

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC NO 162 OF 2016

THE PRESBYTERIAN FOUNDATION - 1ST PLAINTIFF/APPLICANT

MRS. ELIZABETH WAIRIMU KIBAKI

(SUING ON HER OWN BEHALF AND
ON THE BEHALF OF TEACHERS &
SUBORDINATE STAFF OF KINOO GIRLS
HIGH SCHOOL)

- 2ND PLAINTIFF/APPLICANT

MS. MERCY NJOROGE

(SUING ON HER OWN BEHALF AND
NEXT FRIEND OF OTHER FORM 4 STUDENTS
OF KINOO GIRLS HIGH SCHOOL)

-3RD

PLAINTIFF/APPLICANT

MS. JOSEPHINE GITOGA MUTUKU

(SUING ON HER OWN BEHALF AND
NEXT FRIEND OF FORM 1 TO FORM 3

STUDENTS OF KINOO GIRLS HIGH SCHOOL) - **4TH**
PLAINTIFF/APPLICANT

VS

DOUGLAS KIHICO WAIYAKI
DEFENDANT/RESPONDENT

- 1ST

LOISE MUKIRI
DEFENDANT/RESPONDENT

- 2ND

LEONARD NGIGI WAWERU

(Sued as the Chairman, Secretary and
Treasurer Of the MAMA NGINA

PRIMARY SCHOOL) respectively) - **3RD**
DEFENDANT/RESPONDENT

THE LAND REGISTRAR, KIAMBU DEFENDANT/RESPONDENT	-	4TH
THE COMMISSIONER OF LANDS DEFENDANT/RESPONDENT	-	5TH
HON. KIMANI ICHUNG'WA DEFENDANT/RESPONDENT	-	6TH
JOSHUA KAMAU KIMEMIA DEFENDANT/RESPONDENT	-	7TH
SUSAN GITAU KARANJA DEFENDANT/RESPONDENT	-	8TH
INSPECTOR GENERAL OF POLICE DEFENDANT/RESPONDENT	-	9TH
OFFICER COMMANDING, KIKUYU POLICE STATION DEFENDANT/RESPONDENT	-	10TH
THE COUNTY GOVERNMENT OF KIAMBU DEFENDANT/RESPONDENT	-	11TH
MRS. NELLY NJENGA (SUED ON HER OWN BEHALF AND ON BEHALF OF ALL THE TEACHERS AND STUDENTS OF MAMA NGINA SENIOR SCHOOL) DEFENDANT/RESPONDENT	-	12TH

RULING

(in respect to the Plaintiff's application dated 24/11/25)

1. Before the Court is the Plaintiffs/applicants' Notice of Motion dated the 24/11/25 seeking the following orders;
 - a. Leave to further amend the amended plaint dated 19/2/25.
 - b. The 11th Defendant/respondent be restrained by itself or its servants/agents from entering into selling or altering

Dagoriti/Kinoo /538 and 540 [suit lands] pending the hearing and determination of the suit.

- c.** The 4th and 11th defendants be restrained from interfering with the 1st Plaintiff's quiet enjoyment of the suit lands pending the hearing and determination of the suit.
- d.** The 4th and 11th defendants be restrained from interfering with the land registers of the suit lands, namely Dagoretti/Kinoo/537, 538, 539 and 540.
- e.** Costs of the application.

2. The application is based on the grounds annexed thereto and the supporting affidavit of Patricia Karanja, the Legal Officer of the 1st Applicant, sworn on the same date. She deponed that during the subsistence of the proceedings, the applicant discovered that the 11th defendant is now registered as the owner of the Dagoretti/Kinoo/538 and 540, as shown by the searches annexed thereto, despite protests to the 4th and 11th respondents since 2024. As a result, there is a need for the plaint to be amended to enable the 1st applicant to seek specific reliefs from the said 11th Respondent.
3. It was further averred that Dagoretti/Kinoo/538 and 540 are a church and apartments, respectively, belonging to the 1st applicant
4. On 27/11/25, the parties recorded a consent in respect to prayer a) granting leave to the applicants to amend the Plaint further in terms of the annexed amended Plaint.
5. Consequently, the subject of this Ruling concerns prayers Nos b) - e) of the application.
6. The 3rd Respondent has opposed the application via the Replying Affidavit sworn by Leonard Ngigi Waweru on 19/12/25. He affirmed that he has the authority to swear the affidavit on his own behalf and on behalf of the 2nd and 3rd Respondents. He indicated that the interests of Mama Ngina School pertain to Parcels No.s 537 and 539, which were the subject of the Ruling delivered by Justice Okongo on 10/11/2017, in which the application for an injunction was duly dismissed. That the orders in question concern Parcel 539, a subdivision of Parcel 512, which

was originally owned by the County Government of Kiambu. That notwithstanding, the deponent asserts that the current application is res judicata. The application seeks orders against Parcels Nos. Parcels 537, 538, 539, and 540 which are either owned by the County Government or held in trust for Mama Ngina School by the 1st applicant. As a trustee of the school, the 1st applicant cannot claim ownership of the land or dictate how the principal utilizes it. He contended that Parcel 512 was subdivided into Parcels 539 and 540. Parcel 539 was allocated to Mama Ngina Secondary School, while Parcel 540 remains owned by the County Government of Kiambu. On the other hand, he stated that parcel 537 has been occupied by Mama Ngina Primary School for the last 50 years.

7. That it is unfair and an abuse of the court's process for the 1st applicant to seek injunctive orders over parcels 537 and 539, in which it is a trustee for the institutions, and to invoke proprietary rights whilst holding the land as a trustee. For that reason, the applicant has not established a prima facie case, and the balance of convenience does not favour it.
8. The 13th Respondent filed grounds of opposition on the following grounds;
 - a. That the applicant does not have the legal right or standing to seek for the orders sought as the property is registered to another party.
 - b. The applicant has not established a prima facie case
 - c. The applicant has not shown sufficient cause for the grant of the prayers sought in the application
 - d. The applicant has not met the test.
9. It was submitted by the 12th Respondent that, from the documents produced by the Plaintiff/Applicant i.e. annexure PK 2, the searches indicate that land parcel Dagoretti/Kinoo/538 and Dagoretti/Kinoo/540 are registered in the name of the County Council of Kiambu (page 39 and 41 of the Applicant's application). The County Council of Kiambu has been the registered proprietor of land parcels Dagoretti/Kinoo/538 and Dagoretti/Kinoo/540 since

2001 and 1972, respectively. No evidence has been produced by the Applicant to demonstrate that they were ever registered as the owners, or that the County Council of Kiambu and the Land Registrar have interfered with land parcels Dagoretti/Kinoo/538 and Dagoretti/Kinoo/540 from 2001 and 1972, respectively, as alleged by the Applicant and for that reason, the applicant has not demonstrated any prima facie case at all

10. The key issue for determination is whether the applicants are entitled to orders of interim injunction against the 4th and 11th Respondents.
11. The purpose of a temporary injunction, as stated in Order 40 Rule 1 of the Civil Procedure Rules, 2010, is to stay and prevent the wasting, damaging, alienation, the sale, removal or disposition of the suit property. The Order provides that;
 - “1. 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 Respondents 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 Respondents 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”.
12. The principles that guide the Court in determining an application of such nature are found in the celebrated case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358 as follows: -

- a. First the Applicant must show a prima facie case with a probability of success.
- b. 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.
- c. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.

13. Has the Applicant established a prima facie case with a probability of success? 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.”

14. The court takes note that the controversies revolving around suit lands cannot be determined in the application, and to preserve the substratum of the titles, I make the following orders in the interests of justice;-

a. To preserve the substratum of the suit lands, I order that the status quo as at the date of the Ruling be maintained. None of the parties can sell, transfer, and/or part with possession of the suit lands pending the hearing and determination of the suit.

b. I make no orders as to costs.

15. orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH
DAY OF FEBRUARY 2026 VIA MICROSOFT TEAMS**

**J G. KEMEI
JUDGE**

Delivered online in the presence of; -

1. N/A for the Plaintiff
2. N/A for the 1st -3rd Defendants
3. Ms Mwalozi present for the 4th & 7th -10th & 12th -13th Defendants
4. N/A for the 5th Defendant
5. Mr Mumu HB for Mr Ngugi for the 6th Defendant
6. N/A for the 11th Defendant
7. CA- Ms Yvette Njoroge