

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU**

**ELCLC E002 OF 2026**

**LAMECK ONGERE (Suing as the 1<sup>st</sup> Elder, Seventh- Day  
Adventist Church Nyahururu Central).....1<sup>ST</sup>**

**PLAINTIFF**

**EUTYCUS MUTUMA MUTHAMI (Suing as the Treasurer,  
Seventh Day Adventist Church  
Nyahururu Central).....2<sup>ND</sup>**

**PLAINTIFF**

**VERSUS**

**CENTRAL RIFT VALLEY CONFERENCE OF SEVENTH  
DAY ADVENTIST CHURCH.....1<sup>ST</sup>**

**DEFENDANT**

**EXECUTIVE COMMITTEE, CENTRAL RIFT VALLEY  
CONFERENCE OF SEVENTH-DAY ADVENTIST  
CHURCH.....2<sup>ND</sup>**

**DEFENDANT**

**EXECUTIVE SECRETARY**

**CENTRAL RIFT VALLEY CONFERENCE OF**

**SEVENTH DAY ADVENTIST CHURCH.....3<sup>RD</sup>**

**DEFENDANT**

**OFFICER COMMANDING STATION (OCS)**

**NYAHURURU POLICE STATION.....4<sup>TH</sup>**

**DEFENDANT**

## **RULING**

**1.** Before me is a notice of motion application dated 13.1.2026 filed contemporaneously with the suit. The plaintiffs seek the following orders;

**1. THAT this Honourable court be pleased to issue a temporary injunction restraining the Defendants whether by themselves, their employees, servants, agents, or otherwise howsoever from entering, occupying or remaining upon that parcel of land known as Nyahururu Municipality Block VI/552 or locking the church erected thereon or interfering with Seventh-Day Adventist Church Nyahururu Central's use of the church erected on the suit parcel of land or interfering with or running the school erected and established thereon or dealing with the suit**

parcel of land in any manner whatsoever prejudicial to the interests of Seventh- Day Adventist Church Nyahururu Central pending the hearing and determination of this Application *inter partes*.

2. **THAT** this Honourable court be pleased to issue a temporary injunction restraining the Defendants whether by themselves, their employees, servants, agents, or otherwise howsoever from entering, occupying or remaining upon that parcel of land known as Nyahururu Municipality Block VI/552 or locking the church erected thereon or interfering with Seventh Day Adventist Church Nyahururu Central's use of the church erected and established thereon or dealing with the suit parcel of land in any manner whatsoever prejudicial to the interests of Seventh-Day Adventist Church Nyahururu Central pending the hearing and determination of this Application suit.

**3. THAT this Honourable court be pleased to issue a mandatory injunction compelling the Defendants whether by themselves, their employees, servants, agents, or otherwise howsoever to remove all the locks they have placed on Seventh-Day Adventist Church Nyahururu Central erected on that parcel of land known as Nyahururu Municipality Block VI/552 pending the hearing and determination of this suit and in default the plaintiffs break the locks and re-enter the church.**

**4. THAT the Officer Commanding Station (OCS) Nyahururu Police Station do ensure compliance of the above orders”**

2. The application is premised on grounds that suit land is registered in favour of the SDA church (EA) to hold in trust for the SDA church Nyahururu central as stipulated in the governance and policy instruments of the church, of which the latter has a primary school and other amenities thereon. However, in late 2025, the 1<sup>st</sup> defendant removed the SDA church Nyahururu central from the sisterhood of churches

under it, thus the SDA church Nyahururu central decided to withdraw from the sisterhood.

- 3.** That on diverse dates between November and December 2025 the defendants sponsored chaos at Seventh-Day Adventist Church Nyahururu Central erected on the parcel of land known as Nyahururu/Municipality Block VI/552 at which congregants were assaulted and movable properties destroyed.
- 4.** The application is supported by the affidavit of one EUTYCUS MUTUMA MUTHAMI, the second plaintiff
- 5.** The 1<sup>st</sup> - 3<sup>rd</sup> defendants oppose the application via the rather lengthy replying affidavit of one OLGAR KEMUMA ONDIEKI, the treasurer, secretary and executive member of the Committee of the Central Rift Valley Conference (CRVC), and the affidavit of PASTOR SAMUEL MAKORI, the Executive Director of East Kenya Union Conference of the SDA Church. The 1<sup>st</sup> deponent avers that the plaintiffs have no locus standi in this matter as they don't have baptismal cards and proof of membership as well as a resolution from the SDA church (EA) authorizing them to institute the suit. They

however admit that the suit land is registered in the name of SDA (EA).

6. The defendants argue that the Nyahururu SDA church falls under the jurisdiction of the 1<sup>st</sup> defendant in terms of the structure and governance of the SDA church, starting with the highest office in USA, thus the 1<sup>st</sup> defendant has the mandate to supervise the aforementioned church. They aver that in year 2024, there were several cases where the former president of the 1<sup>st</sup> defendant one Stephen Nginga was removed from office due to abuse of office. That court decisions directed the disputes to be resolved internally, a case in point being **Nakuru CMCC Civil Suit No. E1052 of 2024 - Bosco Otieno Okebe & Others Vs Executive Secretary, CRVC & EKUC.**
7. That upon realizing that the courts were not returning Stephen Nginga to the office, certain churches including the Nyahururu one declined to remit tithes to the 1<sup>st</sup> defendant and formed splinter groups, branding themselves as Midriff valley Union of Churches.

8. The 2<sup>nd</sup> deponent associates himself with the sentiments of the 1<sup>st</sup> deponent. He adds,

**“1) THAT the governance, administration and discipline of the Seventh-Day Adventist Church are regulated by the Seventh-Day Adventist Church manual (2025 edition) and the General Conference Working policy, which instruments bind all members, officers, churches, conferences, unions and institutions within the denomination.**

**2) THAT under the said instruments, local churches and constituent units of the denomination and operate under the authority and oversight of the Local Conference, which in turn relates upward to the Union and the General Conference, and no local church or group of members lawfully secede, reorganize, or realign outside these structures.**

**3) THAT the collection, custody, and remittance of tithe and other trust funds are expressly governed by the Church manual and Working Policy, which require remittance to the Local Conference for orderly administration, pastoral support, and**

**mission, with prescribed percentages transmitted upward through the denominational structure.**

**4) THAT church property and assets, whether land, building, schools, accounts, or movables, are held in trust for the denomination through appropriate denominational corporate entities, and not by individual, trustees, factions, or local congregations acting independently of Conference authority.”**

**9.** I have considered all the rival arguments. The issue falling for determination are whether the injunctive orders sought by the plaintiffs including the mandatory injunction are merited.

**10.** The law on grant of interlocutory injunctions is provided for under Order 40 Rule 1 of the Civil Procedure Rules, 2010. The same provides 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.”**

**11.** Therefore under Order 40 Rule 1 of the Civil Procedure Rules an order of temporary injunction may issue where the court is satisfied that there is a likelihood of the suit property being wasted or alienated before the suit is heard and determined.

**12.** An application for an interlocutory injunctive order is weighed against the requisite essentials set out in the

celebrated case of **Giella vs Cassman Brown (1973) EA 358** where it was held as follows:

**“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a 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.”**

**13.** The Plaintiff/Applicant in this case is expected to meet those three principles and surmount them sequentially. This was stated by the Court of Appeal in **Nguruman Limited V Jan Bonde Nielsen & 2 Ors [2014] eKLR** where the Court stated thus;

**“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:-**

**(a) Establish his case only at a *prima facie* level,**

**(b) Demonstrate 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 stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. (See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86) If the applicant establishes a prima facie case, that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the**

**applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between."**

**14.** The Court of Appeal in **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR** defined a prima facie case as follows;

**"....So what is a prima facie case? I would say that in civil cases it 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 as to call for an explanation or rebuttal from the latter."**

**15.** More recently, the Court of Appeal in the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others(supra)** while agreeing with the definition of a *prima*

*facie* case in the **Mrao Case** (supra) went ahead to further expound as follows;

**“We adopt that definition save to add the following conditions by way of explaining it. The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he**

can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it, the applicant's case is more likely than not to ultimately succeed."

**16.** The Court will be guided by the foregoing principles as well as the general principle that no definitive findings on law or facts should be made at this interlocutory stage.

**17.** As for a mandatory injunction, I make reference to the case of **Reliable Electrical Engineers (K) Ltd v Mantrac Kenya Limited [2006] eKLR**, where it was stated as follows;

**"In 4 Halsbury's Laws of England Vol. 24 at page 948 it is stated that in the absence of special circumstances, an interlocutory mandatory injunction "will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a**

**simple and summary one which can easily be remedied, or if the defendant attempts to steal a match on the plaintiff, ... a mandatory injunction will be granted”.**

**18.** There is no controversy regarding the ownership of the suit property. The protagonists agree that the land is registered in the name of the S.D.A. Church (East Africa). The bone of contention at this stage of the trial relates to the use, utilization and occupation of the suit land, an issue falling under the jurisdiction of this court in terms of the provisions of Article 162 (2) (b) of the Constitution and Section 13 of the Environment and Land Court Act. However, in as much as this court has the aforementioned mandate, the court takes cognizance that the dispute relates to a church, the S.D.A church, thus the court must interrogate the governing instruments of the church, of which the defendants have availed various documents to that effect.

**19.** One such document is the *ECD working policy of 2024* where at clause 55, it provides that;

**“Church properties and other assets shall be held in the name of an appropriate denominational**

**corporate entity and not by individuals, trustees or local congregations.”**

The plaintiffs do not have any such document to show how church property is owned, nor any document to rebut the aforementioned policy.

**20.** The defendants have also availed another document titled *Organizing, Uniting and Dissolving Churches and Companies*”, where it is stated that “On dissolution or expulsion of a church, the church property is held in trust for the conference, and the latter has the “right the authority, and the duty to administer, protect or dispose of such property and funds”. Again, the plaintiffs do not have a contrary document. At paragraph 24 of the supporting affidavit of Eutycus Mutuma Muthami, he avers that their church was removed from the sisterhood of the 1<sup>st</sup> defendant, and therefore, they also withdrew from the said sisterhood, which means that the aforementioned clause on management of the church property takes effect.

**21.** This far, it becomes clear that the plaintiffs have not established a prima facie case. The plaintiffs have advanced an argument that the SDA church Nyahururu central is the

one which acquired the suit land via an allotment letter of 3.5.1991, and then in 1996, it caused the land to be registered in the name of the current owner, the S.D.A. Church East Africa. If the plaintiffs desire to claim ownership of the property in question, then they would have to challenge the registration status of the suit land. As at now, there is no sufficient material presented before this court to warrant the issuance of the orders sought. In the circumstances, the application dated 13.1.2026 is dismissed with costs to the 1<sup>st</sup> - 3<sup>rd</sup> defendants.

**DATED, SIGNED AND DELIVERED AT NYAHURURU  
THIS 5<sup>TH</sup> DAY OF MAY 2026 THROUGH MICROSOFT  
TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:**

**Bedan - Court Assistant**

**Ratemo for the Plaintiffs**

**Matoke H. for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents**

**No appearance for 4<sup>th</sup> Respondent**

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