



**Ndungu v Kayani (Environment & Land Case E084 of 2024)  
[2025] KEELC 1386 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1386 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E084 OF 2024  
LC KOMINGOI, J  
MARCH 20, 2025**

**BETWEEN**

**MARY MUCERA NDUNGU ..... PLAINTIFF**

**AND**

**SAMUEL RIMUI KAYANI ..... DEFENDANT**

**RULING**

1. This is the Notice of Motion dated 9<sup>th</sup> September 2024 brought under;

(Under Order 51 of the Civil Procedure Rules & Sections 1A, 1B, & 3A of the Civil Procedure Act, Sections 24,25, 26, & 27 of the Land Registration Act 3 of 2012, Article 40 & 159 of the Constitution, 2010 and all other enabling provisions of the law)

2. It seeks orders;

1. Spent.

2. Spent.

3. That a preliminary injunction be granted preventing the defendant/respondent, his agents, servants, assigns or anyone acting through him from in any way claiming and/or collecting the monthly rental payments emanating from the apartments/flats built on property title number Ngong/Ngong/36047 pending the hearing and determination of the main suit.

4. That the costs of this application abide the result thereof.

5. That this Honourable Court be pleased to make such further or other orders as it may deem fit and just to grant.



3. The Application is supported by the affidavit of Mary Mucera Ndungu the Plaintiff/Applicant, herein sworn on the 9<sup>th</sup> September 2024 and a Further Affidavit sworn on the 22<sup>nd</sup> October 2024.
4. The Application is opposed.  
There is a Replying Affidavit sworn by Samuel Rimui Kayani, the Defendant/Respondent on the 28/9/2024.
5. The Application was canvassed by written submissions.

#### **The Plaintiff's/Applicant's Submissions.**

6. They are dated 11<sup>th</sup> December 2024.  
Counsel submitted that the Plaintiff/Applicant is the registered owner of land parcel No. Ngong/Ngong/36047 as shown in the Title Deed.  
Reliance is placed on Section 24 (a) of the *Land Registration Act* and Article 40 of *the Constitution*.
7. It is further submitted that the Plaintiff/Applicant purchased the suit property using her own funds. He has put forward the case of Mumo Vs. Muema (2024) KEELC 1382 (KLR); Kimeu Vs. Kimeu & 4 Others KEELC 970 (KLR); Gituma Vs. Kamangara (2024) KEELC 5709 (KLR).  
That the monthly rental payments were deposited with her personal bank account.
8. It is also submitted that the Plaintiff/Applicant has established a prima facie case stands to suffer irreparable loss if deprived of her right to property and the proceeds therefrom.
9. Reliance is placed on the case of Cecilia Karuru Ngayu Vs. Barclays Bank of Kenya & another (2016) eKLR to submit that costs should be awarded to the Plaintiff who has demonstrated that she is the registered owner of the suit property. He prays that the Application be allowed.

#### **The Defendant's/Respondent's Submissions.**

10. They are dated 20<sup>th</sup> January 2025.  
Counsel submitted that this Honourable Court has no Jurisdiction to deal with the issues herein as the parties herein are husband and wife. He has put forward the case of *AKK Vs. PKW Civil Appeal No. 61 of 2019*; The owners of Motor Vessel "Lillians"Vs. Caltex Oil (Kenya) Limited (1989) eKLR.
11. Counsel further submitted that the suit property is matrimonial property which fact the Plaintiff/Applicant failed to disclose.  
He has put forward the case of KRA& 2 Others Vs. Mount Kenya Bottlers Limited & 4 Others KESC 26(KLR)
12. It is also submitted that the Plaintiff has made false statements under oath, with a view of defeating the course of justice and action ought to be taken against her. He has relied on Section 108 (1) of the *Penal Code* and the case of Simon Mugo Rutere Vs. Republic (2021) eKLR .
13. It is further submitted that the presence of a constructive/resultant trust would enable the Defendant to have beneficial interest. He has put forward the case of Mary Nyambura Kang'ara Vs. Paul Ogari Mayaka; Sock Petition 9 of 2021.  
He prays that the Plaintiff and the Notice of Motion be struck out with costs to the Defendant.



### **Analysis and Determination.**

14. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the written submissions and the authorities cited. The issues for determination are;
  - i. Whether this court has jurisdiction?.
  - ii. Whether the Plaintiff/Applicant's Application meets the threshold for grant of the temporary injunction.
  - iii. Who should bear costs of the Application?.
15. It is the Defendant's/Respondent's case that the suit property is matrimonial property as the parties are husband and wife. The plaintiff/Respondent on the other hand avers that the suit property is registered in her sole name.
16. It is my view that the issues is one of ownership of the suit property. The same is registered in the name of the Plaintiff/Applicant.

It is not about the division of the matrimonial property as the parties are not divorced. I find that this court has jurisdiction to deal with the issues herein.
17. The conditions for granting temporary injunction were set out in the precedent setting case of Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358.

They were restated by the Court of Appeal in Nguruman Limited Vs. Jan Bonde Nelsen & 2 Others (2014) KECA 606 (KLR).
18. The Plaintiff/Applicant's case is that she is the registered owner of the suit property. It is also her case that the Defendant/Respondent has denied her access.
19. The Defendant/Respondent on the other hand maintains the Plaintiff holds the suit property in trust for himself.
20. I am of the view that the matter would have to proceed to full trial in order for the court to establish these facts.
21. I therefore find that the Plaintiff/Applicant has failed to establish a prima facie case with a probability of success at the trial.
22. She has also failed to demonstrate that she will suffer irreparable loss that cannot be compensated by an award of damages.

It is my view that this being rental property the monthly income can be quantified. She can adequately be compensated if she is successful at the end of the trial.
23. In conclusion I find no merit on this application and the same is dismissed. The costs do abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20<sup>TH</sup> MARCH 2025.**

**L. KOMINGOI**

**JUDGE.**

In the Presence of:

Mr. Ondego for the Plaintiff/Applicant.



Mr. Mugo for Mr. Ndegwa Wahome for the Defendant/Respondent.

Court Assistant – Mutisya.

