



Presbyterian Foundation Association v Riungu & 20 others (Environment and Land Appeal E021 of 2021) [2026] KEELC 377 (KLR) (28 January 2026) (Ruling)

Neutral citation: [2026] KEELC 377 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND APPEAL E021 OF 2021**

**BM EBOSO, J
JANUARY 28, 2026**

BETWEEN

THE PRESBYTERIAN FOUNDATION ASSOCIATION APPLICANT

AND

CUTHBERT RIUNGU 1ST RESPONDENT
MWIANDI M'MUGAMBI 2ND RESPONDENT
FREDRICK MIRITI 3RD RESPONDENT
AILEEN MBIRO 4TH RESPONDENT
ASHFORD MIRITI BAINI 5TH RESPONDENT
JOHN GITONGA 6TH RESPONDENT
JAMES KIMANDI 7TH RESPONDENT
KENNETH MURITHI 8TH RESPONDENT
ELIPHAS MBIUKI 9TH RESPONDENT
GAINSON KIRAGU 10TH RESPONDENT
MURUNGI NGUTHATI 11TH RESPONDENT
LEONARD MUGO 12TH RESPONDENT
ROSE IGOJI 13TH RESPONDENT
MUGAI BOORE 14TH RESPONDENT
RUGURU KARANGU 15TH RESPONDENT
JULIET KAWIRA 16TH RESPONDENT
BENSON GITONGA 17TH RESPONDENT



MARY KAINDA	18 TH RESPONDENT
SASINTA CIRINDI	19 TH RESPONDENT
MUGAMBI WALLACE	20 TH RESPONDENT
THARAKA NITHI COUNTY GOVERNMENT	21 ST RESPONDENT

RULING

1. Falling for determination in this ruling is the appellant’s notice of motion dated 20/6/2025 through which they seek: (i) an order staying execution of the judgment and decree rendered on 22/11/2024 in Chuka CMC Civil Case No 24 of 2016, pending the hearing and disposal of this appeal; and (ii) an interlocutory order of inhibition relating to land parcel number Mwimbi/Murugi/1022 (hereinafter referred to as “the suit land”), pending the hearing and disposal of the appeal. The application was premised on the grounds outlined in the motion and in the two affidavits sworn by Eliphas Kubai Mbogori on 20/6/2025 and 13/10/2025, respectively. It was canvassed through written submissions dated 9/7/2025, filed by M/s Kiautha Arithi & Co Advocates.
2. The case of the applicant is that they were allocated the suit land by the defunct County Council of Meru many decades ago and they have been in occupation of the suit land since 1973. They were registered as proprietors of the suit land in November 2001 and were issued with a title in 2002. They have extensively developed the suit land. They have constructed a health facility on the suit land, going by the name PCEA Kiriani Health Centre, which offers essential outpatient and community health services to the public.
3. They add that they were sued by the respondents over the suit land in Chuka CMC Civil Case No. 24 of 2016. The trial court heard the case and subsequently rendered a judgment in the suit in which it decreed cancellation of its title and issuance of a new title in the name of Tharaka Nithi County Government. The trial court further issued a permanent injunction restraining them against re-planning, alienating, selling or disposing the suit land without express consent from the Kiriani Community as per Article 63 of the *Constitution* and Section 6 of the *Community Land Act*. They have lodged an appeal in this court, challenging the said judgment.
4. The applicant adds that they are apprehensive that the respondents are likely to execute the decree, leading to irreparable loss arising from their investments on the suit land. They further contend that if an inhibition order is not issued, their title will be cancelled and the suit land will be registered in the name of the County Government of Tharaka Nithi.
5. The respondents opposed the application through a replying affidavit sworn on 25/9/2025 and written submissions dated 29/10/2025, filed by M/s Kipngeno & Associates Advocates. The case of the respondents is that the suit land is community land and any occupation of the land by any party to this suit or any party’s agents/representatives can only be with the consent of the community and no party has exclusive hostile possession against the interests of the community. They add that vide their affidavit, the applicant confirmed that they were members of Kiriani Community in whose favour the trial court issued the decree.
6. The respondents add that the decree of the trial court has already been executed and the land has been registered in the name of the County Government of Tharaka Nithi. They deny the allegation that the applicant has made developments on the suit land, adding that the developments on the suit land were done by Kiriani Community through public fundraisings and that a substantial chunk of the money



used to erect the structures on the suit land was compulsory compensation money that was paid by the Government of Kenya after part of the suit land, which is community land, was released. They argue that the plea for an inhibition has been overtaken by events because the applicant's title was cancelled and a new title was issued in the name of the County Government of Tharaka Nithi. They urge the court to reject and dismiss the application.

7. The court has considered the application, the response to the application, and the parties' respective submissions. The two key issues that fall for determination in this ruling are: (i) Whether the criteria for granting an order of stay of execution pending disposal of an appeal by this court has been satisfied; and (ii) Whether the criteria for granting an interlocutory injunctive relief (in form of an inhibition order) by this court under Order 42 rule 6 (6) of the Civil Procedure Rules has been met. I will analyse and dispose the two issues sequentially in the above order.
8. Does the application satisfy the criteria for granting an order of stay of execution by this court pending the hearing and disposal of an appeal before it? The principles that guide the jurisdiction of a first appellate court to grant an order of stay of execution are spelt out in Order 42 rule 6(2) of the Civil Procedure Rules which provides as follows:

“No order for stay of execution shall be made under sub rule (1) unless;-

 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
9. On unreasonable delay, the court notes that the impugned judgment was rendered on 22/11/2024. The present application is dated 20/6/2025 and was filed on 23/6/2025. The delay of 7 months is, without doubt, unreasonable. That is not all. The decree of the trial court was executed on 12/6/2025 when the registration and title of the applicant were cancelled and the suit land was registered in the name of the County Government of Tharaka Nithi to hold it in trust for Kiriani Community. By the time the applicants filed the present application, the decree of the trial court had already been executed.
10. On substantial loss, the applicants elected not to move this court expeditiously. They came to court after execution of the decree of the trial court. At this point, they have not demonstrated that any of the structures on the suit land face an imminent danger of demolition. They have not demonstrated that the County Government intends to close the health facility on the suit land.
11. On security for the due performance of the decree, the applicant elected not to offer any security; yet this is a mandatory legal requirement. Taking the foregoing into account, the court comes to the finding that the applicant has not satisfied the criteria for granting an order of stay of execution by a third tier superior court under Order 42 rule 6 (2) of the Civil Procedure Rules.
12. Does the application meet the criteria for granting an interlocutory injunctive relief by a first appellate court under Order 42 rule 6 (6) of the Civil Procedure Rules? Over the years, Kenya's superior courts have developed principles that guide the exercise of the above jurisdiction (see (i) *Madhupaper International Limited v Kerr* (1985) KLR 840; (ii) *Venture Capital & Credit Limited v Consolidated Bank of Kenya Ltd*; Civil Application No 349 of 2003 (174 of 2003 UR); and (iii) *Butt v Rent Restriction Tribunal* (1982) KLR 417).
13. Suffice it to state that, the jurisdiction of a first appellate court to grant an interlocutory injunction under Order 42 Rule 6 (6) of the Civil Procedure Rules is a discretionary and equitable one. Secondly,



the discretion will not be exercised in favour of an applicant whose appeal is frivolous; the applicant must demonstrate that a reasonable argument can be put forward in support of his appeal. Thirdly, the discretion should be refused where it would inflict greater hardship than it would prevent. Fourthly, the applicant must show that refusal to grant the injunction would render his appeal nugatory. Fifth, the court is to be guided by the principles in *Giella v Cassman Brown & Company Ltd* (1973) EA 358. Lastly, whenever disposing a plea for an interlocutory injunction, the court does not make definitive or conclusive pronouncements on the key issues in the dispute.

14. In the present application, it does emerge from the interlocutory evidence presented in this appeal that the suit land was registered in the name of the County Council of Meru on 20/1/1966. The easements section of the register shows that the land was at the time of registration reserved for Kiriani Social Centre. In 1981, the Government of Kenya compulsorily acquired a portion of the land for the purpose of building the Embu-Meru Road. The acquired portion measured 0.110 hectares. The compulsory acquisition was noted in the register in 1986. In 2001, the remaining land was transferred to the applicant.
15. The circumstances under which an already alienated and registered trust land was transferred to the applicant in 2001 were the subject of consideration by the trial court. In this appeal, the applicant faults the trial court for relying on the *Constitution* of Kenya 2010, contending that the said Constitution had not been promulgated at the time the suit land was allocated to them. They contend that the allocation was properly done under the retired Constitution. They further fault the trial court for failing to find that the suit against them was statute-barred. Lastly, they fault the trial court for failing to make a finding on what would become of their immense developments on the suit land. Without making conclusive or definitive pronouncements, in this court's view, these are arguable grounds of appeal.
16. Taking the above into account, the court finds that there is a proper basis for preserving the suit land through an inhibition order as sought by the applicant. The court is, in the circumstances, satisfied that the criteria for granting an interlocutory injunctive order in the nature of an inhibition order has been met.
17. In the end, the application dated 20/6/2025 is disposed in the following terms:
 - a. The plea for an order of stay of execution is declined/rejected.
 - b. The plea for an interlocutory inhibition is granted and the said inhibition shall stand vacated on disposal of this appeal or on expiry of 12 months from the date of this ruling. The tenor and import of the inhibition order is that the suit land shall remain in the name of the County Government of Tharaka Nithi as a trustee and no dealings shall be registered against the title.
 - c. Costs of the application shall be in the appeal.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 28TH DAY OF JANUARY, 2026.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Ms. Kerubo for the Appellant/Applicant

3rd, 4th, 5th and 20th Respondents present in person

Court Assistant – Nelly

ELC LAND APPEAL CASE NO. E021 OF 2024 – Ruling Page 3

