



**Board of Management Nyabola Girls Secondary School alias Nyabola Girls
Adventist Secondary School & another v Ethics and Anti-Corruption
Commission; Homabay County Government & another (Interested Parties)
(Land Case E002 of 2024) [2024] KEELC 5204 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5204 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
LAND CASE E002 OF 2024**

GMA ONGONDO, J

JULY 4, 2024

BETWEEN

**BOARD OF MANAGEMENT NYABOLA GIRLS SECONDARY SCHOOL ALIAS
NYABOLA GIRLS ADVENTIST SECONDARY SCHOOL 1ST PLAINTIFF**

SEVENTH DAY ADVENTIST CHURCH (EA) LIMITED 2ND PLAINTIFF

AND

ETHICS AND ANTI-CORRUPTION COMMISSION DEFENDANT

AND

HOMABAY COUNTY GOVERNMENT INTERESTED PARTY

NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. This ruling pertains to an application by way of a Notice of Motion dated 5th February 2024 by the plaintiffs/applicants through Abisai and Company Advocates for orders;
 - a. Moot
 - b. Moot
 - c. That this Honourable court be pleased to issue an order of injunction against the Defendant/ Respondent, its agents, servants and/or any other person acting under any their instructions from accessing, entering, occupying and or in any way interfering with the occupation and operation of the applicants on LR No. West Kasipul/Kotieno Kochich/23 (Hereinafter referred to as the suit property herein) pending the hearing and determination of this suit.



- d. That the costs of the application be provided for.
2. The application is anchored upon the supporting affidavit sworn on 31st January 2024 by Hesborn Juma Omune, the chairman of the 1st applicant and the annexed documents namely certificate of registration and certificate of official search. Briefly, the applicants averred that the suit property is registered in the name of South Nyanza County Council, the predecessor of the 1st interested party and reserved for Nyabola Girls Secondary school which is run by the applicants. That the respondent intends to take out the school to the detriment of the applicants hence, the orders sought in the application be granted in the interest of justice.
 3. In the replying affidavit sworn on 6th March 2024 by Wycliffe Simiyu Sirengo, an investigator with the respondent, it is averred in part that the supporting affidavit sworn on 31st January 2024 accompanying the application, cannot support the application. That thus, the supporting affidavit be struck out and that the application is a mere misapprehension. That the suit property was reserved for Nyabola Girls Adventist Secondary School by South Nyanza County Council, the registered owner and predecessor of the 1st interested party. That the school was registered in 1974 under registration number 2040 as a public school by the Ministry of Education hence, the suit property is public land under the 1st interested party, the absolute and indefeasible owner of the same.
 4. Also, it was averred that the Teachers Service Commission had actively posted teachers to the school until 1985 when the 2nd plaintiff/applicant tried to convert it to private entity. That the notice of motion is frivolous, vexatious and an abuse of the court process. That therefore, the same be dismissed with costs.
 5. By the replying affidavit sworn on 4th April 2024 by Hesborn Juma Omune (*supra*), the respondent's replying affidavit sworn on 4th April 2024 does not disclose the source of information. Thus, the same is inadmissible under the [Oaths and Statutory Declaration Act](#) Chapter 15 of the Laws of Kenya. That land adjudication was carried out in the area in 1972 culminating to titles being issued in 1975 and the suit property was registered as stated in paragraph 2 hereinabove and adjudication record attached to the affidavit.
 6. The application was heard by way of written submissions further to the court's directions of 7th March 2024.
 7. In the submissions dated 16th May 2024, learned counsel for the applicants referred to the pleadings, the application, the replying affidavit thereto and stated that the 1st applicant was established in 1968 as the suit property was registered in the name of the 1st interested party. That the 1st applicant is privately owned and registered as unaided school with no support from either the 1st interested party or the National Government as shown in its certificate. That the 2nd applicant has shown how he had acquired the suit property. Reliance was made on [Giella-vs-Cassman Brown](#) (1973) EA 358, [Nguruman Ltd-vs-Jan Bonde Nielsen and others](#) (2014) eKLR and [Mrao Ltd-vs-First American Bank of Kenya Ltd](#) (2003) eKLR.
 8. Counsel submitted that the applicants and students are bound to suffer irreparably due to internal learning disturbance if interim orders are not granted in the application. That the application is meritorious hence, the applicants are entitled to the orders sought in the application. Counsel implored the court to grant status quo order to preserve the suit property as held in [Robert Mugo Wa Karanja-vs-Ecobank \(K\) Ltd](#) (2019) eKLR and [Joel Mugambi Mukira and others-vs-County Government of Nyeri](#) (2019) eKLR, among other authoritative pronouncements.



9. By the submissions dated 21st May 2024 drawn and filed by Ruth Yator learned counsel for defendant/respondent, reference was made to the application inclusive of injunctive order sought therein and the replying affidavit sworn on 8th March 2024 by Wycliffe Sirengo Simiyu alongside the parties' respective submissions and authorities. The respondent submitted in part that it received a complaint that the suit property is public land registered in the name of the County Council of South Nyanza the predecessor of the 1st interested party with effect from 12th January 2015 and reserved for the 1st applicant. That the respondent's investigations reveal that the 2nd applicant purported to convert the suit property which belongs to the public to private property.
10. The 2nd respondent and interested party did not file and serve either response or submissions in respect of the application.
11. In the foregone, is there merit in application to entitle the applicants to the orders sought in the application?
12. Order 40 of the *Civil Procedure Rules*, 2010 under which the application was generated, provide for temporary injunction and temporary orders. The triple requirements in an interlocutory injunction application are well settled; see *Giella*, *Nguruman Ltd* and *Mrao Ltd* cases-*supra*.
13. The principal order of temporary injunction sought in the application is an equitable one. The same is grantable within the discretionary of the court as held in the case of *National Bank of Kenya Ltd-vs-Shimmers Plaza Ltd* (2009) KLR 278 at 283, among other authorities.
14. It is established law that temporary injunction must satisfy the effect of flora and fauna; see *Bob and Ursulla Brenneisen & 7 others-vs-Shanzu Water front* (2016) eKLR.
15. In the case of *Hutchings Biemer Ltd-vs-Barclays Bank of Kenya & others* (2006) eKLR, the Court of Appeal opined thus;
 - a. ".....injunctive orders are meant to preserve property and maintain the status quo....."
16. The issues relating to proprietorship of the suit property are highly contested. Thus, the suit property calls for interim preservation orders awaiting the outcome of the suit to be heard on merit.
17. This court is mandated under section 13 (7) (a) of the *Environment and Land Court Act*, 2015 (2011) to grant interim preservation orders. Undoubtedly, status quo orders are envisioned thereunder.
18. It is trite law that status quo orders target to preserve the property in question until the suit is determined or terminated; see *Ogada-vs-Mollin* (2009) eKLR.
19. In conclusion, it is the finding of this court that the applicants deserve interim preservation orders in the form of status quo in lieu of the temporary injunction in the manner sought in the application over the suit property. To that extent, the application is meritorious.
20. Wherefore, the application is determined in the following terms;
 - a. The status quo prevailing over the suit property shall be maintained by the parties pending the hearing and determination of this suit. In particular, the defendant/respondent and the interested parties shall not dispossess the plaintiffs/applicants from the suit property which shall not be sold, subdivided, transferred, alienated, charged and or disposed of in any manner pending the outcome of the suit.
 - b. Costs of the application be in the cause.



21. The suit is set for directions on 30th September 2024 and learned counsel for the plaintiffs to serve learned counsel for the defendant and the interested parties accordingly.
22. It is important to note that the present ruling was not delivered on 19th June 2024 as scheduled because the trial Judge was away from the station on urgent official duties including training organized by Kenya Judiciary Academy and requisite notice was issued accordingly.
23. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 4TH DAY OF JULY 2024.

G.M. A ONG'ONDO

JUDGE

PRESENT;

- a. Mr. B. Singei learned counsel for the plaintiffs/applicants
- b. T. Luanga and F. Mutiva, court assistants

