



Matunda & 2 others (Suing as the Registered Trustees/ Officials of Christian Faith Church (Previously) Christian Faith Ministries) v Mwenje & another (Environment and Land Case E115 of 2025) [2026] KEELC 2481 (KLR) (23 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2481 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E115 OF 2025
TW MURIGI, J
APRIL 23, 2026**

BETWEEN

**BISHOP EVANS MATUNDA 1ST PLAINTIFF
CHRISANTUS MUSIOMA 2ND PLAINTIFF
MECYLINE AGNETA OCHOLI 3RD PLAINTIFF
SUING AS THE REGISTERED TRUSTEES/ OFFICIALS OF CHRISTIAN FAITH
CHURCH (PREVIOUSLY) CHRISTIAN FAITH MINISTRIES)**

AND

**THE HONOURABLE MARK MWENJE 1ST DEFENDANT
BOARD MEMBERS, CDF EMBAKASI WEST CONSTITUENCY 2ND
DEFENDANT**

RULING

1. By a Notice of Motion dated 18th March 2025, brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 40 Rules 1-4 of the Civil Procedure Rules, the Plaintiffs/Applicants seek the following orders:
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing and determination of the suit, a temporary injunction be issued restraining the 1st & 2nd Defendants/Respondents either acting by themselves, their servants, their contractors and/ or agents from trespassing, entering, continuing with construction of a



structure on the suit property and or in any other manner interfering and or dealing with the Applicants parcel of land known as Nairobi/Block 82/7907 situate in Embakasi West.

- d. That the costs of this application be borne by the Respondent.
2. The application is based on the grounds appearing on its face together with the supporting affidavit of Bishop Evans Matunda, sworn on even date.

The Applicants Case

3. The deponent avers that the Applicants are the registered proprietors and lawful lessees of L.R. No. Nairobi/Block 82/7907, measuring approximately 1.342 hectares, held under a ninety-nine-year lease.
4. He further averred that they were allocated the suit property by the then Nairobi City Council following an application made on 15th March 2003 for the purpose of constructing a church and a primary school to serve the local community. He stated that after the application was approved on 17th July 2003, they paid the requisite charges, and a Certificate of Lease was subsequently issued in their favour on 10th February 2011, after which they took possession of the property.
5. He explained that during their visit to the property in 2025, they discovered that the 1st and 2nd Defendants had entered the land, put up signage for a school, and commenced construction without their authorization.
6. He further stated that an official search confirmed they remained the registered proprietors of the suit property and that the Certificate of Lease had never been revoked or cancelled. He argued that a restriction registered against the title by the National Land Commission pursuant to Gazette Notice No. 5022 of 18th July 2014 was unlawful and that they had taken steps to have it removed.
7. The deponent argued that the construction carried out by the Defendants lacked the necessary regulatory and development approvals, including architectural details, from the County Government, the National Environmental Management Authority and the National Construction Authority.
8. According to the deponent, the ongoing occupation and construction by the Defendants, which constitute trespass, have impeded their intended development of the property, resulting in the loss of prospective investors interested in establishing a school in accordance with the permitted use of the property. He stated that they had reported the matter to the County Government of Nairobi, the police, and also issued demand letters to the Defendants who refused to cease construction.
9. The 2nd Defendant filed a replying affidavit sworn by Samson Opiyo in opposition to the application.
10. The deponent averred that vide an Addendum published in Kenya Gazette Notice No. 5021 of 18th July 2014, the National Land Commission recommended the revocation of the title for the suit property.
11. He further averred that the suit property was the subject matter in Milimani Environment and Land Court Case No. 449 of 2016, filed by representatives of Tena Residents Association, where the Court issued a decree declaring that the suit property was public utility land reserved for the construction of a school and a clinic. It also restrained the Nairobi City County Government from allocating the land to private individuals or otherwise dealing with it in a manner inconsistent with that purpose. He contended that the present suit is res judicata on account of Milimani ELC Case No. 449 of 2016.
12. He further stated that on 25th May 2018, Tena Residents Association wrote to the Principal Secretary of the Ministry of Lands and Physical Planning, complaining that public land, including the suit property, had been irregularly subdivided and leased to private individuals. They requested the



Ministry's intervention to cancel the allegedly illegal titles and to facilitate the allocation of the land to the Nairobi City County Government for public use.

13. He stated that on 13th March 2019, the suit property was allocated to the Cabinet Secretary, Treasury, and earmarked for the construction of Tena Primary School. Subsequently, in December 2020, the Nairobi Regional Director of Education recommended, following a site inspection of the suit property, that the Ministry of Education collaborate with the National Treasury to acquire the title deed, allocate funds for the school's construction, and that the NG-CDF Embakasi-West support the initiatives.
14. Based on the foregoing, the 2nd Defendant contended that the Plaintiff's claim to the property is unlawful as it relates to public land reserved for public utility purposes.

The Response

15. In a further affidavit dated 2nd February 2026, the deponent averred that the doctrine of res judicata is inapplicable because the Plaintiffs were neither parties to ELC Case No. 449 of 2016 nor represented in those proceedings. He emphasized that the Court confirmed this position in its ruling delivered on 3rd October 2025.
16. He argued that the Kenya Gazette Notice relied upon by the Respondents was an administrative recommendation issued by the National Land Commission and did not constitute a lawful revocation of the Plaintiffs' title. He added that the Tena Residents Association, which initially raised the complaint leading to the Gazette Notice, had subsequently issued an apology acknowledging that the inclusion of the suit property among titles scheduled for revocation had been made in error. He reiterated the contents of his affidavit in support of the application.
17. The deponent argued that the Plaintiffs had met the criteria for granting interlocutory injunctions as outlined in *Giella v Cassman Brown & Co Ltd and Nguruman Limited v Jan Bonde Nielsen & 2 Others*. They urged the Court to allow the application and to halt further construction on the suit property until the case is decided.
18. The application was canvassed by way of submissions

The Plaintiff's Submissions

19. The Plaintiffs filed their submissions dated 13th February 2026.
20. On behalf of the Plaintiffs, Counsel submitted that the only issue for determination is whether the Plaintiffs had met the threshold for the grant of an interlocutory injunction pending the hearing and determination of the suit. Counsel relied on the principles governing interlocutory injunctions outlined in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, as refined in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR and *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR.
21. Regarding whether a prima facie case had been established, Counsel submitted that the Plaintiffs had produced a valid Certificate of Lease for L.R. No. Nairobi/Block 82/7907, which under Section 26(1) of the *Land Registration Act* constitutes prima facie evidence of indefeasible ownership of the suit property.
22. Counsel argued that the Respondents had not produced any Court order or lawful Gazette Notice cancelling or revoking the title. It was also argued that there was no evidence of compulsory acquisition or compensation as required under Article 40(3) of *the Constitution* and the *Land Act*. To support this point, reliance was placed on *Patrick Musimba v National Land Commission & 4 Others* [2016]



eKLR and *Viranda Ramji Gudka & 3 Others v Attorney General* [2014] eKLR, where the Courts emphasized that compulsory acquisition must strictly comply with constitutional and statutory procedures. Counsel contended that the Respondents' entry and construction on the suit property amounted to trespass, thereby establishing a prima facie case with a probability of success.

23. On irreparable harm, Counsel submitted that the Respondents had begun constructing permanent structures on the suit property, which would irreversibly alter the land and render the dispute nugatory. Counsel argued that land is unique and that infringement of proprietary rights cannot be adequately compensated by damages. Counsel relied on *Nguruman Ltd v Jan Bonde Nielsen and Joseph Siro Mosioma v Housing Finance Co. of Kenya Ltd & 3 Others* [2008] eKLR to submit that damages are not an adequate remedy when property rights are threatened.
24. Regarding the balance of convenience, Counsel submitted that the Plaintiffs are the registered proprietors of the suit property, while the Respondents entered the land without demonstrating any lawful entitlement. Counsel argued that the balance of convenience favoured maintaining the status quo and preserving the suit property pending the hearing and determination of the suit.

The Defendants Submissions

25. The Defendants filed their submissions dated 18th March 2026.
26. On behalf of the Defendants, Counsel submitted that the application did not meet the criteria for granting an interlocutory injunction as set out in *Giella v Cassman Brown & Co Ltd* (1973) EA 358. Counsel further relied on *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 to argue that a prima facie case must disclose an apparent right that has been infringed and which calls for rebuttal.
27. On the first limb, Counsel submitted that the Plaintiffs have not established a prima facie case because the Certificate of Lease and official search relied upon by them disclosed a subsisting restriction registered by the National Land Commission pursuant to Gazette Notice No. 5022 of 18th July 2014 for the purposes of revocation.
28. Counsel argued that the restriction cast a legal doubt over the Plaintiffs' title and pointed to a defective root of title. Counsel further submitted that the Plaintiffs' documents indicated the suit property was intended for developing a school, yet no development occurred for over twenty years, even after the alleged allotment in 2003 and the issuance of title in 2011. Counsel contended that the land remained unused until the Government took possession and began constructing a public school.
29. Counsel submitted that the Plaintiffs had not produced an approved Part Development Plan prior to the alleged allocation. Counsel argued that under the pre-2010 public land allocation regime, the preparation and approval of a Part Development Plan were mandatory statutory requirements before the alienation of public land. To support this argument, reliance was placed on *Nelson Kazungu Chai & 9 others v Pwani University College* [2014] eKLR and *Dina Management Limited v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR). Counsel contended that the Plaintiffs had failed to demonstrate lawful acquisition of the suit property.
30. Regarding irreparable harm, Counsel argued that the Plaintiffs' claim of suffering loss of use of the property and potential investors was not supported by any valuation report, financial documents, or expert evidence. Counsel asserted that any loss claimed by the Plaintiffs could be compensated with damages. Counsel argued that the Plaintiffs cannot legitimately claim a private loss over the suit property as it is public land. To support this, Counsel cited *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR.



31. Counsel relied on *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR to submit that the balance of convenience favours the Defendants and the public interest. Counsel argued that the construction of a public school on the suit property is at an advanced stage and nearing completion, and that issuing the injunction would disrupt an ongoing public project and violate the constitutional right to education for children in the area who would benefit from the school. Counsel submitted that any prejudice to the Defendants and the public outweighs the alleged commercial loss claimed by the Plaintiffs.

Analysis and Determination

32. Having considered the application, the respective affidavits and the rival submissions, the following issues arise for determination:

- a) Whether this suit is barred by the doctrine of res judicata; and
- b) Whether the Plaintiffs have satisfied the threshold for the grant of an interlocutory injunction.

33. Regarding the first issue, the 2nd Defendant contends that this suit is res judicata on account of the judgment delivered in *Milimani ELC Case No. 449 of 2016*.

34. The Plaintiffs contend that the issue of res judicata was settled by this Court's ruling issued on 5th October 2025. In that ruling, the Court dismissed the preliminary objection on res judicata because the Respondents failed to produce the pleadings and evidence necessary to establish the existence of the previous proceedings. This decision was therefore not a ruling on the substantive merits of the res judicata argument, and therefore, it did not bar the Defendants from raising and substantiating the issue in the present application.

35. The doctrine of res judicata is anchored in Section 7 of the *Civil Procedure Act* as follows:

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

36. The Supreme Court restated the rationale and elements of the doctrine in *John Florence Maritime Services Limited & another versus Cabinet Secretary for Transport and Infrastructure & 3 Others* [2021] eKLR as follows:

“We reaffirm our position, as in the *Muiri Coffee* case, that the doctrine of res judicata is based on the principle of finality, which is a matter of public policy. The principle of finality is one of the pillars upon which our judicial system is founded and the doctrine of res judicata prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.”

...

For res judicata to be invoked in a civil matter, the following elements must be demonstrated:

- a) There is a former Judgment or order which was final;
- b) The Judgment or order was on merit;



- c) The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
 - d) There must be between the first and the second action identical parties, subject matter and cause of action. (See *Uhuru Highway Developers Limited v Central Bank of Kenya & others* [1999] eKLR and See the decision of the Court of Appeal in *Nicholas Njeru v Attorney General & 8 others* Civil Appeal 110 of 2011 (2013) eKLR).
37. For the doctrine to apply, it must be shown that there was a previous final decision on the merits, issued by a court of competent jurisdiction, and that the subsequent suit involves the same parties, or parties litigating under the same title, over the same subject matter and the same cause of action.
 38. The 2nd Defendant produced a decree from ELC Case No. 449 of 2016. In this case, the Petitioners were members of the Tena Residents Association, while the Respondents included Continental Developers Limited, Nairobi City County, the Chief Land Registrar, the National Land Commission, and Gidjoy Investment Limited. The Court issued several orders, including a declaration that L.R. No. 82/7907, which covers about 3.5 acres, is public utility land designated for building a school and a clinic. The Court also restrained any dealings with the land that conflicted with this designated purpose.
 39. It is evident that the subject matter in both suits is the same. However, that alone is not sufficient to sustain a plea of *res judicata*. The Court must also be satisfied that the parties are the same, or are litigating under the same title, and that the cause of action is identical.
 40. In the present suit, the Plaintiffs, as registered lessees, are seeking to protect their proprietary rights over Nairobi/Block 82/7907 and to restrain the Defendants from trespassing and continuing construction. Conversely, the claim in ELC Case No. 449 of 2016 was filed by members of Tena Residents Association, asserting that the land was public utility land and seeking declarations to protect it for that public purpose.
 41. The Plaintiffs herein were not shown to have been parties to the earlier proceedings, nor has it been demonstrated that they litigate under the same title as the parties in that suit. The causes of action are also not identical. One concerns the protection of an asserted private leasehold interest, while the other relates to the enforcement of public utility status over the land.
 42. In light of the foregoing, this Court is not satisfied that the plea of *res judicata* has been established.
 43. Regarding the second issue, the law governing applications for interlocutory injunction is set out in Order 40 Rule 1 of the Civil Procedure Rules, 2010, which 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 if 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.”

44. The principles applicable in an application for an injunction were established 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.
45. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success.
46. A prima facie case was defined in *Mrao Ltd v First American Bank of Kenya and 2 others*, (2003) KLR 125 as: -
- “A Prima facie case in a civil application includes but 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 there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.
47. The Plaintiffs contend that they were allocated the suit property by the former Nairobi City Council after they made an application in 2003 to establish a church and a primary school. They produced correspondence from the City Council of Nairobi regarding the allocation, an allotment letter dated 17th July 2003, receipts evidencing payment of charges, a letter confirming payment clearance, and a Certificate of Lease issued on 10th February 2011 for Nairobi/Block 82/7907 and an official search indicating they remain the registered lessees, although with a restriction registered by the National Land Commission in support of their claim.
48. The Plaintiffs argued that although their title had not been lawfully cancelled or revoked, the Defendants entered the suit property and started construction activities. In this regard, they produced photographs showing ongoing construction and correspondence demonstrating that they protested the Defendants’ entry and sought intervention from public authorities.
49. The Defendants argued that the Plaintiffs’ ownership is subject to legal scrutiny, asserting that the property is designated for public utility, specifically for a school and a clinic. They relied on the Gazette Notice and related restriction, the decision in ELC Case No. 449 of 2016, correspondence from Tena Residents Association, an allotment made to the Cabinet Secretary for the National Treasury on 13th March 2019, and correspondence from the Ministry of Education showing that the property was reserved for Tena Primary School.
50. The Defendants further argued that the Plaintiffs failed to establish the legality of their title by not providing an approved Part Development Plan, asserting that their title was among those recommended for revocation by the National Land Commission.
51. The Plaintiffs’ claim of ownership of the suit property is anchored on the Certificate of Lease and allocation documents from the former Nairobi City Council, while the Defendants rely on previous legal proceedings and administrative actions that disputes the validity of the Plaintiffs’ title.



52. In *Edwin Kamau Muniu Vs Barclays Bank of Kenya Ltd 2006*) the Court held that;
- “In an interlocutory application to determine the very issues which will be canvassed at the trial with finality All the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria.”
53. At the interlocutory stage, the Court is not required to make a final determination on the legality of the allocation to the Plaintiffs, the validity of the title, or the effect of the recommendation by the National Land Commission. These are substantive issues to be determined in a full trial, where parties will have an opportunity to call evidence and challenge it by way of cross-examination.
54. Based on the evidence presented by the parties, I find that the Plaintiffs have established a prima facie case with a probability of success.
55. On irreparable harm, the Applicant must demonstrate that it is a harm that cannot be adequately compensated by an award of damages. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR*, the Court of Appeal held that:
- “On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be remedied by damages in the absence of an injunction, is a threshold requirement, and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”
56. The Plaintiffs complained that the Defendants had entered the suit property and begun constructing permanent structures, thereby altering the physical character of the land and claiming conflicting rights over it.
57. The Plaintiffs are apprehensive that if construction continues, the substratum of the dispute will be altered. I find that the Plaintiffs’ fears are not baseless, as continued construction could permanently alter the character of the property and undermine the effectiveness of any eventual relief.
58. Based on the foregoing, I find that the Plaintiffs have demonstrated a real risk of irreparable harm if the construction is allowed to continue pending trial.
59. On balance of convenience, the Court has to weigh the hardship to be borne by the Applicant by refusing to grant the injunction, against the hardship to be borne by the Respondents by granting the injunction. Based on the evidence presented by the parties, I find that the balance of convenience favours preserving the suit property pending the hearing and determination of the suit.
60. The upshot of the foregoing is that the application dated 18th March 2025 is merited and is hereby allowed in the following terms:
- a. A temporary injunction is hereby issued, pending the hearing and determination of the suit, restraining the 1st & 2nd Defendants either acting by themselves, their servants, their contractors and/ or agents from trespassing, entering, continuing with construction of a structure on the



suit property and or in any other manner interfering and or dealing with the applicants parcel of land known as Nairobi/Block 82/7907 situate in Embakasi West.

b. The costs of the application shall be in the cause.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 23RD DAY OF APRIL 2026.

.....

HON. T. MURIGI

JUDGE

In the Presence of:

Jin for the Plaintiffs

Onderi holding brief for Omwenga for the Defendants

Ahmed- Court assistant

