



Voice of Salvation & Healing Church v Muthini (As Trustee of the Christian Foundation of Kenya) (Environment and Land Appeal E082 of 2024) [2025] KEELC 5892 (KLR) (6 August 2025) (Ruling)

Neutral citation: [2025] KEELC 5892 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E082 OF 2024**

**JG KEMEL, J
AUGUST 6, 2025**

BETWEEN

THE VOICE OF SALVATION & HEALING CHURCH APPELLANT

AND

**MOSES NGILA MUTHINI RESPONDENT
AS TRUSTEE OF THE CHRISTIAN FOUNDATION OF KENYA**

RULING

1. The Respondent was the Plaintiff in the lower Court. He sued the Appellant [Defendant] in MCELC No E458 OF 2023 and sought inter alia a permanent order for injunction restraining the Defendants from interfering with the suit land being NBI/Block 62/754 situate in Nairobi County. He also sought orders of eviction of the Defendant and demolition of the illegal structures and costs of the suit.
2. It was his case that the suit land was jointly registered in his name and that of both of his parents as joint trustees of Christian Foundation of Kenya. Upon their deaths he continued as the sole surviving trustee of the Foundation. Notwithstanding the registration status, he discovered that the suit land had been sold to the Appellant under mysterious circumstances. That the Appellant had erected structures on the suit land without his consent and knowledge.
3. The Defendant filed a statement of defence and denied the Plaintiff's case and contended that he purchased the land from Mathew Mwaniki Ngilla, a sibling of the Plaintiff as well as a member of the Foundation.
4. Simultaneously the Plaintiff filed a Notice of Motion seeking inter alia interim orders of injunction restraining the Defendants from proceeding with constructions building development alienation transfer or otherwise interfering with the suit land pending the hearing and determination of the suit.



5. Upon hearing and determining the application the trial Court rendered its Ruling on the 15/5/24 allowing the application. It is this Ruling that has triggered this appeal on the following grounds;
 - a. The learned Magistrate erred in failing to determine and should have determined that the 1st Respondent did not establish the test for grant of interlocutory injunctions sought.
 - b. The learned Magistrate erred in basing his entire decision on the question whether the Respondent demonstrated that he had an interest in the suit property, which interest was under threat or had been infringed.
 - c. The learned Magistrate erred in failing to consider, and should have considered, that the Respondent did not produce any resolution or decision of the Christian Foundation of Kenya [the Society] authorizing him to file suit and an application for interlocutory orders against the Appellant and had therefore not established a basis for filing the suit on which the application for interlocutory orders was anchored.
 - d. The learned Magistrate erred in proceeding on the basis that the Respondent is the owner of the suit property when the property was only registered in his name, among others, as trustees of the owner of the property, the Christian Foundation of Kenya.
 - e. The learned Magistrate erred in failing to consider, and should have considered, that the Appellant was allowed access to the suit property by a majority of the members of the Society.
 - f. The learned Magistrate erred in failing to consider that decisions of a society such as the Christian Foundation of Kenya are made by the members of the society based on the law and the Constitution of the society, and a trustee or an official of a society cannot override the decisions of a majority of the society's members.
 - g. The learned Magistrate erred in failing to consider that the orders sought by the Respondent related to a property that had been subdivided and that the Appellant was allowed access to a specific subdivision whose number is specific and different from the earlier number of the larger property.
 - h. The learned Magistrate erred in failing to consider that the balance of convenience tilted in favour of allowing the Appellant to continue dealing with the property in the manner that was allowed by a majority of the members of the Christian Foundation of Kenya and a majority of the members of the Philip Ngilla family pending the hearing and determination of the various contentious issues that have arisen in the case.
 - i. The learned Magistrate erred in allowing the Respondent's application.
 - j. The learned Magistrate erred in awarding costs to the Respondent.
6. Consequently the Appellant prays that:
 - a. This appeal be allowed.
 - b. The ruling and order of 15/5/2024 be set aside and the order made thereunder be substituted with an order dismissing the Respondent's application dated 27/10/2023.
 - c. The Respondent pays the costs of this appeal and the costs of the application dated 27/10/2023 in Milimani MCELC No. E458 of 2023
7. On the 3/5/2025 with the consent of both Counsel of the parties having been present the Court directed the parties to file written submissions within 30 days and reserved the date of judgement. With



- the consent of both Counsels, the Appellant was equally directed to file a supplementary Record of Appeal.
8. As at the time of preparing this Ruling none of the parties have complied with the Court's directions with respect to the filing of written submissions. That being so evidently this appeal suffers from want of prosecution.
 9. That said the key issue for determination is whether the appeal is merited.
 10. As a first appellate Court, this Court has a duty to examine matters of both law and facts and subject the whole of the evidence to a fresh and exhaustive scrutiny, before drawing a conclusion from that analysis. The Court has however to bear in mind the fact that it did not have an opportunity to see and hear the witnesses first hand. This duty is enunciated by Section 78 of the [Civil Procedure Act](#) which espouses the role of a first appellate Court which is to: '... re-evaluate, reassess and re-analyze the extracts of the record and draw its own conclusions.'
 11. Besides, that duty has been affirmed in numerous decisions of the superior Courts. Notably in the case of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was pronounced thus:

“...this Court is not bound necessarily to accept the findings of fact by the Court below. An appeal to this Court ... is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”
 12. With that in mind, I proceed to analyze the merits or otherwise of the appeal as filed before the Court.
 13. On perusal of the decision of the Court I agree with the trial Court that the purpose of a temporary injunction as stated in Order 40 Rule 1 of the Civil Procedure Rules, 2010 is to stay and prevent the wasting, damaging, alienation, the sale, removal or disposition of the suit property.
 14. The Court is cognizant that for an application for interlocutory injunction like this one before Court, the Court is not required to make final findings of contested facts as the Court should only weigh the relative strength of the party's cases. See the case of *Mbuthia v Jimba credit Corporation Ltd* [1988] eKLR.
 15. This appeal is premised on grounds which attack the very core of the issues of the disputants that is to say ; the locus of the seller of the land , the capacity of the Respondent's sister to obtain letters of administration in the estate of her deceased father; the authenticity and otherwise of the said grant and whether or not any of the Respondents siblings had the capacity to dispose of the suit land; whether the Respondent is entitled to challenge the alleged disposal of the land in view of the “consent” of the other family members. Clearly these are issues that cannot be determined in an interlocutory application of this nature. They are best reserved for the trial Court to interrogate and determine on merits.
 16. It is not in dispute that the ownership of this land is contested by both parties and having said that I am guided by the provisions of Order 40 Rule 1 of the [Civil Procedure Rules](#) read together with Section 3A of the [Civil Procedure Act](#), that justice will be served if the suit land is preserved pending the hearing and determination of the suit so that each party will adduce evidence and proof their claims in Court. Evidently, the balance of convenience favours the preservation of the suit land pending the hearing and determination of the suit.



17. In the end I find no fault on the part of the learned Magistrate to interfere with the decision of the trial Court.
18. Final Orders for Disposal
 - a. The appeal is without merit.
 - b. It is dismissed with no orders as to costs.
19. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF AUGUST 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the Presence of:

Mr Tugee for the Applicant

NA for the Respondent

CA- Ms Yvette Njoroge

