



Anyega & 3 others (Pentecostal Assemblies of God (Bahati PAG Church) Through its Trustees) v Donjud Company (KE) & another (Environment & Land Case E045 of 2024) [2025] KEELC 4822 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4822 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E045 OF 2024**

**CK NZILI, J
JUNE 25, 2025**

BETWEEN

**MOSES MOGITA ANYEGA 1ST PLAINTIFF
LUCY KIMELI KIPKEMOI 2ND PLAINTIFF
BEDINA KAGEHA MALEA 3RD PLAINTIFF
LYDIAH WANJIAH 4TH PLAINTIFF
PENTECOSTAL ASSEMBLIES OF GOD (BAHATI PAG CHURCH) THROUGH
ITS TRUSTEES**

AND

**DONJUD COMPANY (KE) 1ST DEFENDANT
THE COUNTY GOVERNMENT OF TRANS NZOIA 2ND DEFENDANT**

RULING

1. Through an application dated 4/12/2024, the court is asked to issue an injunction barring and restraining the respondents from entering, constructing, or putting up more constructions, leasing, transferring, alienating, or doing any act on Title No. Kitale Municipality Block 6/231 pending hearing and determination of this suit. The grounds are set out on the face of the application and in a supporting affidavit of Nebert Misigo Mudaki.
2. It is deposed that the church is the duly registered owner of the suit land measuring 0.8050 Ha. Attached to the affidavit is a copy of the trust deed, authority to plead, title deed, official search certificate, and bundle of documents towards the acquisition of the title marked as annexures NMM-1(a) and (b), 2(a) and (b), and 3, respectively.



3. The plaintiff deposes that following a judgment in Kitale Civil Suit No. 4 of 2006, there was a finding that it was entitled to ½ an acre out of the 2.2 acres of Kitale Municipality Block 6/231, where it constructed a church, and that there was also an ongoing construction on the land. The judgment and photos for the construction are attached as NMM-4 and 5. The applicant deposes that the defendants, without any justification, have trespassed onto the land and started erecting unlawful structures thereon, causing it loss and damage. The applicant urges the court to grant the orders sought; otherwise, it will suffer loss and damage.
4. The application is opposed on the grounds of opposition and a replying affidavit by the 2nd respondent, sworn by Truphosa Amere on 10/3/2025. It is deposed that the suit land is public land held in trust by the 2nd respondent and reserved for public use, which the applicants fraudulently acquired, yet it is available for the 2nd respondent to put up projects meant to serve public interest. Again, the 2nd respondent states that the suit land falls within the pecuniary jurisdiction of the lower court.
5. Further, the 2nd respondent deposes that the applicant has not met the conditions for the grant of a temporary injunction, given those competing legal rights between the applicants and the general public. The 2nd respondent insists that public interest militates against granting the injunction.
6. The applicants rely on written submissions dated 8/1/2025 and submit that they followed due procedure in obtaining the certificate of lease. That the 2nd respondent has never sued the applicants for being in possession of the suit land or acquired it compulsorily.
7. Accordingly, the applicants submit that the actions of the respondents amount to trespass and should be restrained as they risk losing their land. The applicants also submit the respondents stand to suffer no loss if the orders are granted.
8. The 2nd respondent relies on written submission dated 10/2/2025. It submits that the applicants have not met the requirements set in *Nguruman Ltd -vs- Jan Bonde Neilsen* [2014] eKLR. That the applicants have not established a prima facie case since the suit land is public land which they acquired fraudulently and is held in trust for the defunct Kitale Municipal Council.
9. Further, the 2nd respondent relies on *Robert Mutiso Lelli -vs- Kenya Medical Training College & 2 others* [2021] KECA 475 (KLR) on the proposition that land reserved for public use cannot be allocated to any entity and such allocation would be irregular, null and void.
10. Similarly, the 2nd respondent submits that the applicants have not demonstrated the loss they will suffer as the value of the suit land can be and an award of damages be sufficient and therefore the balance of convenience tilted against the grant of the orders sought.
11. A party seeking orders of temporary injunction has to show that it has a prima facie case with a probability of success at the hearing, that it will suffer irreparable loss or damage in the absence of an injunction, and lastly; that the balance of convenience tilts in granting the temporary injunction.
12. A prima facie case is defined as established if, looking at the material before the court, one will establish that a right has been infringed or breached to call for a rebuttal from the opposite side. See *Mrao Ltd -vs- First American Bank of (K)* [2003] eKLR.
13. Irreparable damage refers to something that cannot be compensated in monetary terms; it must be real, apparent and un-compensable. It is not enough to express a fear or apprehension. See *Nguruman Ltd (supra)*. Balance of convenience occurs where the inconvenience caused to the applicant in the absence of an injunction would be more, if the suit were to succeed in the long run, than would be to



the respondent if the injunction is granted and ultimately, the defendant is successful in the suit. See Kogo -vs- Kimeli Tenai [2018] eKLR.

14. A court, to establish whether there is a prima facie case, is not expected to undertake a mini-trial, but to see on the face of it, look into the merits of the material presented by the parties, without making definite findings as to facts, so long as there is a fair and bona fide question to raise as to the existence of the right which the applicant alleges, on a balance of probabilities. See Nguruman Ltd (supra). In Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Co. Ltd & Others [2016] eKLR, the court observed that where any doubt exists as to the applicant's right or where the right is not disputed, but its violation is denied, the court in determining whether an injunction should be issued takes into consideration the balance of convenience of the parties, the nature and extent of the injury to the two parties and ultimately, on the need to maintain the status quo in determining where the balance of convenience lies.
15. The applicant has attached a certificate of lease dated 20/5/2003. Attached to the supporting affidavit are also the paper trail of the root of the certificate of lease, including a letter of allotment dated 11/6/1998, payments for the requisite fees, and a judgment in Kitale High Court Civil Case No 4 of 2006 dated 8/7/2011.
16. There is no evidence that the said judgment or its decree was reviewed or set aside. Other than alleging that the suit property is public land and or was fraudulently obtained, the 2nd defendant has not brought before the court any suit, or objection or protest letter, or proceedings where it has succeeded in impeaching the title held by the applicant which this court under Section 26(1) of the [Land Registration Act](#) has to take as prima facie evidence of ownership by the plaintiff.
17. Equally, the 2nd respondent has not brought any material on how it will be inconvenienced more, if an injunction was granted, as opposed to the applicants who are absolute holders of the title and have rights protected under Article 40 of [the Constitution](#), Order 40 of the Civil Procedure Rules and Section 63(e) of the [Civil Procedure Act](#).
18. The upshot is that I grant the prayer for a temporary injunction to last for one year.
19. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 25TH DAY OF JUNE 2025.

In The Presence Of:

Court Assistant - Dennis

Miss Chebii for Kaosa for the plaintiff present

Owiti for defendants absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

