

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC L OS NO. E089 OF 2025

REV. DR. EPHRAIM MUDAVE 1ST

PLAINTIFF

PETER ODEMO KITATHI 2ND

PLAINTIFF

EVERLYNE MMBONE INJAILU 3RD

PLAINTIFF

***(Suing as the officials of Pentecostal Assemblies
of God Kenya, Hardy Assembly (P.A.G Hardy))***

VERSUS

ALICE INGAIZA KEYA

DEFENDANT

RULING

1. What is before the Court for determination is the Plaintiffs' Notice of Motion application dated 18th December 2025 where they seek the following Orders:

ELC L OS NO. E089 OF 2025

Ruling

a) Spent.

b) Spent.

c) Spent.

d) That pending the hearing and determination of this suit inter-partes, a temporary injunction be and is hereby issued restraining the Defendant/Respondent whether by himself, associates, servants, employees, agents and or any other person whomsoever working with or on her instructions from interfering with the Plaintiffs/Applicants quiet possession of the suit property in any manner whatsoever.

e) That pending the hearing and determination of this suit inter-partes, a temporary injunction be and is hereby issued restraining the Defendant/Respondent whether by himself, associates, servants, employees, agents and or any other person whomsoever working with or on her instructions from evicting the Plaintiffs/Applicants from the suit property.

f) That this Honourable court do make any other and /or such further orders and issue any further relief it may deem fit to grant in the interest of justice.

g) That the costs of this application be provided for.

2. The application is premised on grounds on its face and on the supporting affidavit of the 1st Plaintiff. He avers that the Pentecostal Assemblies of God Church (Hardy) with a membership of over 500 persons, has openly and peacefully occupied **LR No. 1160/776** situate in Hardy, Karen since 1987, where it has conducted its daily church activities such as prayer services, baptisms and wedding celebrations and has erected permanent church structures thereon, which it has fenced off.

3. He claims that on 21st October 2025, the Plaintiffs were served with a demand letter from messrs Obondi Victor & Associates LLP with instructions from the Defendant to evict them within seven (7) days. Further, they were also issued

with a Statutory Notice dated 30th October 2025 to vacate the suit property within ninety (90) days. He contends that by reason of the notices, the Plaintiffs are in danger of being evicted and the subject matter wasted away. Further, that there is no demonstrable prejudice to be suffered by the Defendant.

Response

4. The Defendant filed a replying affidavit in opposition. She avers that she is the registered proprietor and beneficial owner of a leasehold interest in **LR No. 1160/766** now known as **Nairobi Block 148/1269** and that the Plaintiffs have forcibly entered the suit land without her consent. She denies that they have had exclusive uninterrupted possession and contends that their permanent structures thereon amount to acts of continued trespass. Further, that the suit land is a prime residential area in Karen and has never been designated as a church.

5. The application was canvassed by way of written submissions.

Submissions

6. The Plaintiffs submit that they have demonstrated the principles of injunction as stated in **Giella v Cassman Brown & Co. Ltd [1973] EA**, pointing out that they have established a prima facie case, being that they have fulfilled the principles of adverse possession as they have had continuous exclusive possession of the suit land for more than twelve (12) years and have put up permanent structures thereon. Further, that if the orders sought are not granted, the substratum of this suit shall be destroyed, rendering the entire suit moot.

7. On her part, the Defendant submits that the Plaintiffs have failed to satisfy the threshold for the grant of interlocutory injunctive reliefs as stated in **Giella v Cassman Brown & Co. Ltd [1973] EA (supra)**. She contends that no prima facie case was demonstrated as a trespasser cannot establish

a prima facie case against a registered owner. Further, that there cannot be irreparable loss arising from unlawful occupation as it is not legally protectable. She reiterates that any permanent developments/structures on the suit land are quantifiable and compensable in damages.

8. She also submits that the balance of convenience tilts in her favour being the registered proprietor of the suit land and that the Plaintiffs have not demonstrated any procedural impropriety in her issuance of notices to vacate, warranting interference by the court.

Analysis and Determination

9. I have considered the instant Notice of Motion application including the respective affidavits as well as the rivalling submissions, and the only issue for determination is whether the Plaintiffs have met the threshold for issuance of a temporary injunction restraining the Defendant from evicting them or interfering with their quiet possession of **LR No. 1160/766.**

10. In accordance with the principles on injunctions as set out in the case of **Giella vs Cassman Brown & Company Ltd (1973) EA 358** including the definition of a prima facie case as espoused in the decision of **Mrao Ltd vs First American Bank Ltd (2003) KLR 125**, I will proceed to decipher whether the Plaintiffs have established a prima facie case as against the Defendant to warrant the orders of temporary injunction as sought.

11. The Plaintiffs allege that the Defendant issued them with a demand letter on 21st October 2025 and a Statutory Notice dated 30th October 2025, requiring them to vacate the said suit land within seven (7) and ninety (90) days respectively.

12. The Plaintiffs' claim over the suit land is based on an alleged continuous occupation exclusively and openly without right since 1987, by reason, that their ownership status has crystallized by way of adverse possession. They do not deny

that the Defendant is the registered proprietor of the suit land.

13. On her part, the Defendant insists that the Plaintiffs' are trespassers thus they are not deserving of temporary orders of protection. She also admits to have served them with a demand notice and a statutory notice to vacate the suit land by reason of their alleged trespass.

14. Looking at the documents presented by the Plaintiffs, it is clear it is the Defendant who is the registered proprietor of the suit land. The Plaintiffs except for claiming they undertook Baptism and Weddings on the suit land have not indicated exactly when they entered the suit land and when the said permanent structures were established. The Defendant on the other hand insists that the Plaintiffs' clandestinely trespassed on her land and commenced putting up permanent structures, thereon yet the area is not designated for a Church. I note the Plaintiffs except for confirming that there are church activities ongoing on the

suit land, they did not indicate whether anyone resides thereon. I however note that there are permanent structures on the suit land, which is not clear when they were constructed. In the circumstance, I find that the Plaintiffs have demonstrated a prima facie case to warrant the orders of interim injunction as sought.

15. However, insofar as the Plaintiffs have established a prima facie case noting that the Defendant is the registered proprietor of the suit land and insists that the Plaintiffs are trespassers thereon, at this juncture, I opine that granting injunctive orders would not suffice against a registered proprietor of the land but it would be pertinent if parties maintained the obtaining status quo before the Court makes a determination on the Plaintiffs' claim for adverse possession.

16. In the circumstance, I find the Notice of Motion application dated the

18th December 2025 merited but will not grant the Orders as sought and will proceed to make the following Orders:

a. Obtaining Status Quo be maintained where the party on the suit land should remain therein but not develop it further, pending the hearing and determination of this suit.

b. Costs will be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
13TH DAY OF MAY, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Ms. Atukunda for Plaintiffs

Mwiti for Defendant

Court Assistant: Joan