



**Mutua v M'Ruthiri (t/a Oasis of Living God Ministry) (Land Case E006 of 2024) [2024] KEELC 7096 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7096 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
LAND CASE E006 OF 2024  
CK YANO, J  
OCTOBER 30, 2024**

**BETWEEN**

**PETER MBABU MUTUA ..... PLAINTIFF**

**AND**

**DANIEL MWENDA M'RUTHIRI (T/A OASIS OF LIVING GOD MINISTRY) ..... DEFENDANT**

**RULING**

1. The application for consideration is the Notice of Motion dated 9<sup>th</sup> July, 2024 in which the Plaintiff/applicant is seeking an order for temporary injunction restraining the defendant/respondent by himself or anyone else acting on his behalf from entering, remaining on, building, cultivating or interfering with the plaintiff's quiet possession, occupation, user and/or enjoyment of Land Parcel LR No. Mwimbi/Lower East Magutuni/3692 and for the OCS Magutuni Police Station to be directed to provide security for the forcible removal of the respondent from the suit land pending hearing of the main suit. The application is brought under Section 1, 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Order 40 rule 1 and 2 and Order 51 rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law.
2. The application is supported by the affidavit of Peter Mbabu Mutua, the applicant herein, sworn on 9<sup>th</sup> July, 2024 and a supplementary affidavit dated 26<sup>th</sup> July, 2024 and is based on the grounds that the applicant is the legal owner of the suit land and is in occupation and has been in occupation since 2013. That the respondent has not paid any consideration for the land. The applicant accuses the respondent for using fraud, deceit and intimidation to change the registration of the suit property from Kabaikubu Congregation to Oasis of The Living God Ministry, a fact that is not supported by the consideration or consent of the Kabaikubu congregation for which the applicant is the founding leader. That the land belongs to the Kabaikubu Congregation who have occupied the premises since 2014 having bought it from one Amos Kinegeni on 14/9/2016.



3. The applicant states that on 1<sup>st</sup> June, 2024, the respondent came from Nyahururu with a group of hired goons and fought off the applicant's congregation and partly occupied the church building and that the respondent has started demolishing part of the church building and installing thereof different padlocks, hence making the applicant and his congregation to be unable to use the church premises for worship and other development activities. That unless the respondent is forcibly removed from the suit premises by an order of this court, the applicant will suffer irreparable loss and damage. The applicant has annexed copies of a sale agreement dated 14/9/2016, green card and title deed.
4. The application is opposed. The respondent filed a replying affidavit sworn by Daniel Mwenda Ruthiri on 1<sup>st</sup> August 2024. It is the respondent's contention that the application is misconceived, inept, untenable and incompetent. The respondent avers that he is the Apostle of Oasis of Living God Ministry, which is the sole and absolute registered proprietor of the suit land. That the Ministry was initially registered as Rock United Ministries-Kenya, and in due cause, the name was changed to Oasis of Living God Ministry.
5. The respondent states that in the year 2016, the respondent together with other church of Oasis of Living God Ministry met people who were fellowshiping as Kabaikubu Congregation on the suit land, and upon deliberations with them, it was agreed that they would join Oasis of Living God Ministry. That it was further agreed that Oasis of Living God Ministry would refund (which it did) the purchase price of Kshs. 65,000/= paid by the Kabaikubu Congregation for the said land and in addition develop it by putting up permanent infrastructure. That it was further agreed that the suit land was to be registered in the name of Oasis of Living God Ministry, and the church was to become a branch of the ministry and that they agreed that the applicant would be in-charge of the branch.
6. The respondent avers that he has never worked in the office of the Registrar of Societies and therefore could not have assisted the plaintiff to register his church, adding that the issue of registering the church did not feature in their deliberations.
7. The respondent states that by a letter dated 21<sup>st</sup> May, 2024, the applicant was suspended from Oasis of Living God Ministry owing to misconduct, but the applicant failed to handover the church records held by him. That he remains on suspension and thus not allowed to enter any of the premises of Oasis of Living God Ministry. The respondent accuses the applicant of being guilty of material non-disclosure. That the applicant is not in possession of the suit land but is seeking for mandatory injunction in the nature of eviction against the respondent and other church members who fellowship in the church.
8. The respondent denied hiring any goons nor witnessed any destruction of buildings as alleged by the applicant. That on the contrary, he supervised construction of modern buildings by Oasis of Living God Ministry. The respondent avers that the applicant does not have any interest in the suit land and as such lacks the locus standi to agitate any cause of action touching on the said land. It is the respondent's contention that the application has been brought in bad faith and is an abuse of the court process and should be dismissed with costs.
9. The application was canvassed by way of written submissions which were duly filed by the parties. The applicant filed his submissions dated 2<sup>nd</sup> September 2024 through the firm of P. M. Mutani & Company Advocates while the respondent filed submissions dated 28<sup>th</sup> August 2024 through the firm of Nderitu Komu & Co. Advocates. I have read and considered those submissions and I need not reproduce the same in this ruling.
10. I have considered the application, the submissions made and the authorities relied on. The only issue for determination is whether the applicant is entitled to the orders sought.



11. The principles to be applied when considering an application for injunction are well settled. In the famous case of *Giella Vs. Cassman Brown Co. Ltd.* (1973) EA 358, the applicant must show a prima facie case with a probability of success; that he stands to suffer irreparable damage not compensable in damages; and if the court is in doubt, it will decide the matter on a balance of convenience.
12. In *Mrao Ltd. Vs. First American Bank of Kenya Ltd* [2003] eKLR, a prima facie case was described by the Court of Appeal as follows:

“...a prima facie case, in civil application includes but is not confined to ‘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...”
13. In this case, the applicant’s case is that he is the legal owner of the suit property and is in occupation. The applicant alleges that the respondent changed the registration of the property into his name through fraud, deceit and intimidation. On his part, the respondent claims that he acquired the land pursuant to an agreement with people who were fellowshipping as Kaibaikubu Congregation. Therefore, both parties are claiming the suit property. It is not in dispute that the suit land is currently registered in the respondent’s name. Besides the order for prohibitory injunction, the applicant is also praying for an order for mandatory injunction for the forceful removal of the respondent. That, in my view, is an admission that the respondent is the one in possession and occupation of the suit premises.
14. From the material on record, this court cannot conclude that the applicant has established a prima facie case with a probability of success. Since both parties are claiming the suit premises, the issue of ownership can only be determined at the main trial. Until the alleged fraud is proved, this court will take the certificate of title held by the respondent as prima facie evidence that he is the registered owner of the suit property. Thus at this stage, the applicant has not established a prima facie case with a probability of success. The applicant has also not demonstrated how he will suffer irreparable injury if the temporary injunction is not granted. The suit premises will still be available and the respondent’s title can be cancelled if at the end of the trial it is found to have been acquired fraudulently. In view of the facts that have emerged from the affidavit evidence, it is my view that the applicant has not established compelling evidence that would warrant the court to exercise its discretion and grant an order of temporary injunction.
15. Besides seeking a prohibitory temporary injunction, the applicant is also seeking interlocutory mandatory injunction for the forcible removal of the respondent from the suit premises. The law as regards the principle to be applied when considering the prayer for mandatory injunction is different from the principles in the *Giella Case*. The standard of approach when considering whether or not to grant an interlocutory mandatory injunction is higher than that of prohibitory injunction. “A mandatory injunction ought not be granted on an interlocutory application in the absence of special circumstances and then only in clear cases, either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could easily be remedied or where the defendant has attempted to steal a march on the plaintiff” (See *Locabail International Finance Ltd. Vs. Agro Export & Another* (1986) 1 ALLER 901).
16. In the plaint, the applicant prays for judgment against the respondent for a declaration that the suit land belongs to him, an order directing the land registrar to rectify the register of the suit land by removing the respondent’s name and replacing it with that of the applicant and an order for cancellation of the registration of the respondent’s name and replace it with that of the applicant, an



order of permanent injunction as well as an order for the forceful removal of the respondent from the suit land. In this case, it is apparent that both parties are claiming ownership of the suit land.

17. Having carefully considered the material before me, I am not satisfied that the applicant has made out a clear case to warrant the grant of the order of mandatory injunction. The applicant's case is not unusually strong and clear as to allow me to grant the mandatory injunction prayed for. I cannot safely consider this a clear case that can be decided at once or in a summary manner.
18. The upshot is that the Notice of Motion dated 9<sup>th</sup> July 2024 lacks merit and the same is hereby dismissed with costs to the respondent.
19. It is so ordered.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 30<sup>TH</sup> OCTOBER, 2024**

In the presence of:

Court Assistant – Kiruja

Mutani for Applicant

Nderitu Komu for Respondent

**C.K YANO,**

**JUDGE**

