



**Seventh Day Adventist Church EA Union Limited v Nyamira County Government & 2 others
(Environment & Land Case E003 of 2023) [2024] KEELC 4201 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 4201 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E003 OF 2023**

**JM KAMAU, J
APRIL 18, 2024**

BETWEEN

**THE SEVENTH DAY ADVENTIST CHURCH EA UNION
LIMITED PLAINTIFF**

AND

**NYAMIRA COUNTY GOVERNMENT 1ST DEFENDANT
THE LAND REGISTRAR-NYAMIRA COUNTY 2ND DEFENDANT
THE HON ATTORNEY GENERAL 3RD DEFENDANT**

RULING

- 1 The Application dated 25/10/2023 by the Plaintiff/Applicant seeks for orders that;
 1. The instant Application be certified urgent and same be heard on priority basis.
 2. Pending the hearing and determination of the instant Application the Honourable court be pleased to grant an inhibition, directed to and/or against any dealings transacting and/or disposition, relating and/or concerning transactions in respect of LR No. West Mugirango/siamani/1210.
 3. Pending the hearing and determination of the instant Application, the Honourable court be pleased to grant an interim order of injunction restraining the Defendants/Respondents and more particularly, the 1st Defendant/Respondent either by themselves, agents, servants, employees and/or anyone claiming under the 1st Defendant/Respondent, from entering, re-entering, trespassing onto, cultivating, digging, constructing, fencing, interfering with and/or in any other manner, whatsoever, dealing with the suit property, that is, LR No. West Mugirango/siamani/1210 and/or any portion thereof.



4. The Honourable court be pleased to grant an inhibition directed to and/or against any dealings, transaction and/or disposition, relating and/or concerning transactions in respect of LR No. West Mugirango/siamani/1210 to last pending the hearing and determination of the instant Suit.
 5. The Honourable court be pleased to grant an Order of Temporary Injunction restraining the Defendants/Respondents and more particularly, the 1st Defendant/Respondent either by herself, agents, servants, employees and/or anyone claiming under the 1st Defendant/Respondent, from entering, re-entering, trespassing onto, cultivating, digging, constructing, fencing, interfering with and/or in any manner, whatsoever, dealing with the suit property, that is, LR No. West Mugirango/siamani/1210 and/or any portion thereof, pending the hearing and determination of this suit.
 6. Costs of this Application be borne by the Defendants/Respondents.
 7. Such further and/or other orders be made as the court may deem fit and expedient.
- 2 The said Application was founded on the grounds that the property known as Lr No. West Mugirango/siamani/1210 was issued to the Plaintiff who was issued with a Title Deed but which was later re-transferred to the 1st Defendant. This, to the Plaintiff, is unlawful and there is apprehension that the property may change hands or be wasted as this suit is being heard unless there are restraining orders. All these are replicated in the Supporting Affidavit of Evans Ngote Masongo, a Steward and Church Development Director of Nyamira Conference of the Plaintiff sworn on 25/10/2023 and attached thereto are a number of documents showing how the suit property came into the hands of the Plaintiff.
- 3 Before the Application was heard, the 1st Defendant filed a Notice of Preliminary objection urging the court to dismiss the aforesaid Application on the ground that the Application for injunction against the Government is in contravention of Order 29 Rule 2(d) of the *Civil Procedure Rules*, 2010 and Section 16(2) of the *Government Proceedings Act* which expressly precludes the grant of injunction against Government officers. The 1st Defendant therefore opines that the Application is defective ab initio and is tantamount to abuse of judicial functions. I did ask the parties to file their written submissions in support of and in opposition to the said Application which I have considered before retiring to write this Ruling. I will disallow the Preliminary Objection and give the reasons for the same later since doing otherwise may pre-empt the Judgment in this case.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 18TH DAY OF APRIL, 2024.

MUGO KAMAU

JUDGE

In the presence of: -

Court Assistant – Brenda

Plaintiff's Counsel – Online

Defendants Counsel - Online

