

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC LC NO E46 OF 2025

FAITH TABERNACLE OF KLAMATH FALLS
PLAINTIFF

VERSUS

**ROBERT MURUGU MAHIHU, BEATRICE WANJIKU NGANGA AND
JANE NJERI KIETI (*Sued as the Chairperson, Secretary and Treasurer of
JAMMI HOMECARE FOUNDATION*)DEFENDANT**

AND

**DR. ESTHER NGETHE, JOHNSTONE JUMBA, and ELIZABETH
GACHOKA *in their personal capacities as Chairperson, Secretary and
Treasurer of FOUNTAIN OF LIGHT CENTRES INTERNATIONAL*)
.....INTERESTED PARTY**

RULING

1. This ruling is in respect of the Plaintiff’s Notice of Motion dated 22nd April, 2025, seeking the following orders:
 - a) *Spent*
 - b) ***THAT a temporary injunction be issued restraining the Defendants/Respondents, their agents, servants or employees from destroying, wasting, transferring, disposing, selling and /or interfering in any manner with the following assets located at the suit property***

BAHATI/KABATINI BLOCK 1/18514 pending hearing and determination of this application inter partes; Posho Mill 2. Barber Shop 3. 5x6 Bed and Desk plus chair 4. 2 burner Gas stove 5. Armco Fridge 6. 20 bunk beds with 40 mattresses and mattress covers 7. Borehole 8. 50 cubic Steel Water Tank and Tower 9. 12 Solar Panels on top of water tank 10. 5.5 Kw Hober Sunverter 11. Cabro pavement in the facility 12. Laundry Washing Area 13. Washrooms – 4 urinal bowls and 4 Asian type toilets 14. 2 Energy Saving Jikos (50L and 100L) with 2 respective sufurias each 15. 2 stainless steel Sinks with Storage with one stainless steel work top 16. Hanging Lines 17. Vision 55” Smart TV 18. Various buildings on the land.

- c) THAT upon issuance of prayer 2 above, this honourable court do order that the Plaintiff /Applicant and its agents be granted access to the suit property BAHATI/KABATINI BLOCK 1/18514 for purposes of preparing a comprehensive valuation report to be filed before this honourable court pending hearing and determination of this application.***
- d) OCS Kiamaina Police Station Nakuru to ensure compliance of the orders of this honourable court.***
- e) THAT costs be provided for.***

- 2. The Application is supported by the annexed affidavit of Jimmy Weaver sworn of 18th August 2025, who deponed that he is the Administrative Director of the Plaintiff and that the suit property

BAHATI/KABATINI BLOCK 1/18514, was bought using donor funds purposely for setting up a Children's Home and Rescue Center for abandoned children to be run jointly by the Plaintiff, the Defendant and the Interested Party.

3. He further deponed that the Plaintiff was to focus on fundraising within its network of international donors, while the Defendant/Respondent was charged with running the day-to-day operations of the Children's home, and the Interested Party was to play an advisory and supportive role in the running of the project.
4. It was his disposition that the Plaintiff/Applicant later mobilized international donors to fund the construction of infrastructure on the suit property, including dorm rooms, offices, toilets and bathrooms, a kitchen, and the drilling and equipping a solar-powered modern borehole and other associated amenities. The Applicant listed the assets, which were acquired and developed using donor funds, which are located on the suit land.
5. According to the deponent, in or about the year 2022, the Plaintiff/Applicant realized that the Defendant/Respondent was not being accountable to the donors in the manner in which the funds were being used to run the project. That the Plaintiff raised several audit queries but the Respondent failed to respond to them.
6. Further that the Plaintiff realized that the Defendant/Respondent's Chairperson Mr. Robert Murugu Mahihu had appointed his close kin,

family members and or relatives as board members of Jammi Homecare Foundation and requested him to constitute a proper board to ensure transparency and accountability including compliance with the Children’s Act, No. 29 of 2022 but he failed/refused to implement the directives.

7. It was his disposition that the Chairperson Mr. Mahihu, also buried his deceased mother on the suit land without the consent of the plaintiff and Interested Party as the same was not personal property. He further deponed that the Respondent has since removed the name of the facility “Refuge City Complex” and prevented the Interested Party from accessing the facility.
8. The Applicant urged the court to allow the orders to preserve the subject matter of the litigation pending the hearing and determination of this suit.
9. The Respondent filed a Replying affidavit sworn by Robert Murugu Mahihu on 27th September 2025, and deponed that Jammi Homecare Foundation is a charitable foundation that accepts donations from various donors and does not exclusively take donor funding from the Applicant. Further that the Applicant has failed to provide evidence that its funds were used in the procurement of the items listed in the description of assets.
10. The deponent averred that the foundation remains committed to its duty and there is no plan to sell the assets and that the Applicant is a

foreign entity which can only lease and not own land and urged the court to dismiss the application.

APPLICANT’S SUBMISSIONS

11. Counsel for the Applicant filed submissions dated 4th November 2025, gave a brief background of the case and submitted that the Applicant has established a *prima facie* case by annexing copies of the sale agreement/ title deed to demonstrate that it has a bona fide legal interest/proprietary interest in the suit property.
12. Counsel further submitted that the Applicant also annexed copies of fund transfers to Robert Murugu from various donors for running the Children’s Home on the suit land. It was counsel’s submission that the annexures show massive developments on the suit land and that no funds were raised locally for the construction of the developments.
13. According to counsel, the Respondent’s clear intention to convert the property into its own exclusive use by changing the name from “Refuge City Complex” to Jammi Homes Foundation, hence the apprehension regarding the status of the suit property.
14. Counsel submitted that the Respondent has not denied in the replying affidavit that Robert Mahihu buried the mother on the suit land. Further the Defendant is a custodian/trustee of property that was acquired and developed for charitable purposes and that the trustee has acted contrary to their legal obligations as a trustee.

15. Counsel relied on the case of **William Charles Fryda v Assumption Sisters of Nairobi Registered Trustees & another [2017] eKLR**, where it was held that courts will always uphold the wishes of donors who give resources to support charitable trusts such as religious organizations.
16. Counsel urged the court to find that the Plaintiff/Applicant has established a *prima facie* case with a probability of success by demonstrating that the Defendant/Respondents acted dishonestly and/or contrary to their role as trustees of property meant for charitable purposes, thus requiring this court to issue an equitable remedy.
17. Counsel relied on the case of **Francis Jumba Enziano and Others vs. Bishop Philip Okeyo and Others Nairobi High Court Civil Case Number 1128 of 2001(Unreported)**, and submitted that the Plaintiff will suffer irreparable loss if the order sought is not granted and that the balance of convenience lies in granting the orders.

RESPONDENT'S SUBMISSIONS

18. Counsel for the Respondent filed submissions dated 26th November 2025, and reiterated the contents of the Replying affidavit and identified the issue for determination as to whether the Applicant has fulfilled the conditions set for granting injunctions sought in the Notice of Motion dated 22nd August 2025.
19. Counsel relied on the principles for grant of injunction in the case of **Giella Vs. Cassman Brown [1973] EA 358**, and submitted that for the Applicants to be granted an injunction, they have to demonstrate that

they have a right and that right is being threatened by the Respondent hence the need for the preservation of the suit property.

20. It was counsel's submission that the Applicant has not met the threshold for the grant of injunction hence the application should be dismissed with costs as the Respondent does not intend to sell the assets or the suit property.

ANALYSIS AND DETERMINATION

21. The principles that govern the grant of temporary injunctions are well settled as was enunciated in the case of **Giella vs. Cassman Brown [1973] EA 358**, where the court stated the conditions 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.”

22. In the case of **Rockland Kenya Limited v Elliot White Miller [1994] eKLR**, the court held as follows:

“The object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages

recoverable in the action if the matters in dispute were resolved in his favour at the trial. However, his need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the Plaintiff's undertaking in damages if the subject-matter of the trial was decided in his favour. It is a remedy that is both temporary and discretionary. In cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is given on affidavit and is therefore incomplete as it has not been tested by oral cross-examination. At that stage therefore, it is not the function of the Court to attempt to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. Such matters are to be dealt with at the trial. Nonetheless, the Court must in the exercise of its discretionary power in this regard be satisfied that the claim in respect of which an interlocutory injunction is sought is neither frivolous nor vexatious: in other words, that there is a serious question to be tried.”

23. Order 40 Rule 1 of the Civil Procedure Rules 2010 provides as follows:

Where in any suit it is proved by affidavit or otherwise—

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or*
- b. that the Defendant threatens or intends to remove or dispose of his property in circumstances affording*

reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

24. The issue for determination is whether the Applicant has met the above conditions to enable it benefit from the equitable remedy. The Applicant gave an elaborate background to the case together with documentary and photographic evidence on the state of the suit property, which has not been rebutted by the Respondent.
25. The Respondent filed a replying affidavit and advanced an argument that the Applicant being a foreigner cannot own property but only on a leasehold basis which is the correct position but raising it at this stage shows that there are mistrust and accountability issues between the partners.
26. The Applicant annexed a copy of the sale Agreement for the purchase of the land together with the title deed which shows the partnership and the interest in the suit land. Similarly, the photographs annexed show that the facility's name has changed from "Refuge City Complex" to

Jammi Homes Foundation and it is noted that the Respondent did not address this in the Replying affidavit.

27. Similarly, the Applicant stated that the Respondent's Chairperson Robert Mahihu buried the mother of the suit land and has made his relatives board members. The Respondent did not address this issue.
28. The issues raised are factors that show that the Applicant is right in stating that they are apprehensive that the Respondents are up to no good in respect of the assets and the suit land.
29. The Respondent stated that they do not intend to dispose of the assets or the suit property but the tone of their response demonstrate otherwise. The Respondent stated that the Applicant is not the only donor that has sourced funds for them and that they have not proved that the funds they sourced if what was used to develop the suit property.
30. I have considered the Application, the submission by counsel and the relevant and authorities and find that the Applicant has met the threshold for grant of the orders sought and therefore issue the following specific orders :
 - a) ***THAT a temporary injunction is hereby be issued restraining the Defendant/Respondents, their agents, servants or employees from destroying, wasting, transferring, disposing, selling and /or interfering in any manner with the following assets located at the suit***

property BAHATI/KABATINI BLOCK 1/18514 pending hearing and determination of this suit; The assets namely, Posho Mill 2. Barber Shop 3. 5x6 Bed and Desk plus chair 4. 2 burner Gas stove 5. Armco Fridge 6. 20 bunk beds with 40 mattresses and mattress covers 7. Borehole 8. 50 cubic Steel Water Tank and Tower 9. 12 Solar Panels on top of water tank 10. 5.5 Kw Hober Sunverter 11. Cabro pavement in the facility 12. Laundry Washing Area 13. Washrooms – 4 urinal bowls and 4 Asian type toilets 14. 2 Energy Saving Jikos (50L and 100L) with 2 respective sufurias each 15. 2 stainless steel Sinks with Storage with one stainless steel work top 16. Hanging Lines 17. Vision 55” Smart TV 18. Various buildings on the land.

b) THAT an order is hereby issued granting the Plaintiff /Applicant and its agents access to the suit property BAHATI/KABATINI BLOCK 1/18514 for purposes of preparing a comprehensive valuation report to be filed before this honourable court pending hearing and determination of this suit.

c) That the OCS Kiamaina Police Station Nakuru is hereby directed to ensure compliance of the orders of this honourable court.

d) Costs to the Applicant

DATED, SIGNED AND DELIVERED AT NAKURU THIS 21ST DAY OF JANUARY 2026.

**M. A. ODENY
JUDGE**