



**Mburu & 3 others (Suing Collectively on their Personal Capacities as Members of Holy Spirit Association for the Unification of World Christianity) v Tanui (Being Sued as an Official and Chairman of Holy spirit Association for the Unification of World Christianity) & 5 others; Holy Spirit Association for the Unification of World Christianity (Interested Party) (Environment & Land Case E115 of 2024) [2025] KEELC 76 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 76 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E115 OF 2024**

**MD MWANGI, J  
JANUARY 16, 2025**

**BETWEEN**

**JOHN WAINAINA MBURU ..... 1<sup>ST</sup> PLAINTIFF  
JANE KWAMBOKA GACUKI ..... 2<sup>ND</sup> PLAINTIFF  
JUSTUS MOTURI OMAE ..... 3<sup>RD</sup> PLAINTIFF  
AUGUSTINE NAMATSI OKUBO ..... 4<sup>TH</sup> PLAINTIFF  
SUING COLLECTIVELY ON THEIR PERSONAL CAPACITIES AS MEMBERS  
OF HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD  
CHRISTIANITY**

**AND**

**EMMANUEL KIPKORIR TANUI (BEING SUED AS AN OFFICIAL AND  
CHAIRMAN OF HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF  
WORLD CHRISTIANITY) ..... 1<sup>ST</sup> DEFENDANT  
JACINTA WARIE KABWA (BEING SUED AS AN OFFICIAL AND CHAIRMAN  
OF HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD  
CHRISTIANITY ..... 2<sup>ND</sup> DEFENDANT  
JOYCE WAKIURU GITHAYA (BEING SUED AS AN OFFICIAL AND  
TREASURER OF HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF  
WORLD CHRISTIANITY ..... 3<sup>RD</sup> DEFENDANT  
CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT  
NAIROBI CITY COUNTY GOVERNMENT ..... 5<sup>TH</sup> DEFENDANT  
FRANCIS NDUNGÚ NJOROGE ..... 6<sup>TH</sup> DEFENDANT**



AND

**HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD  
CHRISTIANITY ..... INTERESTED PARTY**

**RULING**

(In respect of the Plaintiffs' application dated 18th March, 2024 seeking for a temporary injunction)

**Background**

1. This ruling is in respect of the Plaintiff's Notice of Motion application dated 18th March, 2024. The said application is expressed to be brought under the provisions of Section 1A, 1B, 3A, and 63 (c) and (e) of the Civil Procedure Act, Order 40 Rules 1 & 2 and Order 51 Rule 1 of the Civil Procedure Rules as well as Article 23 and 40 of the Constitution of Kenya). Principally, the Plaintiff prays for the following orders that pending;
  - a. The hearing and determination of the main suit, this Honourable Court be pleased to issue an order of injunction prohibiting the Respondents herein, by themselves, their agents or anyone acting under their instruction or any other person whether or not sent by the Respondents, from accessing, entering, trespassing and/or dealing on the pieces of land known as LR No. 9460/3, LR No. 7741/366 and LR No. 7741/367.
  - b. The hearing and determination of the main suit, this Honourable Court be pleased to issue an order of injunction prohibiting the Respondent herein, by themselves, their agents or anyone acting under their instruction or any other person whether or not sent by the Respondents from erecting any structures, transacting and/or engaging in any further dealings on the land parcels LR No. 209/2794, LR 9460/3, LR No. 774/366 and LR No. 774/367 in any manner whatsoever.
  - c. That upon hearing inter parties, an order be issued directing the 1st, 2nd and 3rd Respondents herein to allow the Applicants to peaceably or by use of reasonable force enter and/or gain access of the premises erected on the parcel of land to wit LR No. 9460/3 situated in Karen within Nairobi City County.
  - d. The Officer Commanding Police Station (OCPD) Nairobi City County, do effect and supervise the compliance with the orders of this Honourable Court herein.
  - e. The Respondents herein be rendered to pay the costs of this application.
2. The Application is premised on the grounds on the face of it and further supported by an Affidavit of Augustine Namatsi Okubo deposed on the 18th March, 2024, on his own behalf and on behalf of the other Plaintiffs as members of the Interested Party. In summary, the Plaintiffs' case is that the Interested Party is a duly registered Church under the Societies Act and owns different properties including LR No. 209/2794, LR No. 9460/3, LR No. 7741/366 and LR No. 7741/367. The deponent avers that the Interested Party has been in occupation and enjoying exclusive ownership of the parcel of land known as LR No. 209/2794, together with the premises constructed thereon.
3. The deponent avers that sometime back in December 2023, and to the members' dismay, some unknown persons trespassed into the property; demolishing the premises and purporting to reconstruct them, only for members to learn that the said strangers had been expressly authorized



- by the 1st, 2nd and 3rd Respondents. He contends that the 1st, 2nd and 3rd Respondents acted unprocedurally and contrary to the Interested Party's Constitution as they never sought the Interested Party's authorization or its Members 'approval. The 1st, 2nd and 3rd Respondents never held any meetings with the Interested Party's members as required before undertaking any dealings with the Interested Party's assets. There is no resolution authorizing the demolition and reconstruction of the premises.
4. The Applicants states that contrary to their expectation and *the Constitution* of the Interested Party requiring the 1st, 2nd and 3rd Respondents to act with utmost good faith, the said Respondents have been on the forefront in supervising the demolition. The Applicants accuses the said Respondents of abandoning their fiduciary duty to the Interested Party and are now pursuing their selfish interests. It is as a result of the said fraudulent activities that the Applicants' seek the Court's intervention to preserve parcel of land known as LR No. 209/2794.
  5. Regarding the parcels of land known as LR No. 7741/366 and LR No. 7741/367; the Applicants accuse the 1st, 2nd and 3rd Respondents of fraudulently colluding with the 4th Respondent and fraudulently transferring the said properties to the 6th Respondent. The Deponent alleges that the members of the Interested Party were again never informed or the prior approval of the Interested Party sought before the illegal transfer. Therefore, the transfer of the two parcels is illegal and fraudulent.
  6. As for the property known as LR No. 9460/3, the Affiant states that the 1st, 2nd and 3rd Respondents in collusion with the 4th Respondent, transferred the said property to themselves on or about August, 2017. The registration of LR No. 9460/3 in the names of the 1st, 2nd and 3rd Respondents was utterly illegal and contrary to the Interested Party's constitution. Subsequent to the illegal transfer, the 1st, 2nd and 3rd Respondents denied the Applicants and other church members access to the premises constructed thereon, despite it being the headquarters of the Interested Party.
  7. The Applicants accuse the 1st, 2nd and 3rd Respondents, being officials of the Interested Party, of not filing the annual returns as well as payment of the annual rent and rates over the registered properties of the Interested Party. The said officials never disclosed or accounted for any transactions or dealings over the four properties.
  8. It is therefore based on the foregoing that the Applicants seek the court's intervention to preserve the four parcels to obviate any dealings as well as protect the interests of the Interested Party.

#### **1st, 2nd and 3rd Respondents' and the Interested Party's response**

9. The 1st Respondent, Emmanuel Kipkorir Tanui filed a Replying Affidavit deposed on the 2nd May, 2024 and a Further Affidavit deposed on the 20th June, 2024. The said Affidavits are also deposed on behalf of the 2nd and 3rd Respondents as well as the Interested Party. The Deponent avers that he is the Chairman of the Interested Party whereas the 2nd and 3rd Respondent are Secretary and Treasurer respectively.
10. In the said response, the Affiant denies all the accusations levelled against them and avers that there are only undertaking renovations on the subject property. The renovations are being carried out by a Tenant of the Interested Party who is well known to the Applicants. He avers that indeed the 1st and 4th Applicants attended meetings where all potential Tenants were interviewed and ranked against the set out criteria.
11. He states that the current Tenant was found the most suitable and a Lease Agreement was subsequently prepared. The ongoing renovations were part of the terms of the Lease. He deposes that the property under renovation was previously inspected and deemed unfit for habitation. In fact, a closure order was



issued by the City court until the said repairs are fully undertaken. The previous Tenant had refused to vacate the premises resulting in numerous cases and References being instituted at the Courts and the Business Premises Rent Tribunal.

12. The Affiant avers that at the time of the issuance of the Renovation Order, the Interested Party had no money necessitating the search for a Tenant who would do the renovations at their own costs. The Tenant has so far made great progress in rehabilitating the building including erecting a roof on the property. He argues that the application herein is purely to settle scores as the Applicants' preferred Tenants were not granted the Tenancy since they did not meet the criteria.
13. As for the parcels LR No. 7741/366 and LR No. 7741/367, the Respondents state that in the year 2023, they learnt that unknown persons had invaded the said properties. The matter was reported at the Directorate of Criminal Investigations and investigations are still ongoing. Once investigations are completed, they shall institute appropriate proceedings for cancellation and revocation of the titles, if necessary. Therefore, the claim of collusion between the Interested Party's officials and the 4th and 6th Respondent is baseless.,
14. Regarding the allegations of denial of access to the properties by the Applicant, the Affiant denies the same. He avers that they have never denied anyone access thereto. That the 1st and 4th Applicants have indeed been attending and participating in church activities. As for the payment of rent, the deponent avers that during the period when the court proceedings were ongoing, the Tenants occupying LR No. 209/2794 never paid rent as the property was in a state of disrepair hence no income was generated. He maintains that they have been filing returns as required of them.
15. The Applicants therefore assert that the application is misconceived and frivolous and ought to be dismissed.

#### **Applicants' Supplementary Affidavit**

16. The Applicants' Supplementary is sworn on 21st June, 2021 by Augustine Namatsi Okubo. The Deponent avers that neither the Applicants nor the church members were involved in the process leading to the issuance of the purported contract to the alleged Tenant. He avers that the Respondent Officials have not produced any minutes to confirm that the alleged meetings were indeed held.
17. The Affiant avers that the process was conducted in total secrecy, with no advertisement of the works or participation of the members. In further response thereof, the Deponent avers that the alleged Tenant is a non-existent company with no registration details and the failure to attach the alleged Lease Agreement and the Court Order allegedly issued by the City Court.
18. The Applicants maintain that they have been denied access to the premises after the unauthorized demolitions began over the premises constructed on L.R No. 209/2794. The Applicants aver that at time the 1st, 2nd and 3rd Respondents came into office sometime in the year 2012, the premises over L.R No. 209/2794 were all leased out and thus earning income. Therefore, the assertion that there has been no income is false. The non-payment of the rent arrears has led to the present huge arrears. They therefore pray that the application be allowed as prayed.

#### **Court's Directions**

19. The court directed that the application be dispensed with by way of written submissions. The parties complied.



## Issues for Determination

20. I have considered the application, the affidavits both in support and in opposition of the application, as well as the rival submissions thereof. The issues for determination in this matter are:
- a. Whether the Plaintiff/Applicants' application is merited.
  - b. Which orders should the court issue?

## Analysis and Determination

### a. Whether the Plaintiff/Applicants' application is merited

21. The Applicants seek orders of temporary injunction. The principles to be considered in determining an application for an order of temporary injunction were pronounced in the case of *Giella –vs- Cassman Brown* [1973] EA 358, where it was held that in order to qualify for an injunction: -
- “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 harm which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”
22. The Court of Appeal in *Nguruman Ltd. –vs- Jan Bonde Nielsen & 2 Others* (2014) eKLR, while upholding the 3 conditions pronounced in the *Giella* case stated that, ‘the 3 conditions and stages are to be applied as separate distinct and logical hurdles which an Applicant is expected to surmount sequentially.’
23. Turning to the facts of this case, and applying the above tests, the first question to address is whether the Applicant has disclosed a prima facie case with a reasonable probability of success. In the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, the Court of Appeal elaborated the meaning of a prima facie case and stated as follows:
- “....a prima facie case in a civil application includes but is 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 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.”
24. It is not disputed that the Applicants are registered members of the Interested Party. They contend that the Interested Party's properties have been fraudulently transferred and premises on one of the properties demolished without following due process. The 1st, 2nd and 3rd Respondents being officials of the Interested Party deny transferring any property as alleged. They however acknowledge that the suit premises have been invaded by unknown persons and that the issue is subject of investigations at the Directorate of Criminal Investigations. Regarding the demolitions, the Respondents averred that they have leased out the said property to a Tenant who is renovating the premises. Apparently, the Applicants have a prima facie case.
25. To qualify for the grant of an order of temporary injunction, the Applicants have to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted.



The judicial decision of Pius Kipchirchir Kogo –vs- Frank Kimeli Tenai (2018) eKLR provides an explanation for what is meant by irreparable injury and it states;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

26. In the case of Paul Gitonga Wanjau –vs- Gathuthi Tea Factory Company Ltd. & 2 Others (2016) eKLR, Mativo J. (as he then was) stated that;

“In order to show irreparable harm, the moving party must demonstrate that it is a harm that cannot be quantified in monetary terms or which cannot be cured.”

27. The Applicants in their submissions argue that the Interested Party and all its members stand to suffer irreparable harm which cannot be adequately compensated by way of damages as the suit properties are at a risk of being misappropriated and disposed by the Respondents illegally and fraudulently. Further that the illegal registration of LR No. 9460/3 in the names of the 1st, 2nd and 3rd Respondents is a clear intent to deprive the Interested Party of its legal and legitimate proprietary interests over the said property.

28. In their Complaint at Paragraph 8, the Applicants have described the 1st, 2nd and 3rd Respondents as the current Officials of the Interested Party. Churches are registered under the *Societies Act*, Cap 108, Laws of Kenya. Unlike registration under the *Companies Act* or the *Limited Liability Partnership Act*, this registration does not confer artificial personality. This means that the church, even though registered, cannot hold property in its own name and does not have a legal personality separate from its officials and members. The property may be held in trust by the church's officials and or trustees.

29. I have perused the documents adduced in the Plaintiffs' Bundle of Documents. I note that the parcel of land known as LR No. 9460/3 is registered in the name of three (3) Trustees on behalf of the Interested Party. I see no intention to defraud the Interested Party as alleged.

30. As for the parcels LR No. 7741/366 and LR No. 7741/367, the Respondents maintain that the persons in possession of the said parcels are trespassers and indeed criminal investigations have been launched. Although the Applicants allege that the said properties have been transferred to the 6th Respondent, no evidence has been adduced to that effect.

31. From the above, it is evident that the Interested Party is not in occupation of the two parcels. The occupiers thereon at the moment, whether trespassers or purchasers shall be determined at trial. Therefore, issuing an order of injunction as prayed herein is tantamount to evicting them without following due process.

32. Regarding the alleged demolitions on LR No. 209/2794, the Respondents asserts that they have not demolished any structures erected thereon. They have produced a Notice marked as Annexure 7, from the Nairobi County Public Health Department requiring the Interested Party to undertake repairs specified thereon. The repairs include replacing the leaking roof of the premises, repair the work out floor and replacement of the sagging ceiling among other conditions failure to which the premises would be closed down. The Respondents have also attached the Renovation Permit marked as Annexure 6, which provides that the repairs on the said premises should not alter or modify the structure and/or plan of the premises.



33. The Applicants have not challenged the 2 Annexures. In absence of contrary evidence, I am persuaded that indeed there are no demolitions but rather renovations as demanded by the Nairobi County Public Health Department. This in my view will not cause any irreparable harm to the Applicants or the Interested Party's members.
34. Based on the foregoing, I am not satisfied that the Applicants have demonstrated that if orders sought are not granted, they stand to suffer irreparable loss. The balance of convenience tilts in favour of not granting the temporary injunctive orders sought.
35. Consequently the Applicants' application dated 18th March, 2024 is hereby dismissed with costs to the Respondents.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 16<sup>TH</sup> DAY OF JANUARY 2025.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Nyamache h/b for Mr. Osoro for the Plaintiffs

Mr. Wambola for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Defendants and the Interested Party

N/A for the 4<sup>th</sup> and 6<sup>th</sup> Defendants

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

