



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLC NO. E570 OF 2025

**ISMAEL SAID ALI
 SHAFFI SAID ALI
 HUSSEIN MOHAMED
 FATUMA IDRIS
 LATIFA YUSUF
 MOHAMED
 FADILI.....APPLICANTS**

=VERSUS=

AMANI KIBRA.....1ST

RESPONDENT

ASHA SAID.....2ND

RESPONDENT

ALI MUHDIN.....3RD

RESPONDENT

THE COUNTY GOVERNMENT OF NAIROBI.....4TH

RESPONDENT

AND

**KIBRA NUBIAN COMMUNITY
 LAND TRUST (KNCLT).....INTERESTED PARTY**

RULING

1. Before me for determination is the Notice of Motion dated 30th October 2025, brought under Order 51 Rule 1, Order 40 Rules 1 and 2, and Section 3A of the Civil Procedure Act, in which the Applicants seeks the following orders:

a. Spent.

b. Spent

c. THAT a temporary injunction be and is hereby issued restraining the Respondents from constructing any houses, pavements, development, excavation, or any form of construction on the parcel of land known as L.R. No. 29976 pending the hearing and determination of this suit.

d) Spent.

e) THAT the costs of the application be provided for.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Shaffi Said Ali, sworn on even date.

THE APPLICANTS' CASE

3. The deponent averred that the suit property is registered in the name of Kibra Nubian Community Land Trust(KNCLT) and is designated as Nubian Community Land.
4. He further averred that the suit property was historically utilized by their late father, Said Ali Said Ali, and is currently held for the shared and communal use of his family members, including the Applicants.
5. He claims that the 2nd and 3rd Respondents unilaterally permitted the 1st Respondent to trespass and construct on the property, thereby violating their shared communal rights and exclusive ownership.
6. He further averred that the Respondents persisted in their activities despite the KNCLT's letter dated 15th September 2025, which declared the MOU signed by the Lindi Land Committee null and void.
7. He asserted that the joint actions of the 2nd and 3rd Respondents to alienate a portion of the family's inherited rights for personal gain constitute a breach of their fiduciary and communal obligations to the family. He further asserted that the Applicants would suffer irreparable harm if the illegal

construction is not stopped, as the area is intended for family use and would be permanently alienated.

8. He argued that although the land is under KNCLT, the family dispute regarding the deceased's assets and beneficiaries is still pending before the High Court in succession Cause No. 2432 of 2021. He urged the court to grant the order sought.

THE 1ST, 2ND AND 3RD RESPONDENTS' CASE

9. The 1st, 2nd, and 3rd Respondents filed a replying affidavit sworn by Benson Ooko Ouma, on 28th November 2025, in opposition to the application.
10. The deponent averred that the 2nd Respondent had developed the suit property for decades, which had historically served as a small dumping site. He further averred that in 1994, the 2nd Respondent, together with Udugu Society, Abraham Ouma, and Julius Ouma, constructed three latrines and a bathroom on one of the plots, and that these structures were subsequently affected by continued dumping behind the latrines.
11. He explained that following the post-election violence in 2008, a French organization called Solidarity initiated a cleanup

program that was completed in 2012. Although the formal program concluded that year, the 2nd Respondent continued to maintain the site and used it to provide vegetables.

12. In 2014, the Athi Water Company constructed an ablution block as part of the 2nd Respondent's initiative, which included six toilets, four bathrooms, and a urinal.
13. That in 2018, the 2nd Respondent hosted the 1st Respondent and decided that the community library should be constructed on the existing ablution block for the benefit of the community, not for personal gain.
14. He asserted that the Applicants were aware of the initiation of the library's construction, which is essential for children, and that they did not submit any formal protest regarding the project. He maintained that, due to the 2nd Respondent's efforts, the entire area has been transformed from a neglected dumpsite into vital community infrastructure, including an ablution block and a library managed by the 1st Respondent.
15. He confirmed that the 1st Respondent was developing its project on L.R. No. 29976, whereas L.R. No. 209/2222, as stated in the Applicant's demand letter, is distinct and does

not correspond to the community land registered under the Kibra Nubian Community Land Trust.

16. He maintained that the legal capacity to initiate legal proceedings regarding the suit property is vested in the Trustees of Kibra Nubian Community Land Trust, the registered proprietor, and not in the Applicants.
17. He argued that the Applicants failed to disclose to the court that the dispute stems from internal family differences for which resolution mechanisms were established but were frustrated by the Applicants' refusal to engage. He further stated that the 1st Respondent has maintained continuous occupation of the suit property since 2019 without any objection from the Applicants.
18. He stated that three-quarters of the suit land was legally donated to the 1st Respondent's project by Mr. Julius Ouma Lala, who previously had an interest in that area and maintained six semi-permanent structures. The remaining quarter had served as a public waste-disposal site for many years but was shut down in 2000 due to public health concerns.

19. In conclusion, he urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

20. Having considered the application and the respective affidavits, the issue for determination is whether the Applicants have met the threshold for the grant of an injunction

21. The principles for the grant of an injunction were laid down in the celebrated case of **Giella vs Cassman Brown & Co Ltd** **1973 EA 358** as follows:

1. First, the Applicant must show a prima facie case with a probability of success.

2. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.

3. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.

22. The first issue for determination is whether the Applicants have established a prima facie case with a probability of success.

23. A *prima facie* case was defined by the Court of Appeal in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR** as follows:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case 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.”

24. It is common ground that the suit property is registered in the name of the Kibra Nubian Community Land Trust. The 1st - 3rd Respondents maintained that the Applicants lack standing to bring this suit because they are not the registered owners of the suit property.

25. Locus standi goes to the jurisdiction of the court to entertain the Applicant's claim. In the matter at hand, it is not in dispute that the suit property is registered in the name of the Kibra Nubian Community Trust. The Applicants are neither the

registered proprietors nor have they shown that they are a trustee or authorized representative of the trust. It is well settled that where land is registered in the name of a trust or other legal entity, any proceedings relating to such land must be instituted by the entity itself or by a person duly authorized.

26. Based on the material on record, I find that the Applicants have not established a prima facie case with a probability of success.

27. In an application for an interlocutory injunction, the Applicant must satisfy the three conditions before an injunction is granted.

28. In the case of **Nguruman Limited Vs Jan Bonde Nielsen & 2 Others [2014] eKLR**, the Court of Appeal stated as follows:

“...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to

surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If a prima facie case is not established, then irreparable injury and the balance of convenience need no consideration.

29. Having found that the Applicants have failed to establish a *prima facie* case with a probability of success, it will be immaterial to delve into the other limbs that are to be considered on the grant of a temporary injunction. In so finding, I am persuaded by the holding in the case of **Commercial Finance Co. Ltd vs Afraha Education**

Society & Others C A Civil Appeal No. 142 of 1999,

where the court held that:-

“.....the judge should address himself sequentially on the conditions for granting an injunction instead of proceeding straight away to address himself on the third condition because where the Applicant has no registered interest in the land comprised in the title dispute and thereof has not demonstrated that it has a prima facie case with a probability of success, no interlocutory injunction would be available.”

30. The upshot of the foregoing is that the application dated 30th October 2025 is devoid of merit and the same is hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 28TH DAY OF JANUARY, 2025.

.....
**T. MURIGI
JUDGE**

IN THE PRESENCE OF

Nyaribo for the Applicant

Cheruto holding brief for Mogaka for the Respondent.

ORIGINAL