

REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI
LAW COURTS)**

CIVIL APPEAL NO. E1408 OF 2024

**REGISTERED TRUSTEES OF EDELVALE - APPELLANT
VERSUS**

**SISTERS OF GOOD SHEPHERD REGISTERED TRUSTEES -
1ST RESPONDENT**

CATHERINE MUTINDI KIVUTU - 2ND RESPONDENT

***(Being an appeal from the Ruling of Hon. Wendy
Kagendo (CM) delivered on 30th November 2023 in
Milimani in CMCC No. E4985 of 2022)***

JUDGMENT

Background

1. The dispute before the trial court concerned the management, control, and trusteeship of the properties held under the Registered Trustees of Edelvale.
2. The Appellant instituted the suit before the trial court seeking, inter alia, a permanent injunction restraining the Respondents from interfering with its operations and property or transferring its property.
3. Concurrently with the Plaint, the Appellant filed an application for interlocutory injunctive orders to restrain interference with its operations and occupation pending hearing of the suit.

4. The Respondents filed a Defence and Counterclaim asserting that the Congregation of Our Lady of Charity of the Good Shepherd is the lawful appointing authority of trustees and that the existing trustees should relinquish their positions. The Respondents urged the court to issue orders for transfer of control and handover of documents and assets.
5. The Respondents also filed their own application seeking injunctive relief restraining alteration of trusteeship pending determination of the suit.
6. Upon considering both applications, the trial court issued orders granting a temporary injunction restraining both parties from transferring property or interfering with occupation or trusteeship. The trial court also issued orders directing that the Appellant's trustees continue acting in a limited capacity pending determination of the suit.

The Appeal

7. Aggrieved by the trial court's orders, the Appellant filed this appeal contending that the trial court:
 - I) Misapplied the principles governing interlocutory injunctions;***
 - II) Issued orders that were final in nature at an interlocutory stage;***
 - III) Improperly limited the functions of the Appellant's trustees;***
 - IV) Exercised discretion wrongly, thus warranting appellate interference.***

8. The appeal was canvassed by way of written submissions which I have considered.

Issues for Determination

9. From the pleadings, submissions, and the record, I find that the main the issue for determination is whether the trial court properly exercised its discretion in granting interlocutory injunctive orders.

Analysis and Determination.

10. As a first appellate court, this Court is guided by ***Selle & Another vs. Associated Motor Boat Co. Ltd (1968) EA 123***, to re-evaluate the evidence and reach its own conclusions.

11. The principles governing interlocutory injunctions were settled in ***Giella vs. Cassman Brown & Co. Ltd (1973) EA 358***, where it was held that an applicant must prove the existence of a prima facie case, that he will suffer irreparable harm if the orders are not issued and that the balance of convenience tilts in favour of granting the said orders.

12. In ***Nguruman Limited vs. Jan Bonde Nielsen & 2 Others [2014] eKLR***, the Court of Appeal emphasized that these principles are sequential and must all be established in order to justify the granting of the interlocutory injunctive orders.

13. It is also trite that an appellate court will only interfere with discretion of the trial court where it is shown that the court misdirected itself or acted on wrong principles. (See ***Mbogo v Shah (1968) EA 93***).
14. In the instant case, I note that the impugned orders were issued after the trial court considered competing applications from both parties, each seeking injunctive relief.
15. The trial court expressly stated that it was guided by the need to preserve the substratum of the suit, prevent prejudice to either party and to maintain the status quo pending the hearing of the suit.
16. The Court finds that the approach adopted by the trial court aligns with established jurisprudence that interlocutory injunctions are intended to preserve the subject matter of the suit and not determine substantive rights. It is also noteworthy that the orders issued were mutual, symmetrical and binding on both parties equally.
17. It is my view that the Appellant itself, having sought similar injunctive relief before the trial court, cannot now be heard to complain when substantially similar orders were granted in a balanced manner.
18. There is no evidence that the trial court took into account irrelevant factors, ignored relevant factors or applied wrong principles. Accordingly, I find that the threshold in ***Mbogo vs. Shah*** (supra) for appellate interference has not been met.

19. My further finding is that even though the Appellant contended that the orders issued by the trial court were final, I note that the injunctions were expressly temporary, were limited to preservation pending hearing and did not determine ownership or appointing authority of trustees. I also note that the limitation imposed on trustees was not a final determination but a regulatory measure to maintain operational continuity while preventing unilateral actions.
20. I am satisfied that the orders were purely preservative and fall squarely within the scope of interlocutory relief as recognized in the **Nguruman** case (supra).
21. The dispute revolves around control of trust property and trusteeship and I am satisfied that the trial court correctly observed that the properties and funds held in trust form the substratum of the suit. My view is that any alteration in trusteeship or transfer of assets could render the suit nugatory. In such circumstances, courts are entitled to issue status quo and conservatory orders to prevent dissipation or interference. I also note that the limitation imposed, to allow trustees to act only in day-to-day operations, was reasonable and proportionate as it was intended to ensure continuity of operations, protect the trust property so as to avoid prejudice to either party.
22. In conclusion, I find that the instant appeal is not merited and I therefore dismiss it with costs to the Respondents.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL 2026.

HON W. A. OKWANY

JUDGE

In the presence of

Ms Ngetich for Appellant

Ms Wangui holding brief for Kiongera for Respondent

Abdirzak - Court Assistant

ORIGINAL