



**National Museums of Kenya v Ali & another; Trustees of Riyadhha Mosque and Islamic Centre & another (Interested Parties) (Civil Appeal E001 of 2025) [2025] KEHC 12906 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12906 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARSEN  
CIVIL APPEAL E001 OF 2025  
JN NJAGI, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**NATIONAL MUSEUMS OF KENYA ..... PLAINTIFF**

**AND**

**HUSSEIN MOHAMED SAYYID ALI ..... RESPONDENT**

**AND**

**AL AKH SAYYID AHMED MUHAMMED SAGGAF ..... DEFENDANT**

**AND**

**TRUSTEES OF RIYADHA MOSQUE AND ISLAMIC CENTRE .... INTERESTED PARTY**

**COUNTY GOVERNMENT OF LAMU ..... INTERESTED PARTY**

**RULING**

1. The Appellant/Applicant has filed an application dated 2025 seeking for orders that:
  - [1] Spent
  - [2] Spent
  - [3] That temporary order of injunction be issued pending the hearing and determination of this suit restraining the
2. Defendants/Respondents or their agent[s], person/person[s] working on their instructions, permission or direction from demolishing, defacing and/or altering the Anisa Mosque situated within the Western Fringe of Lamu Old Town on plot No.956/Lamu.



- [4] Cost of this Application be in the cause.
3. The application is based on grounds stated on the face of the application and supported by the affidavit of Prof. Mary Gikungu, the Director General of the plaintiff/Applicant. The grounds thereof are that the plaintiff is mandated under the [National Museums and Heritage Act](#) to ensure preservation of and conservation of Kenya's heritage and that Anisa Mosque situated in the western fringe of Lamu town within Plot No. 956 / Lamu falls within the buffer zone for Lamu Old town World Heritage Site and is recognized as a national monument owing to its rich architectural, cultural, historical and religious significance.
4. That despite protestations from the Applicant, the Respondents have commenced demolition and / or purported restoration of works of Anisa Mosque against conservation standards and guidelines and conditions issued by the plaintiff which works now threaten to completely deface, alter and /or destroy the monument, Anisa Mosque.
5. It is further averment of the Applicant that the Respondents have defied stay orders issued by Lamu Municipal Officers against illegal construction works that contravene conservation standards which will lead to irreparable damage unless the orders sought are granted. The Applicant in support of their application for temporary injunction to issue against the Respondents annexed, inter alia, the following documents:
- [1] An inventory of recognized historic buildings//monuments within Lamu indicating Anisa Mosque as one of them.
  - [2] Identification report for Lamu Old Town for listing into UNESCO.
  - [3] A copy of gazette notice No.22490 of 1986 declaring Lamu Old Town as a monument.
  - [4] An excerpt of Usan Ghaidan listing characteristics of historic buildings in Lamu town.
  - [5] A copy of the defendant's application dated 8<sup>th</sup> December 2024 submitting revised plans for the intended repair of the mosque.
  - [6] Plaintiff's letter dated 11<sup>th</sup> December 2024 granting approval for the approved plans and stipulating conditions guidelines to be followed.
  - [7] Copy of plaintiff's letter dated 20<sup>th</sup> February 2015 requesting the municipality to issue stay order against the defendant for non-compliance with the approved revised plans.
  - [8] photographs showing the destruction of the mosque.
6. It was averred that owing to its heritage value, the mosque is a key religious and cultural landmark within Lamu region requiring a careful restoration to preserve its historical authenticity while addressing modern functional needs. That where a building is recognized as a national monument and /or part of a UNESCO World Heritage Site, anybody dealing with it is required to adhere to set out guidelines and /or conservation standards to ensure preservation of heritage and integrity value of the building and the Applicant is mandatorily mandated to advice on such guidelines and conservation standards for compliance.to ensure the heritage value of such building is preserved for posterity.
7. It was averred that the Respondents in November 2024 submitted an application to the Lamu Municipal Manager for intended alterations and repairs to the mosque but did not present the same to the Applicant for review and advice on possible impact to the heritage integrity of the building. Moreover, that the Respondents did not conduct any Heritage Impact Assessment prior to commencing the repairs and did not seek an approval from the National Construction Authority. That



- the approval by the Municipal Manager was approved without any advice on heritage impact of the proposed works.
8. The Applicant avers that the Respondents plans were thereafter revised to their satisfaction and granted their approval on 11<sup>th</sup> December 2024 subject to guidelines and conditions sought to ensure that the mosque retained its general form, integrity and identity as an exemplary Swahili architectural monument and an integral part of Lamu heritage. That the Respondents failed to comply with the same by continuing to demolish the mosque; constructing new walls around the mosque contrary to the guidelines; undertaking activities in violation of guidelines set forth for protection and preservation status of Lamu Old Town as a UNESCO World Heritage Site and undertaking construction works in violation of Lamu Old Town Conservation by-laws and stay orders issued. That the non-compliance will substantially change the form and integrity of the building leading to loss of its integrity as a heritage resource.
  9. It was averred that once the integrity of a heritage resource such as the subject Anis Mosque is destroyed, its value disappears for ever and cannot be restored back. Therefore, that the country and the public at large stands to be greatly prejudiced should the orders sought are not granted. That the balance of convenient tilts in favour of granting the orders to the Applicant.
  10. The application was supported by the 2<sup>nd</sup> interested party [the County Government of Lamu] vide the replying affidavit of its Municipal Manager, Abdulswamadu Ali. He deposed that the Defendants/ Respondents failed to adhere to conservation and restoration guidelines outlined in the Applicant's letter dated 11<sup>th</sup> December 2024 as a result of which the 2<sup>nd</sup> interested party issued a stay order on 21<sup>st</sup> February 2025. That despite the issuance of the stay order staying the development, the Respondents continued with the construction unabated which prompted the 2<sup>nd</sup> interested party to write a letter dated 27<sup>th</sup> February 2027 protesting the Respondents' defacement of the mosque thus destroying its cultural and historical significance as well as robbing Lamu Old Town of a historical asset. That the Respondents ignored the latter letter and continued with the destruction. That attempts by the Deputy Sub-County Commissioner, Lamu Central to resolve the issue amicably did not bear fruit. Therefore, that unless the orders sought by the Applicant are granted the Respondents will continue to destroy the historical mosque with impunity to the detriments of the residents of Lamu and Applicant's conservation efforts, thus depriving Kenya of a historical dem whose historical, cultural and historical value is irreparable and cannot be compensated by monetary award.
  11. The application was opposed by the Respondents through the .....
  12. The application was also opposed by the 1<sup>st</sup> Interested Party, [the Trustees of Riyadhha Mosque and Islamic Centre], vide the replying affidavit of one of its committee members, Abdikadir Mohamed Sayyid wherein he denies that the subject mosque is a recognized historical or national monument or that it forms part of the UNESCO World Heritage Site. It was averred that the mosque is situated outside the protected buffer zone as demonstrated by a map annexed and marked "B" which shows that the mosque lies outside the gazetted area. That the allegation that the mosque is a national monument is unsubstantiated as no gazette notice was annexed to prove so.
  13. It was averred that though the mosque is among the 24 notable religious structures documented by Usan Ghaidan in 1974 for its architectural features, that in the absence of gazette ment does not confer it the status of a national monument.
  14. The deponent admitted that the mosque holds significant sentimental and cultural value and consequently that the renovations were undertaken in strict compliance with the recommendations, approvals and guidelines from both the Applicant and the 2<sup>nd</sup> Interested party, the County



Government of Lamu. However, that during construction the structure began to collapse due to its severely weakened state whereupon they submitted revised plans which were approved by both entities. They denied that the plans indicated construction of wholly new building. They averred that only irreparably damaged walls were reconstructed which were necessitated by caving-in and excessive cracks. They stated that there was no deviation or disregard of any guidelines or approvals.

15. It was the averment of the 1<sup>st</sup> interested party that the ex parte orders granted by the court are undeserved and ought to be vacated as they have at all material times acted in good faith while being guided by expert recommendations, approvals and the urgent need to preserve the mosque's functional integrity, historical continuity and communal utility.
16. The application was canvassed by way of written submissions

### **Applicant's Submissions**

17. The Applicant submits that section 45[1] [a] of the *National Museums and Heritage Act*, 2006 prohibits any person from destroying, injuring, removing, defacing or carrying out any act that may imperil the preservation of the monument. More so that sub-section 2 provides the following on any act that imperils the preservation of the monument:  
  
45 [2] In the event of any threatened or continuing act contrary to sub-section [1] [a] the High Court may on application of the National Museums grant an injunction to restrain such act or its continuance.
18. It was the submission of the Applicant that the application has met the threshold for grant of orders of injunction as laid out in the case of *Giella v Cassman Brown* ..... that an applicant is required to demonstrate a prima facie case with a probability of success; that the applicant will suffer irreparable harm and if in doubt, the court will determine the matter on a balance of probabilities.
19. On the first limb, the Applicant submitted that it has through its supporting affidavit demonstrated its statutory mandate of protecting and preserving monuments. That it has demonstrated that Anisa Mosque is a national monument and forms part of Lamu Old Town World Heritage Site [annextures 1 – 3: inventory of recognized historic buildings/monuments within Lamu, copy of gazette notice No.2490 of 1986 declaring Lamu town as a monument and excerpt from Usan Ghaidan listing characteristics of historic buildings in Lamu town and list of 24 historic mosques in Lamu], hence attracting statutory protection by the Applicant. That the acts of non-compliance by the Respondents contravene section 45 [1] of the relevant Act are stipulated in paragraph 26 of the supporting affidavit of Prof. Mary Gikungu. It was submitted that the acts complained of are not mere apprehensions but are factual. Therefore, that the Applicant has demonstrated a prima facie case with a probability of success.
20. On the issue of suffering irreparable harm, the applicant submits that Article 11[1] of *the Constitution* of Kenya 2010 recognizes culture as a foundation of the nation. That the Applicant is the government agency that is statutorily mandated to ensure protection, preservation and conservation of Kenya's heritage. That Anisa Mosque is a key religious and cultural landmark within Lamu region requiring a careful restoration to preserve its historical authenticity. That the acts of the Respondents threaten to completely erase the mosque's heritage value, which once done cannot be brought back by any amount of compensation.
21. On the third limb of balance of convenient, the Applicant submits that the Respondent stands to suffer no prejudice should the orders sought are granted but on the contrary the Applicant and the public at large would be extremely prejudiced should the orders sought be denied. That no remedy



can be granted later to rectify the situation should the Respondents be left to continue destroying the mosque. That the continued destruction of the mosque would contribute to compromising the mosque's authenticity and integrity which may prompt a reactive monitoring from mission from UNESCO hence potentially resulting to adverse to adverse consequences for the for the site's `World Heritage Status and exposing it to further scrutiny and possible delisting. That the scales of justice tilts to granting the orders sought.

## **2<sup>nd</sup> Interested Party's Submissions**

22. The 2<sup>nd</sup> Interested party [County Government of Lamu] submits that the Respondents failed to comply with the development permission granted by the 2<sup>nd</sup> Interested party pursuant to the powers of conferred to the County Executive Committee Member responsible for physical and land use planning by section 57 of the *Physical and Land Use Planning Act*, Cap.303 of the Laws of Kenya and have continued with construction regardless of the stay order staying further construction. That in the circumstances, the Applicant has established a prima facie case with a probability of success.
23. On the second issue whether the Applicant will suffer irreparable injury, the 2<sup>nd</sup> Interested Party submitted that the destruction of the mosque will deprive Kenya of a historical gem whose historical, religious and cultural value is irreparable and on monetary award can compensate the injury to be suffered.

On the third issue of balance of convenience the 2<sup>nd</sup> interested Party raised similar arguments as to those raised by the Applicant on the issue and submitted that the balance of convenience is in favour of the Applicant.

## **1<sup>st</sup> and 2<sup>nd</sup> Respondent's submissions**

24. The two respondents [defendants] submit that the Applicant has not established that they have a prima facie case with a probability of success. They referred to the definition of prima facie case in the case of *Mrao Limited v First American Bank of Kenya Limited* [2003] KLR 125 where it was held that an applicant requires to demonstrate a clear, enforceable legal right that has been or is likely to be infringed. That in the present case the Applicant has not established any proprietary or custodial rights over Anisa Mosque. That it is not sufficient to merely assert general statutory powers but the Applicant must point to a specific statutory or regulatory provision conferring authority over the particular site. That the mandate of the Applicant herein extends to only gazetted heritage sites or those formally declared as protected. Consequently, that the omission to produce a gazette notice or any legal instrument conferring Anisa Mosque's heritage status is fatal to the Applicant's claim.
25. It was submitted that the burden lies on the Applicant to prove the existence of a right requiring protection as observed in *Nguruman Limited v Ian Bonde Nielsen 7 2 others* [2014] eKLR. That the Applicant failed to discharge this burden.

## **Analysis and determination**

26. I have considered the grounds in support of the application, the grounds in opposition thereto and the submissions filed by the respective counsels for the parties.
27. The Applicant is seeking for temporary order of injunction against the Respondents and the interested parties pending the hearing and determination of the suit pending herein. The issue for determination is whether the orders for temporary injunction are merited pending the hearing and determination of the suit.



28. The principles under which the court may issue injunctive orders are settled. An applicant has in the first place to establish that he has a prima facie case with a probability of success. Secondly establish that unless the orders are granted, he will suffer irreparable harm that cannot be compensated by way of damages. Thirdly that where in doubt on the first two conditions, to determine the matter on a balance of convenience. The principles were established in the case of *Giella v Cassman Brown & Company Ltd* [1973 [EA] at pg 360 where the conditions for granting an injunction were stated to be that:

“The conditions for the grant of an interlocutory injunction are well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be 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.”

29. First is the question whether the Applicant has established a prima facie case with a probability of success. A prima facie case was defined in the case of *Mrao Ltd v First American Bank of Kenya & 2 others* [2003] KLR 125 as follows:

..a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter... a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.”

30. The Applicant argues that Anisa Mosque in Lamu is a national monument that forms part of Lamu Old Town World Heritage Site. The Applicant annexed documents in support of that submission - an inventory of recognized historic buildings/monuments within Lamu, copy of gazette notice No.2490 of 1986 declaring Lamu town as a monument and excerpt from Usan Ghaidan listing characteristics of historic buildings in Lamu town and list of 24 historic mosques in Lamu of which Anisa Mosque is one of them.

31. The Respondents on the other hand argued that Anisa Mosque is not a gazetted national monument and lies outside the

32. On the issue of balance of convenience, the applicants referred the court to case of *Alice Awino Okello v Trust Bank Ltd & another* KLR No.665 [CCK] in which the Court of Appeal held that:

.....

### **Analysis and determination**

33. I have considered the grounds in support of the appeal, the grounds in opposition thereto and the submissions tendered by the counsels for the respective parties.

34. The Applicant is seeking for orders of injunction against the Respondents and the interested parties pending the hearing of the suit pending herein.

35. The guiding principles in considering whether to grant an interlocutory injunction are as laid out by the Court of Appeal in the celebrated case of *Giella v. Cassman Brown & Co. Ltd* [1973] E A 358 at 360, where Spry J. held as follows:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success.



Secondly, an interlocutory injunction will not normally be 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.”

36. First is the issue of whether the Applicant has established a prima facie case with a probability of success. A prima facie case was defined in the case of *Mrao Ltd v First American Bank & 2 others* [.....] as follows:

“...In civil cases a prima facie case is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”

37. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR stated the following on the subject:

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant’s case is more likely than not to ultimately succeed.”

38. In this case, the Applicant argues that Anisa Mosque is a national monument that requires protection by the Applicant. The Applicant annexed documents in support of their contention -

inventory of recognized historic buildings/monuments within Lamu, copy of gazette notice No.2490 of 1986 declaring Lamu town as a monument and excerpt from Usan Ghaidan listing characteristics of historic buildings in Lamu town with Anisa Mosque being one of them and list of 24 historic mosques in Lamu with Anisa Mosque being one of them.

39. The Respondents on the other hand argued that the mosque is situate outside the UNESCO World Heritage Site and is not a gazettted national monument. That without evidence of gazette ment the Applicant has not demonstrated that they have a right that requires protection. Therefore, that the orders being sought have no legal foundation.

40. The Applicants in their main suit are seeking for a declaration that the subject mosque is a national monument and falls within the buffer zone of the protected Lamu Old Town UNESCO World Heritage Site and deserves to be protected and preserved as such for prosperity.



41. There is no dispute that Anisa Mosque is an important historical site in Lamu and hold significant sentimental, religious and cultural value to the people of Lamu. The Applicant has not annexed any document to show that the mosque is a gazetted national monument. The issue however as I see it is whether a non-gazetted historical site can be declared a national monument. This in my view cannot be decided at this stage of the trial. That can only be done after hearing the full case for the parties. Suffice is to say that the Applicant has in my view through the documents presented before the court established a prima facie case with a probability of success.

**Whether the applicant stands to suffer irreparable loss if injunction order is not granted**

42. For an interlocutory injunction to issue, the plaintiff has to show that he will suffer irreparable loss that cannot be compensated by way of damages. In *Mureithi v City Council of Nairobi* [1976-1985] EA 331 Madan JJA referred to L. Diplock in *American Cyanamid Co. v Ethicon Ltd* [1975] 1All ER 504 as follows;

“The object of Interlocutory injunction is to protect the plaintiff against injury by violation of his right of which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial...if damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff’s claim appeared to be at that stage.”

43. In the *Nguruman Limited* case [supra] it was stated that:

“...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.”

44. What amounts to irreparable injury was stated in the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR to be 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.

45. The Applicant argued that Anisa mosque is a key religious and cultural landmark within Lamu region and as such requires careful restoration to preserve its historical authenticity. That the acts of the Respondents threaten to completely erase the mosque’s heritage which no amount of compensation can bring it back once destroyed.

46. The Respondents on the other hand argued that any damage that may occur during the restoration of the mosque can be compensated by damages. That it is the Respondents who will suffer irreparable harm as they have deposited building materials on site which continue to deteriorate.

47. It is common ground that Anisa mosque has a historical Swahili architecture. I find that if the same is destroyed during the restoration of the mosque, the damage caused may not be restored back and the



resulting damage may not be adequately compensated by way of damages. The applicant has thereby established that they will suffer irreparable loss unless the orders sought are granted.

48. Thirdly, the Plaintiffs have to demonstrate that the balance of convenience tilts in their favour. The Applicant argued that its mandate of protecting and preserving monuments would be rendered meaningless if the orders sought are denied and the mosque is destroyed as no remedy can be granted later to rectify the situation. The Respondent on the other hand argued that the Applicants interests are largely institutional and can be remedied by way of damages while that of the Respondents represents an entire faith community whose place of worship remains incomplete and vulnerable to deterioration if the injunction is upheld.

49. In the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] EKLK, the concept of balance of convenience was defined 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”.

50. The question then is who among the parties will suffer more inconvenience than the other if the injunction is granted or declined? I am persuaded that the balance of convenience is in favour of the Applicant. It is the one to suffer more if the historical parts of the mosque are destroyed and the suit is eventually determined in its favour. The argument by the Respondents that they will suffer more harm because their material on site will continue to deteriorate is incomparable to what the Applicant will lose if the historical part of the mosque are destroyed. The Applicant has thereby proved this limb.

51. In the final end, I find that the order of temporary injunction as sought by the Applicant is merited. Consequently, I grant a temporary order of injunction as prayed in prayer 3 of the Notice of Motion dated 24<sup>th</sup> March 2025 pending the hearing and determination of the suit herein.

Costs of the application awarded to the Applicant.

**DELIVERED, DATED AND SIGNED AT GARSIN THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**J. N. NJAGI**

**JUDGE**

In the presence of:

.....for Plaintiff/Applicant

.....for Defendant/Respondent

Court Assistant - Rahma

