

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. 130 OF 2025

LEONARD ASIRE.....1ST
PLAINTIFF/RESPONDENT

REMJIUS OCHIENG.....2ND
PLAINTIFF/APPLICANT

SAMWEL LANGA 3RD
PLAINTIFF/APPLICANT

ELIUS ONYANGO..... 4TH
PLAINTIFF/APPLICANT

MAURICE AMOLO..... 5TH
PLAINTIFF/APPLICANT

RODGERS NYABANDE..... 6TH
PLAINTIFF/APPLICANT

MAURICE JUMA..... 7TH
PLAINTIFF/APPLICANT

VERSUS

POPE LAWRENCE
KALUL.....DEFENDANT/RESPONDENT

HAZINA ADHIAMBO OBONDO.... 2ND
DEFENDANT/RESPONDENT

JOHN ODHIAMBO OPUGE.....3RD
DEFENDANT/RESPONDENT

**PAUL
DEFENDANT/RESPONDENT**

ONDUTO.....4TH

**SAMUEL
DEFENDANT/RESPONDENT**

ORIARO.....5TH

RULING

- 1.** This suit was initiated by way of a **plaint dated 21/05/2025** wherein the Plaintiffs, being members and officials of **St. John Batista Legion Maria of African Church Mission (Kibera Branch)** sought order (hereafter the church) against the Defendants sued as the Registered Trustees and officials of Legion Maria of Africa Church Mission (Nairobi Diocese) for permanent injunction restraining the defendants from blocking denying, preventing and or limiting the Plaintiffs worshipping rights, ingress, egress, entering and or accessing the church (described above) contrary to the main church constitution as pleaded in the plaint.
- 2.** The Plaintiffs also sought orders barring the Defendants by themselves, agents and representatives from accessing the Kibera Branch Church premises including the priest as well as interfering with property and activities and activities of the members.
- 3.** The Plaintiffs further sought an order to bar transfer or suspension of the 1st, 2nd and 3rd Plaintiffs and any other priest or staff, including an order that the Plaintiffs are the rightful

leaders and founders of the Kibera Branch of the Church among other orders.

4. Together with the plaint, the Plaintiffs filed a Notice of Motion application of an even date (21/05/2025) seeking similar orders as stated in the plaint.

The Application Dated 21/05/2025

5. Based on provisions of **Order 40 Rules 1, 2, 3 and Order 51 Rule 3 of the CPR and Sections 1A, 1B and 3A of the civil Procedure Act (CPA)** and grounds on its face and further amplified by the supporting affidavit sworn by Leonard Asire, describing himself as one of the founder members of the **St. John Batista Legion Maria of Africa Church Miseum (Kibera branch)**.
6. The Plaintiffs sought orders that:
 - 1) *Spent*
 - 2) *Spent*
 - 3) *This court be pleased to issue temporary injunction orders restraining the Defendants/Respondents from blocking, denying, preventing and or limiting the Plaintiffs/Applicants worshipping rights ingress egress entering and or accessing St John Batista Legion Maria of Africa Church Miseum Kibera Branch (the church) until the application is heard and determined.*
 - 4) *Pending the hearing and determination of this application/suit, an injunction does issue restraining the*

defendants/respondents whether by themselves, their agents, representatives, servants and/or employees, priests from interfering with the operations of **St. John Batista Legion Maria of African Church Mission Kibera Branch** by posting, transferring and/or nominating the 5th defendant/respondent contrary to the main church constitution and affirming him as presiding priest of Kibera Branch.

- 5) Pending the hearing and determination of this application, an injunction order does issue barring the defendants/respondents whether by themselves, their agents, representatives, servants and/or employees, priest from accessing, coming near the premises of **St. John Batista Legion Maria of African Church Mission Kibera Branch**.
- 6) This Court be further pleased to order temporary injunction restraining the defendants whether by themselves, their agents or servants from interfering with the property, activities and worship of members of **St. John Batista Legion Maria of African Church Mission Kibera Branch** and/or declare the Defendants/Respondents by their conduct to have violated the Legion Maria of Africa Church Mission's Constitution and by extension the plaintiffs/applicants' rights and fundamental freedom to

worship as guaranteed by the Constitution of Kenya 2010.

- 7) An order does issue that the alleged transfer of the 1st, 2nd & 3rd Plaintiffs/Applicants and any other priest or staff thereof be and is hereby stopped and or suspended forthwith until the hearing and determination of this application/suit herein.
- 8) The installation of the 5th Defendant/Respondent be and is hereby declared unlawful, illegal, null and void in the circumstances.
- 9) Pending the hearing and determination of this application and the main suit, this honourable court be pleased to order the 1st Plaintiff/Applicant to remain the presiding priest, the 2nd & 3rd Plaintiffs/Applicants to remain assistant presiding priest while the 4th & 7th Plaintiffs/Applicants as officials and or committee members and to continue as so until the hearing and determination of this application and or suit herein.
- 10) The Officer Commanding Police Station (OCS) Jamhuri Police Station does oversee, enforce and or supervise the compliance with the orders of this Honorable Court.
- 11) The costs of this application be in the cause.

7. Grounds for the Application

- a) The Legion Maria of African Church Mission is duly registered under **Societies Act Cap 108 Laws of Kenya** having deposited a copy of its Chur Constitution

with the Registrar as contemplated by law and that the said constitution establishes the basis of the contractual relationship in place between Legion Marin of African Church Mission being the Church headquarters and the Plaintiffs/Applicants herein being either founders, officials and members of St. John Batista Legion Maria of African Church Mission Kibera Branch.

*b) The Plaintiffs/Applicants are the recognized founders, priests, officials and/or duly registered members of St. John Batista Legion Maria of African Church Mission Kibera Branch pursuant to Rule 11 (C) of the Constitution of the **Legion Maria of African Church Mission** which constitutional provision provides for a contractual autonomy of Kibera Branch Diocese Committee from its headquarters with respect to occupation and or term limits of service as members of Kibera Branch Church Diocese Committee.*

*c) Despite the foregoing Constitutional provision establishing contractual obligations between the plaintiffs/applicants and the defendants/respondents herein, the 1st defendant/respondent, vide a notification dated **3rd** April, 2025 purported to orally transfer the 1st plaintiff/applicant, being the **Presiding priest** and founding member of St. **John Batista Legion Maria of African Church Mission Kibera Branch** to Diocese of*

Nakuru which action is not provided for and/or contemplated by the Constitution of **Legion Maria of African Church Mission**.

d) As a result of the said notification dated 3rd April 2025, the 1st defendant, in further breach of its contractual obligation as stipulated in the referenced constitution purported to nominate the 5th defendant/respondent as the presiding priest of **St. John Batista Legion Maria of African Church Mission Kibera Branch** despite lacking powers and or contractual authority to do so.

e) As a result of the foregoing breach, the defendants/respondents purported to have transferred the 2nd Defendant/Respondent to Kendu Bay Diocese which was not effected and have now resorted to usurping the powers of the duly elected presiding priest by their actions namely; conducting unprocedural meetings in the church compound with intentions of splitting the church by sowing seeds of discord amongst church members and causing rebellion against the duly elected office bearers and/or Diocese Committee Members.

f) The defendants/respondents have been blocking the priests, officials and members of the church from worshipping, gathering and assembling at the church assisted by the heavy presence of the police, breaking

the locks and replacing them and further chasing away the plaintiffs/applicants from the church.

- g) In event this honorable court does not intervene, the Plaintiffs/Applicants and all members, founders of St. John Batista Legion Maria of African Church Mission Kibera Branch will suffer irreparable injustice at the behest of the defendants/respondents whose actions are now threatening the plaintiffs/applicants' rights to worship and assemble at the branch as contractually provided for by the constitution of the Church.*
- h) Pursuant to the foregoing, it is only fair and just that this Honorable court does issue an order of temporary injunction restraining the defendants/respondents from transferring and or nominating the 5th Defendant/Respondent as a presiding priest of St. **John Batista Legion Maria of African Church Mission Kibera Branch** or in any way interfering with the management of the church or any part thereof.*
- 8.** The motion was placed before the court under certificate of urgency on ex parte basis on the 22/05/2025.
- Upon the above basis and material placed before the court by the plaintiffs, the court found no basis to grant the ex parte orders and on 24/06/2025, an order of status quo was issued to last upto 15/07/2025 when the Respondents were expected to have been served and responded to the motion.

9. On 15/07/2025, directions were taken whereof the Respondents were granted leave to file supplementary affidavit and both parties directed to file submissions.
10. In the interim, on the 28/07/2025, by a **motion dated 28/07/2025** the Plaintiffs approached the court complaining that the Defendants had disobeyed the status quo orders of the court and had moved into the church and destroyed property therein and obstructed worshippers from entering the church and thus caused massive mayhem.
11. Upon the material placed before the court, temporary orders interims of prayers number 5 of the motion were issued to prevent further destruction of property and fights among the members of the church with an order that OCS Jamhuri Police Station and the Deputy County Commissioner Kibera sub County enforced the court order on status quo pending determination of the application and suit.

It is dated 8/07/2025 and sworn by Pope Lawrence Kalul the 1st Respondent; who deposes that the entire application by the Plaintiffs was brought with conscious and deliberate falsehoods made to mislead the court, adding that the 1st Plaintiff was appointed on behalf of the church to be priest in the Kibera Branch on 10/06/2010 (letter of appointment attached as "LK - 001" and denying that he was a founder

member stating that the church was not founded by individual minutes, has rules and a constitution- attached as "LK-2"

- 12.** Further the deponent that the Priest serves at the leisure of the pope in office at any time, adding that the church has a committee and admits that there has been waggles pitting the church and the 1st Plaintiff and several meetings have been held o resolve the disputes minutes annexed as "LK-003" and further that the transfers of the stated officials were made to save the church from the wrangles.
- 13.** As to the violence the pope states that the church and the Ministry Abhors all sorts of violence against any person or any property and that on the matter of the church premises, the deponent states that it is the 1st plaintiff with others who locked the church building to prevent members and the view priest from taking over and worshipping therein upon transfer of the 1st Plaintiff.
- 14.** To buttress the above, the Pope avers that it is upon the chaos championed by the 1st Plaintiff that the church sought intervention from its headquarters who advised them to seek police assistance the protect the worshippers and ensure peace in the church, but not to harass of intimate the plaintiffs who were allowed to worship.
- 15.** The Pope amplifies his depositions by confirming that no church door was broken in the Mayhem save for locks which

were removed to enable worshippers to gain access to the church.

- 16.** To the above, the Respondents aver that the orders sought by the Plaintiffs ought not be granted, the applicants having failed to show a prima facie case and thus seek for dismissal of the application.
- 17.** On 25/09/2025, the parties were directed to file their respective submissions and exchange by close of business on 16/10/2025 with a ruling being scheduled for 12/02/2026.
- 18.** The plaintiffs have failed to file their submissions within the timeline given by the court or at all. The court proceeds to prepare the ruling without the benefit of the Applicants submissions.

Respondents Submissions

- 19.** The respondents submissions by their Advocates Wambilianga Majan & Associates are dated 23/09/2025 They flag 3 issues for determination for which they offer their submissions:-
 - 1) Whether the motion is competent in law*
 - 2) Whether the applicants have satisfied the legal threshold for grant of interlocutory injunctions; and*
 - 3) Whether the application discloses a prima facie case.*
- 20.** It is submitted that the application is incurably defective for seeking to restrain Defendants pending hearing and determination for the suit that cannot be granted in the

interim citing the case of Nguruman Ltd Jan Bonde Nielsen & 2 Others [2014]eKLR, stating that permanent reliefs cannot be granted pending hearing of a suit, also citing the case **Kenya Commercial Finance Co. Ltd v. Afraha Education Society [2001] EA 86** for the holding that a final order cannot be granted at an interlocutory stage.

- 21.** It is thus submitted that the motion is defective.
- 22.** Further the Respondents state that the Applicants have fallen short of meeting legal principles of injunctions set out in **Giella v Cassman Brown 91973) EA 358** not established a prima facie case; no irreparable injury and not meeting the balance of convenience.
- 23.** Accordingly, the Respondents urge the court to dismiss the application with costs. It provides: Temporary Injunctions and Interlocutory orders wherein 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,*
 - b) *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, damage, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.*

- 24.** It is crystal clear that the order envisages temporary orders or interlocutory orders pending full hearing and determination of a suit; thus final orders cannot be granted in a temporary application.
- 25.** In the matter before the court, the property in dispute is a church, church property being damaged by the rival parties within the church, wrangles arising from the two factions in the church lead by the Plaintiffs faction against the church leadership represented by the Respondents as deponed to by the 1st Respondents.
- 26.** There is no dispute that the church property was being destroyed and damaged by the Applicants/Plaintiffs faction for reasons stated by the Respondents faction due to transfers of the 1st Plaintiff and others among the applicants.
- 27.** The application and the orders sought are drafted as pending hearing and determination of the application and the suit, which ought not to be so, for reasons that interlocutory applications ought to be in the interim, pending hearing and determination of the application. In the first instance, from which the court may determine in the applicants favour, or distress the same.
- 28.** So that when the Applicants seek interlocutory orders pending hearing and determination of the application and the suit, it is inappropriate.

- 29.** I fully agree with the Respondents that by so pleading application is legally ambiguous and incapable of enforcement save that the court may in its wide discretion grant the orders if appropriate in the interim.
- 30.** The court of Appeal in the case of **Nguruman Ltd (supra)** held that interim reliefs must be clear, precise and properly framed for them to be granted. Also, the court in the **Kenya Commercial Finance Co. Ltd (Supra)** held that a final order cannot be granted at an interlocutory stage as doing so would deny the parties the right to be heard fully at trial.
- 31.** Reliefs sought at prayers 2, 4, 7, 8, 9 are in mandatory and final and therefore cannot be granted in the interlocutory stage. See the cases I have cited above.
- 32.** I further agreed with the Respondents that the reliefs sought in the application before the court are omnibus and ambiguous, each requiring compliance of distinct legal principles hence causing confusion and prejudice.
- 33.** The court of Appeal in the case of **Stephen Boro Gitihia v. Family Finance Building Society & 3 Others [2009] eKLR** rendered that:
- “there is no doubt the application is an all-cure, omnibus application. an omnibus application is incapable of proper adjudication by the court for each of the reliefs sought, a part from being governed by*

different rules, each is also subject to long established and different judicial principle, which counsel need to bring to the attention of , and the court needs to consider before granting the entire relief sought. This alone makes the plaintiffs application incurably defective and a candidate for striking out”

- 34.** The above being in reserve, this court, being minded that technicalities ought not be cited to deny justice to party deserving of reliefs sought as dictated by **Article 159 (2) of the Constitution** it is important that I look at the merit or otherwise of the remaining prayers that speak of interlocutory reliefs pending hearing and determination of the application. These are prayers No. 3, 5 and 6.
- 35.** Here the applicants seek temporary orders of injunction precisely restraining the defendants from blocking and preventing the Plaintiffs and worshippers from accessing the church and their rights of worship in the particular church - Kibera branch.

Analysis and Determination

- 36.** The applicants in their application seeks a myriad of Injunctive Orders against the Respondents/Defendants based on **Order 40 Rule 1 of the CPR.**

Respondents' Submissions

37. The Respondents' submissions by their Advocates Wambilianga Majani & Associates are dated 23/09/2025. They flag 3 issues for determination for which they offer their submissions:-

*It is submitted that the application is incurably defective for seeking to restrain the Defendant pending hearing and determination of the suit in the interms that cannot citing the case of **Nguruman Ltd V. Jan Bonde Nielsen & 2 Others [2014] eKLR**, stating that permanent reliefs cannot be granted pending hearing of a suit; also citing the case **Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] EA86** for the holding that a final order cannot be granted at an interlocutory stage.*

38. Further, the Respondents state that the Applicants have fallen short of meeting the legal principles of injunctions set out in **Giella V. Cassman Brown [1973] EA 358**; **not** established a Prima Facie case; no irreparable injury and not meeting the balance of convince.

39. Accordingly, the Respondents urge the court to dismiss the application with costs.

40. It provides Temporary Injunctions and Interlocutory where in any suit it is proved by affidavit 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) *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, damage, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.*

- 41.** It is crystal clear that the order envisages temporary orders or interlocutory orders pending full hearing and determination of a suit; thus final orders cannot be granted in a temporary application.
- 42.** In the matter before the court, the property in dispute is a church, church property being damaged by the rival parties within the church, wrangles arising from the two factions in the church lead by the Plaintiffs faction against the church leadership represented by the Respondents as deponed by the Respondents 1st Respondent.
- 43.** There is no dispute that the church property was being destroyed and damaged by the Applicants/Plaintiffs faction for reasons stated by the Respondents faction due to transfers of the 1st Plaintiff and others among the Applicants.
- 44.** The Applicant and the orders sought are drafted as pending hearing and determination of the application and the suit,

which ought not be so, for reasons that interlocutory applications ought to be in the interim, pending hearing and determination of the application. In the first instance, from which the court may determine in the applicants favour, or dismiss the same.

45. So that, when the Applications seek pending Interlocutory Order hearing and determination of the application and the suit it is inappropriate.
46. I fully agree with the Respondents that by so pleading the application is legally ambiguous and incapable of enforcement save that the court may in its wide discretion, grant the orders if appropriate in the interim.
47. The Court of Appeal in the case of **Nguruman Ltd (Supra)** held that interim reliefs must be clear precise and properly framed for them to be granted. Also, the court in the **Kenya Commercial Finance Co. Ltd (supra)** held that a final order cannot be granted at any interlocutory stage as doing so would deny the parties the right to be heard fully at trial.
48. Reliefs sought at prayers 2, 4, 7, 8, 9 are in mandatory and final and therefore cannot be granted in the interlocutory stage. See the cases I have cited above.
49. I further agree with the Respondents that the reliefs sought in the application before the court are omnibus and ambiguous

each requiring compliance of distinct legal principles hence causing confusion and prejudice.

50. The court of Appeal in the case of **Stephen Bero Gitiha v. Family Finance Building Society & 3 Others [2009] eKLR** rendered that;

“There is no doubt the application is an all-cure omnibus application. An omnibus application is incapable of proper adjudication by the court for each of the reliefs sought, a part from being governed by different rules, each is also subject to long established and different judicial principles which counsel need to bring to the attention of and the court needs to consider before granting the entire relief sought. This alone makes the plaintiffs application incurably defective, and a candidate for striking out”.

51. The above being in reserve this court being minded that technicalities ought not be cited to deny justice to a party deserving of reliefs sought, as dictated by Article 159(2) (2) of the Constitution. It is important that I look at the merit or otherwise of the remaining prayers that speak of interlocutory reliefs pending hearing and determination of the application these are prayers No. 3, 5 and 6.

52. Hence, the Applicants seek temporary orders of injunction, precisely restraining the Defendants from blocking and preventing the Plaintiffs and worshippers from accessing the

church and their rights of worship in particular church – Kibera branch.

- 53.** Considering the Respondents responses in respect thereof I find that the allegations are unfounded and no rebuttals have been filed to counter their depositions that they are the duly mandated officials and clergy of the church acting within the authority of the church constitution, hence should this court bar them from doing what they are mandated to do by that Church Constitution at an interlocutory stage would be against the legal principles in respect of interlocutory injunctions.
- 54.** For the court to do so, it believes the applicants to establish a prima facie case against the respondents with probability of success. In the case of **Giella v. CaSSMAN Brown (supra)**.
- 55.** The Applicants must show clearly that the 1st Respondent christened the “POPE” has not assumed spiritual leadership of the church, and therefore has no mandate to transfer the 1st Applicant and others and has no authority to do so and that the Respondents have no authority nor have they vesting authority over the church property as expressly stated at paragraph 9 of the church constitution.
- 56.** To that extent therefore, the applicants having not clearly and unambiguously shown that the Respondents have no proprietary or fiduciary entitlement over the church property nor arrogate to themselves the title of founders of the church.

- 57.** The case of **Mrao Ltd v. First American Bank of Kenya Ltd & 2 others [2003] KLR 125**, held that a prima facie case is more than an arguable case; it must demonstrate clear rights and obligations that have been violated or infringed by the applicants.
- 58.** Upon interrogation of the Applicants averments, I find no right or obligations that the Respondents have violated or threatened to violate necessitating grant of an interlocutory relief of injunction.
- 59.** On irreparable harm as one of the requirements that an applicant must demonstrate as specified in the **Giella Cassman Brown** case, I am afraid the Applicants have not demonstrated any harm that may not be compensated in damages.
- 60.** To refrain the “POPE” the 1st Respondent and the leadership of the church from performing their duties would be against the church’s constitution. It could be done only upon full hearing of the case where evidence would be produced to show reasons that may necessitate the removal from office of the Respondents.
- 61.** As stated in the **Nguruman Ltd case (supra)** injunctive orders and reliefs are equitable reliefs that must be exercised judiciously and only where the applicant has established a

Prima facie case and where irreparable damage and harm have been demonstrated.

62. The court of appeal in the case of **Kenya Commercial Finance Co. Ltd (supra)** held that where the court finds no prima facie established by an applicant, the court need not consider other parameters like irreparable harm or balance of convenience.

63. Upon the above analysis, it is clear to the court that the Applicants application dated 21/05/2025 lacks merit and must be dismissed with costs to the Respondents.

It is so ordered.

Delivered Dated and Signed at Nairobi this 12th day of February, 2026.

.....
JANET MULWA.
JUDGE