



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

LAND CASE NO. E118 OF 2025

**THE CHURCH COMMISSIONERS FOR
KENYA.....PLAINTIFF/APPLICANT**

VERSUS

KASIMU DUME & 12

OTHERS.....DEFENDANTS/RESPONDENTS

RULING

1. The Notice of Motion dated August 19, 2025, requests the court to prohibit the defendants or anyone acting on their behalf from interfering with the plaintiff's title and peaceful possession of the land located in Kaloleni, Kilifi, measuring 8.894 hectares and designated as land reference number 3833, as shown on land survey plan number 464333. The plaintiff also asks the court to prevent the defendants, or anyone acting under their authority, from inciting the public to interfere with the plaintiff's title to and peaceful possession of the entire suit land.
2. The application is supported by Rev. Michael Shitandi's affidavit.
3. The defendants opposed the application on the grounds of opposition dated September 5, 2025, and a replying affidavit sworn on September 16, 2025,

by Amos Thoya on behalf of the other defendants.

4. The application was canvassed through written submissions. I acknowledge receipt of submissions from the counsels representing the parties, as these greatly assisted the court in disposing of the application. I also recognize that the case law cited by the parties on the preliminary issues raised in opposition, and on the principles applicable to the issuance of injunctions generally, was significant.
5. Arising from the materials placed before me, the issues that I frame for the determination of this court are whether the court should grant orders of injunction in this matter pending the hearing and determination of this suit, and who should bear the costs of this application.
6. According to the plaintiff, a church, it holds a certificate of title to the suit land. The church operates a hospital known as St. Luke's Hospital, Kaloleni, on the suit land. The hospital was established in 1927 by the church and has served the community for nearly a century.
7. The Church has had peaceful possession and occupation of the suit land since 1904 until August 12, 2025, when the defendants led a crowd of over fifty people to storm the hospital. They delivered a letter dated August 11, 2025, to the hospital manager demanding that the Church vacate the suit land immediately and surrender it to the people of the Kaloleni community. The letter included an ultimatum stating that if the demand was not fulfilled within fourteen days, the people of Kaloleni would exercise their sovereign

power to take the suit land.

8. The Church was deeply concerned by these actions as they were alarmist and meant to deny the Church the use and quiet enjoyment of the suit land, with the potential of disrupting the operations of the hospital and delivery of much-needed critical health care services to the residents of Kaloleni.
9. These events led the plaintiff to file this suit seeking the court's intervention.
10. The defendants responded to the application through a Statement of Grounds of Opposition dated September 5, 2025. They take the following position: there is no nexus between the plaintiff and the first lessee, Trust Association, and the first lessee is the eligible party to apply for and be granted an extension or renewal of the lease in accordance with the law. The Trust Association was the original holder of the leasehold interest made on April 20, 1910, for a period of 99 years, commencing in 1904 and expiring in 2023, but not the plaintiff.
11. The suit was filed without approval from the plaintiff's company, and the suit violates mandatory legal provisions. The matter involves a plaintiff's company, but there is no resolution or valid resolution authorizing the institution and filing of the suit, rendering the filing by the law firm invalid for lack of authority from the company. Without authority, there is no properly filed suit before this court. Therefore, the suit is scandalous, frivolous, vexatious, incurably defective, legally invalid in both law and fact, lacking legal merit, violating legal provisions, and abusing the court process;

it should be dismissed.

12. According to the defendants, the application lacks legal basis to grant the plaintiff injunctive orders against the defendants, because the applicant obtained the lease documents through misrepresentation, and the extension or renewal was unlawfully, illegally, and procedurally improper. The applicant's application dated August 19, 2025, has not established any prima facie case against the defendants, and it should be dismissed with costs awarded to the defendants.

13. Proceeding to the preliminary issues concerning the court's jurisdiction due to lack of authority from the company and the decision to file the suit - Desmond Mutula, a trustee of the Church, swore an affidavit verifying the contents of the plaint. He stated that the plaintiff instructed him to swear the affidavit. He confirmed and verified the allegations contained in the plaint and affirmed that the suit involves the plaintiff. Rev. Michael Shitandi also swore an affidavit in support of the application under the plaintiff's instructions. Any director authorized to act on behalf of the company, unless shown otherwise, has the powers of the board to act on behalf of that company. The defendants have not shown that Desmond Mutula and Rev. Michael Shitandi lacked the board's authority to act on the plaintiff's behalf. See the holding in **Fubeco China Fushun v Naiposha Company Limited & 11 others [2014] eKLR**, supporting this view.

14. On the connection between the plaintiff and the first lessee, in his affidavit,

Rev. Michael Shitandi explained as follows: The suit land was initially granted by His Most Gracious Majesty King Edward VII to the Church Missionary Trust Association for 99 years, beginning in 1904. In 1927, the Church Missionary Society established St. Luke's Hospital on the suit land. The Church Missionary Society became the Anglican Church of Kenya in 1998. The plaintiff, the Church Commissioners for Kenya, was established in 1974 and assumed the responsibilities and assets previously managed by the Church Missionary Trust Association. On September 14, 2000, before the lease expired, the plaintiff applied for an extension of the lease on the suit land. The application underwent all necessary government approvals, and ultimately, the Cabinet Secretary issued the plaintiff a Certificate of Lease on May 12, 2023.

15.Coming to the core issue in this matter, on the issuance of an injunction, the application is brought pursuant to Order 40 of the Civil Procedure Rules. It states 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.”

16. The principles for the issuance of interlocutory injunctions were articulated in the well-known case of **Giella v Cassman Brown & Company Limited [1973] EA 358**, reiterated in **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR**, where the Court of Appeal held that:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

(a) establishes his case only at a prima facie level,

(b) demonstrates irreparable injury if a temporary injunction is not granted, and

(c) allay any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and steps are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”

17. A Prima facie case is defined in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**, where the Court of Appeal held as follows:

“The principles which guide the Court in deciding whether or not to grant an interlocutory injunction are, first, an applicant must show prima facie case with a probability of success. Secondly, an interlocutory injunction

will not normally be 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...A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. It is true that the Court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms “prima facie” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a sustainable cause of action, the words “prima facie” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant’s interest to adopt a genuine and arguable case standard rather than one of a prima facie case, the former being the lesser standard of the two...In civil cases a prima facie case is a case in 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 to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the

evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."

18. Applying the principles outlined above concerning the issuance of an interlocutory injunction, it is established that the plaintiff holds ownership of the suit land through a duly extended leasehold interest. The plaintiff manages a hospital situated on the suit land. On August 12, 2025, the defendants unlawfully entered the hospital premises, insisting that the church vacate the land in question. It is a well-settled legal doctrine that every landowner has the right to the quiet possession and occupation of their property without interference from third parties.

19. The plaintiff has therefore established a right that is at the brink of violation, thus a prima facie case, prompting the defendants to rebut it. The immediate harm caused by the defendants' actions would be the disruption of the hospital's operations and the delivery of much-needed critical healthcare services to residents of Kaloleni.

20. The irreparable loss and damage that will be caused by the invasion will not only harm the applicant's proprietary rights but also disrupt health services for the residents of Kaloleni.

21. The balance of convenience favors granting the requested orders. As already demonstrated, the applicant currently holds title to the suit property, and there is a hospital on the suit land that serves the public. It is in the public interest to maintain the ownership and normal operations at the hospital

pending the hearing of the suit.

22. In my view, the applicant has sequentially met the requirements for an interlocutory injunction at this stage. The plaintiff has satisfied all three conditions for the grant of an injunction pending the case's hearing and determination.

23. Consequently, the application dated August 19, 2025, is hereby allowed with costs.

Dated, signed, and delivered electronically in Nyeri on this 11th day of March, 2026.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Mugambi for the Applicant

Mr. Mangaro for the Respondents

Kendi: Court Assistant

