



**Ethics and Anti-Corruption Commission v Presbyterian Foundation Registered Trustees; County Government of Nyeri & another (Interested Parties) (Environment & Land Case E026 of 2022) [2024] KEELC 1031 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1031 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE E026 OF 2022  
JO OLOLA, J  
FEBRUARY 29, 2024**

**BETWEEN**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**THE PRESBYTERIAN FOUNDATION REGISTERED TRUSTEES ..... DEFENDANT**

**AND**

**COUNTY GOVERNMENT OF NYERI ..... INTERESTED PARTY**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**RULING**

1. By the Notice of Motion dated 10<sup>th</sup> November 2022, the Ethics and Anti-Corruption Commission (the Plaintiff) prays for a temporary order of injunction to issue restraining the Defendant from dealing by way of sale, transfer, mortgage, development or any other manner whatsoever with all that parcel of land known as Kirimukuyu/Kiria/792 pending the hearing and determination of this suit.
2. In addition, the Plaintiff urges the Court to issue a temporary order of injunction restraining the 2<sup>nd</sup> Interested Party from considering any application submitted by the Defendant for compensation arising from the compulsory acquisition made by itself of a portion of the said parcel of land pending the hearing and determination of this suit.
3. The application is supported by an Affidavit sworn by the Plaintiff's Investigator Simon Lei wherein the Plaintiff avers that it did receive a complaint to the effect that the suit property allegedly constituted public property that had been unlawfully allocated to the Defendant. It further asserted that there was



- also a complaint that the 2<sup>nd</sup> Interested Party had compulsorily acquired a portion of the suit property and that it was about to compensate the Defendant in respect of the same.
4. The Plaintiff avers that the investigations so far conducted have revealed that the suit property was indeed set apart for a public purpose, being part of Kianyakura School, before it was irregularly re-allocated to the Defendant by the defunct County Council of Nyeri which was the predecessor to the 1<sup>st</sup> Interested Party. The Plaintiff asserts that it has filed this suit to recover the suit property and revert it to the public and hence the need for its preservation in the meantime.
  5. The Presbyterian Foundation Registered Trustees (the Defendant) is opposed to the grant of the orders sought. In a Replying Affidavit sworn on its behalf by the Parish Minister, Presbyterian Church of East Africa, Tumutumu West Parish, the Reverend Peris Kanjiru Mugo on 31<sup>st</sup> March 2023, the Defendant denies that the suit property was set aside for public purposes or that Kianyakura School for which it was reserved was a public school.
  6. The Defendant avers that as far back as 1957, the land belonged to it after members of the Church contributed money and others donated their own parcels of land which in total measured approximately 17.3 acres.
  7. The Defendant further avers that during the demarcation, consolidation and registration in 1959, all church land in freehold areas in Nyeri County including land actually owned by the Church was registered in the name of the County Council of Nyeri but the register showed it was reserved for the Church or its school and that in this case the land was reserved for Kianyakura P.C.E.A School and the same was owned by the P.C.E.A Tumutumu Parish.
  8. I have carefully perused and considered the Plaintiff's application as well as the response thereto by the Defendant. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the Parties. The Interested Parties neither supported nor did they oppose the application.
  9. By the application before the Court, the Plaintiff prays for a temporary order of injunction to restrain the Defendant from dealing with the suit property known as Kirimukuyu/Kiria/792 by way of sale, transfer, mortgage or development pending the hearing and determination of this suit. In addition, the Plaintiff urges the Court to restrain the National Land Commission (the 2<sup>nd</sup> Interested Party) from compensating the Defendant for a portion of the suit land that the 2<sup>nd</sup> Interested Party has compulsorily acquired.
  10. It is the Plaintiff's case that at all times material, the suit property constituted public land set apart and reserved for Kianyakura School, the same having been registered in 1959 in the name of the Native Lands Trust Board which was the predecessor of the County Council of Nyeri and the 1<sup>st</sup> Interested Party herein. The Plaintiff contends that the legal effect of such registration was to render the same public land vested in the Council to hold in trust for the residents of Nyeri.
  11. On its part, the Defendant asserts that even though the suit property was so registered, the suit property was its private property the same having been purchased in 1957 by donations from members of the P.C.E.A Church. It is the Defendant's case that during land demarcation, consolidation and registration in 1959, all land owned by the Defendant church were registered in the name of the County Council but the register would indicate that it was reserved for the Church or its School.
  12. As it were the conditions for the grant of an interlocutory injunction were restated in the celebrated case of *Giella v Cassman Brown & Company Limited* (1973) EA 358 at page 360 where the Court stated thus:



”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 a balance of convenience.”

13. As to what would constitute a prima facie case in a civil application such as this, the Court of Appeal in *Mrao v First American Bank of Kenya Limited & Others* [2003] eKLR held as follows:

“... a prima facie case 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. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”

14. In the matter before me, it is the Plaintiff’s contention that the injunction sought against the Defendant is for the purposes of preserving the suit property pending the hearing and determination of the suit. As it were, it is not disputed that the suit property was at the time of registration in 1959 registered under the Native Lands Trust Board which was the predecessor to the 1<sup>st</sup> Interested Party herein.

15. Such registration as suggested by the Plaintiff would ordinarily imply that the suit property was public land being vested in the County Government to hold not as the owner but as the trustee for the residents of that County. While the Defendant contends that the practice was to have land belonging to its churches registered in the name of the County Government, that is a matter which can only be established after this matter is fully heard and evidence tabled before the Court to that effect.

16. In the circumstances herein, I was persuaded that this Court is duty-bound to preserve the property pending the hearing and determination of the recovery proceedings. The Plaintiff has demonstrated that it stands to suffer irreparable damage should the temporary injunction not issue and the subject property is disposed of by the Defendant to third Parties. I am also persuaded that the Defendant will not suffer any undue prejudice as in the event the suit is dismissed, the suit property shall be restored to the Defendant’s full ownership with rights to deal therewith as it pleases.

17. I am also persuaded that the balance of convenience tilts in the Plaintiff’s favour as it is the Party that would be most inconvenienced were the injunction to be refused and the case succeeds given that it would have to expend more tax payers money to trace the property in order to satisfy the decree. On its part, the Defendant would be compensated by an award of costs if the suit is not successful.

18. In the premises, it is my finding that there is merit in the Motion dated 10<sup>th</sup> November, 2022. Accordingly I hereby grant a temporary order of injunction restraining the Defendant from dealing with the suit property by way of sale, transfer or mortgage or development pending the hearing and determination of this suit. The 2<sup>nd</sup> Interested Party is equally restrained from considering any application for compensation to the Defendant in terms of Prayer No. 5 of the application.

19. The Costs of the application shall be in the cause.

20. It is so ordered.

**RULING DATED SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 29TH DAY OF FEBRUARY, 2024.**

**In the presence of:**



**Mr. Ayoo for the Plaintiff/Applicant**

**Mr. Wahome Gikonyo for the Defendant/Respondent**

**Court assistant – Kendi**

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**J. O. Olola**

**JUDGE**

