

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. E007 OF 2023

WILLIAM MUTINDA MBITHI.....	1 ST PLAINTIFF
FRANCIS GEORGE KITETU.....	2 ND PLAINTIFF
JOSEPH NDOTO MUSAU.....	3 RD PLAINTIFF
REBBECA MUENI KIAMBA.....	4 TH PLAINTIFF
WILLY KITHOME KIAMBA.....	5 TH PLAINTIFF
SAMMY KITHOME KIAMBA.....	6 TH PLAINTIFF
ALPHONCE NGEI NDOME.....	7 TH PLAINTIFF
PETER MULINGE MUINDI.....	8 TH PLAINTIFF
JOHN MWANIA LAZARO.....	9 TH PLAINTIFF
LAZALOUS MAMBO.....	10 TH
PLAINTIFF	
BERNARD KALITI.....	11 TH
PLAINTIFF	
GEORGE KITETU MAVINDU.....	12 TH PLAINTIFF
JENIFERE KSIVA NYENGE.....	13 TH PLAINTIFF
ANGELINA KASIKU MBUVI.....	14 TH
PLAINTIFF	
RICHARD MUTETI KIKUU.....	15 TH PLAINTIFF
SIMON MUSOI MUTYTUMO.....	16 TH PLAINTIFF
DOMINIC MBEVI MATHEKA	
THOMAS MUTHIANI NZIOKA	
KAUNDI MWETHA	
JULIUS MUIA	
JOSEPH MUTUA	
NELSON KATHANZAO	
BERNARD KIMEU	
YUSUF KIZITO	
URBANUS WAMBUA	
YELO MWANIKI	
KENNEDY MUTUA NGUNU	
CATHERINE MBITHE (All suing as members of KITESE WELFARE ASSOCIATIONS)	17 TH PLAINTIFF

-VERSUS-

BISHOP PAUL MBOKO MUTUA
REV. JOHN BANKOSKY KITONGA

BISHOP ARTHUR KITONGA (Sued as the registered trustees of the REDEEMED GOSPEL CHURCH INC.....1ST DEFENDANT
JONATHAN MUTUA..... 2ND DEFENDANT
HIGHWAY COMMODITY STORES LIMITED..... 3RD DEFENDANT
LAND REGISTRAR, MAKUENI COUNTY..... 4TH DEFENDANT
THE COUNTY GOVERNMENT OF MAKUENI.....5TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL.....6TH DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 13th October, 2023, in which the Plaintiffs/Applicants seek the following orders:

1) Spent

2) Spent

3) That this honourable court be pleased to issue an order of temporary injunction restraining the 1st, 2nd and 3rd Defendants/Respondents jointly and severally by themselves, their agents, servants, employees, assignees, third parties and/or any other party from carrying out further construction/developments, selling, transferring, charging, claiming, fencing, leasing and/or dealing or interfering in any other manner with the subject properties known as Emali Township Block 126/4 measuring 0.802 Ha, Emali Township Block 126/3 measuring 2.53 Ha, Emali Township Block 126/2 measuring 0.010 Ha and Emali Township Block 126/1 measuring 0.76 Ha pending the hearing and determination of the main suit.

4) That this honourable court be pleased to issue an order of permanent injunction restraining the 1st, 2nd and 3rd Defendants/Respondents jointly and severally by themselves, their agents, servants, employees, assignees, third parties and/or

any other party from carrying out further constructions/developments, selling, transferring, charging, claiming, fencing, leasing and/or dealing or interfering in any other manner with the subject properties known as Emali Township Block 126/4 measuring 0.802 Ha, Emali Township Block 126/3 measuring 2.53 Ha, Emali Township Block 126/2 measuring 0.010 Ha and Emali Township Block 126/1 measuring 0.76 Ha.

- 5) A declaration that parcels of land known as MKN/70/99/5B measuring 0.7 acres, MKN/70/98/24 measuring 0.5 Ha, MKN/70/98/11B measuring 0.3 Ha, MKN/70/99/10B measuring 0.36 Ha, MKN/70/98/11B measuring 0.83 Ha, MKN/70/98/11B measuring 0.84 Ha and MKN/70/98/4A measuring 1.0 Ha were respectively acquired by the Applicants/Plaintiffs between the year 1998-1999 as trust lands and/or vide legal purchase and therefore legally belongs to the Plaintiffs.
- 6) A declaration that the certificate of lease being Emali Township Block 1.126 measuring 4.2 Ha and the resultant leasehold subdivided titles being Emali Township Block 126/4 measuring 0.802 Ha, Email Township Block 126/3 measuring 2.53 Ha, Emali Township Block 126/2 measuring 0.010 Ha and Emali Township Block 126/1 measuring 0.76 Ha currently registered in the names of the 1st – 3rd Respondents/Defendants were fraudulently obtained and therefore illegal, null and void.
- 7) An order of this honourable court be issued cancelling the certificate of lease being Emali Township Blcok 1/126 measuring 4.2 Ha and the resultant leasehold subdivided titles being Emali Township Block 126/4 measuring 0.802 Ha, Emali Township Block 126/3 measuring 2.53 Ha, Emali Township Block 126/2

measuring 0.010 Ha and Emali Township block 126/1 measuring 0.76 Ha currently registered in the names of the 1st – 3rd Respondents/Defendants and all entries made in the register.

- 8) An order of this honourable court be issued directing and authorizing the 4th Respondent/Defendant herein to issue new title deeds for the said suit properties being MKN/70/99/5B measuring 0.7 acres, MKN/70/98/24 measuring 0.5 Ha, MKN/70/98/11B measuring 0.3 Ha, MKN/70/99/10B measuring 0.36 Ha, MKN/70/98/11B measuring 0.83 Ha, MKN/70/98/11B measuring 0.84 Ha and MKN/70/98/4A measuring 1.0 Ha in the names of the Applicants/Plaintiffs without any conditions.
- 9) An order of this honourable court be issued compelling the 1st – 3rd Respondents/Defendants to demolish and pull down all the structures standing on the suit properties being MKN/70/99/5B measuring 0.7 acres, MKN/70/98/24 measuring 0.5 Ha, MKN/70/98/11B measuring 0.3 Ha, MKN/70/99/10B measuring 0.83 Ha, MKN/70/98/11B measuring 0.84 Ha and MKN/70/98/11B measuring 0.84 Ha and MKN/70/98/4A measuring 1.0 Ha and in default the Applicants/Plaintiffs to be at liberty to demolish the same at the 1st – 3rd Respondents/Defendants' expense and under the supervision of the OCS Emali police station for purposes of maintaining peace and order.
- 10) Mense profits.
- 11) That the costs of this application be awarded to the Plaintiffs/Applicants.
- 12) Any other or further reliefs as this honourable court may deem fit and just to grant.

2. The Applicants contend that they were allocated various portions of land by the defunct Masaku County Council between the years 1990 and 1999. The

functions of Masaku County Council were later transferred to Makueni County Council which eventually became the County Government of Makueni. The Applicants took possession of their plots and started utilizing them. The County Government of Makueni recognized their ownership as they were collecting rent and rates from them.

3. The Applicants contend that the 4th and 5th Defendants/Respondents colluded with the 1st to 3rd Respondents and had their properties surveyed and registered as Emali Township Block 1/126 measuring 4.2 hectares. In 2008 the 1st to 3rd Respondents started laying claim to the Applicants' properties. They filed numerous suits in various courts some of which were dismissed for want of prosecution.
4. The 1st to 3rd Respondent later subdivided Emali Township Block 1/126 into four portions namely Emali Township Block 126/4 measuring 0.802 hectares, Emali Township Block 126/3 measuring 2.53 hectares, Emali Township Block 126/1 measuring 0.76 hectares.
5. Upon obtaining titles to the properties, the 1st to 3rd Respondents moved into their properties and evicted them and started building permanent structures and selling portions thereof. It is on this basis that the Applicants are seeking the orders hereinabove.
6. The Respondents opposed the Applicants' application based on a replying affidavit sworn on 4th December, 2023. The Respondents contend that the suit property was allotted to the 1st Respondent on 1st July, 1994 by the government of Kenya. The 1st Respondent took possession and later subdivided the land and sold part of it for consideration. The Applicants purported to be allotted the same land 5 years later.
7. The Respondents state that there is no way the Applicants would have been allotted land which had already been allotted to someone else. The Respondents state that this suit is an abuse of the court process as the Applicants have filed Makindu SPM ELC case No. 52 of 2021 where they

obtained an injunction restraining the Respondents until the determination of the suit. This suit is still pending.

8. The Respondents further state that there is no way Katese Welfare Society under which the Applicants litigate would have been allotted land in 1999 when the society had not come into existence. They also state that the society purports to have purchased 1 hectare from Paul Yellow Mwaniki in 2008. They state that it is not possible that a property allotted in 1999 could again be subject of purchase by the same party in 2008.
9. The parties were directed to file written submissions. The Applicants filed their submissions dated 27th November 2025. The Respondents had filed their submissions dated 22nd January, 2024. I have considered the Applicants' application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties. The only issue for determination is whether the Applicants have established that they have a prima facie case to warrant issuance of an injunction.
10. The principles for grant of a temporary injunction were set out in the case of **Giella –vs- Cassman Brown & Co. Ltd (1973) EA 358**. First, an Applicant has to demonstrate that he has a prima facie case with probability of success. Second, an injunction will not issue unless the Applicant will suffer injury which will not be compensated in damages. Third, if the court is in doubt, it will decide the application on a balance of convenience.
11. The Applicants are not in the suit property. The Respondents were allotted the suit property in 1994. The Applicants state that they were allotted their plots in 1999. The Respondents obtained title for 4.2 hectares which they have gone ahead to subdivide and have sold portions thereof to third parties. On the material placed before me, I do not see what prima facie case the Applicants have.
12. The Applicants have another case in Makindu SPM court being MCEL Case No. 52 of 2021. They have obtained an injunction in that case and one

wonders what more orders they are seeking in this case. Even if the Applicants finally succeed in their case, the injury they may have suffered will be compensated. I have no doubt in my mind as to consider the balance of convenience. The Applicants are already out of the suit property. It is the Respondents who are in possession. I therefore find that the Applicants' application is devoid of merit. The same is dismissed with costs to the Respondents.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12TH DAY OF MARCH, 2026.

IN THE PRESENCE OF:

Mr. Kiluva for Applicant.

Ms. Okinyi for Mr. Kivindyo for 1st and 3rd Defendants.

Court assistants – Musyoki and Nyaanga