



Nduati (Suing for and on Behalf of Christian Church International (CCI)) v Ndungu (Environmental and Land Originating Summons E013 of 2023) [2025] KEELC 5588 (KLR) (28 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5588 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E013 OF 2023
MN GICHERU, J
JULY 28, 2025

BETWEEN

RUEL MURAGU NDUATI PLAINTIFF
SUING FOR AND ON BEHALF OF CHRISTIAN CHURCH INTERNATIONAL
(CCI)

AND

JAMES MUIRURI NDUNGU DEFENDANT

RULING

1. This ruling is on the notice of motion dated 227-1-2025. The Motion which is by the Plaintiff is brought under Order 40 of the [Civil Procedure Rules](#) and Section 3A of the [Civil Procedure Act](#). The motion seeks the following residual orders.
 - (c) An order of injunction restraining the Defendant, his servants, agents or any persons claiming through him from interfering with the status of L.R. No. Mitubiri/Nanga/Block 2/244 (Greystone Holdings) pending the hearing and determination of this suit.
 - (d) That the costs of this application be provided for.
2. The motion is based on five(5) grounds and is supported by the affidavit of Ruel Muragu Nduati dated 27-1-2025. The gist of the motion is as follows. Firstly, the Defendant is unlawfully interfering with the suit parcel by entering therein and digging, constructing and depositing construction materials thereon without leave yet this dispute about the ownership of the land has not been resolved. The construction on the land when the case is pending is like preempting the Court's judgment. The application has been brought without undue delay.



3. The motion is opposed by the Defendant who has sworn a replying affidavit dated 5-3-2025 in which he replies as follows. Firstly, he has never been a member of the Plaintiff church and his church is called Greystone Christian Church which owns the land and has been in occupation since 1992. Secondly, the Plaintiff has never owned the suit land or occupied it and it is motivated by the fact that Greystone Christian Church is progressing well and it supports 187 children in partnership with compassion International Kenya. The children reside on the land. The church also houses expectant mothers who have been there even before the suit was filed.
4. Counsel for the parties filed written submissions dated 6th May and 18th June 2025 respectively. Both sides are agreed that the single issue for determination is whether the Applicant has proved that it is entitled to an order of injunction as per the principles set out in the case of *Giella vs Cassman Brown Co. Ltd* [1973] E.A.
5. I have carefully considered the motion in its entirety including the affidavits, the grounds and the written submissions. I note that the case has been pending in Court for over two years. The case was nearing conclusion until the Defendant asked for an adjournment. This is what has delayed the quick conclusion of the case. Had it been finalized, the current application would not have arisen.

The affidavit by the Plaintiff dated 27-1-2025 lacks details. It does not state when the alleged digging, constructing and depositing of the materials took place. It should have been more detailed. If it is true that the land is home to 187 children and expectant mothers, it should not be interfered with. The only problem is that those in occupation are the ones delaying the case.

6. The three principles in the case of *Giella vs Cassman Brown* (Supra) are as follows. For a party to qualify for an order of injunction they must prove, (a) that they have a prima facie case with a probability of success and (b) they stand to suffer substantial loss that cannot be adequately compensated by an award of damages. If the Court is in doubt, it looks at the balance of convenience. Let me not speculate on whether the Plaintiff has established a prima facie case with a probability of success because doing so may prejudice the fair hearing of this case. As for the second ground, I do not think that the Plaintiff stands to suffer substantial loss that cannot be compensated with an award of damages if the orders sought are not allowed. If the Defendants keep on developing the suit land and it is eventually found to belong to the Plaintiff, the Plaintiff will have nothing to lose. Instead it will be a gain. That notwithstanding, I find that the balance of convenience would dictate that there be no construction on the suit land and the Defendants move with speed to conclude this case.

Consequently, I will allow the notice of motion dated 27-1-25 in terms of prayer (c). Case to be concluded within a period of one(1) year.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 28TH DAY OF JULY, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Miss Mbugua

Defendant's Counsel – Miss Gachango

