st Defendant/Respondent upon encroachment and without them being consulted while the 2nd Defendant/Respondent contends that the developments made on the suit parcel are for the benefit of the pupils of the school.
68. Considering the facts of this case it is my view that the balance of convenience does not tilt in favour of the Plaintiffs/Applicants.

Disposition.

69. Taking the foregoing into consideration, I find that the Plaintiffs/Applicants application dated 22nd July, 2024 lacks merit and it is hereby dismissed with costs.
70. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 20TH DAY OF MARCH, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Koske for the Plaintiffs/Applicants.

Mr. Kipngeno for 6th and 7th Plaintiffs

Mr. Ojwang for 2nd Defendant

No appearance for the 1st and 3rd Defendants/Respondents.

Court Assistant; Mr. Joseph Makori.

