



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Wainaina v Njii & another (Environment & Land Case  
E233 of 2023) [2025] KEELC 3541 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3541 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E233 OF 2023**

**CA OCHIENG, J**

**MAY 5, 2025**

**BETWEEN**

**SAMUEL NGUGI WAINAINA ..... PLAINTIFF**

**AND**

**SIMON MWANGI NJII ..... 1<sup>ST</sup> DEFENDANT**

**ERIC MUHINDI MUIGAI (SUED AS ADMINISTRATOR OF THE ESTATE OF  
THE LATE MUIGAI MWAURA) ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. What is before Court for determination is the 2<sup>nd</sup> Defendant's Notice of Motion application dated the 26<sup>th</sup> October 2023, where he seeks the following Orders:
  - a. Spent.
  - b. Spent.
  - c. Spent.
  - d. That pending the Inter partes hearing and determination of this application and the suit, the Honourable court be pleased to issue an order directing that all rental income generated from Land Parcel No.2019/11388/40 (I.R No. 65953) located within Huruma Estate, Nairobi City County, be deposited in a joint interest earning account to be opened in the names of the Defendants' Advocates.
  - e. That upon granting prayer (c) and (d), the Honourable Court be pleased to issue an order directing that the Defendants jointly appoint a rent collection agent to oversee the collection, accounting and depositing of rent into the joint interest account.



- f. That an order be issued that this Honourable court be pleased to compel the Plaintiff to release all the financial records, accounts, statements or any other information relating to the rental income from Land Parcel No. 209/11388/40 (I.R No. 65953) located within Huruma Estate, Nairobi City County from 1994 to date.
  - g. That costs of the application be provided for.
2. The application is premised on grounds on its face and on the 2<sup>nd</sup> Defendant's supporting affidavit sworn on 26<sup>th</sup> October 2023. He avers that the suit land is registered in his late father's name (Muigai Mwaura-deceased) and forms part of the deceased's free estate. Further, that the Plaintiff challenged ownership of the title to the suit land in ELC Suit No. E023 of 2022(O.S) and in ELC Suit No.495 of 2018(O.S), which suits were both dismissed, following which he filed the instant suit seeking orders for compensation from the legitimate owner of the suit land, for the developments erected thereon. He contends that the Plaintiff has essentially admitted that he has no proprietary interest on the suit land, yet he continues to enjoy rental income from it, as he had constructed a six (6) storey building consisting of residential apartments and has admitted to be deriving a monthly income of kshs.223, 000/= from the said development.
  3. He contends that, it is inequitable and oppressive for a confessed trespasser to use the court process to sanitize his illegal actions and propagate trespass unabated by continuing to benefit from proceeds from his late father's suit land, to the exclusion of his estate.
  4. The 1<sup>st</sup> Defendant opposed the instant application by filing a replying affidavit sworn on 28<sup>th</sup> February 2025, He insists that he is the sole registered proprietor of land reference No. 20/11388/40 and annexed a Certificate of Title to that effect. He reiterates that as the registered owner of the suit land, he has the rights and privileges in relation to the suit land, including the right to collect rent therefrom. He avers that it is only fair and just that he be allowed, to continue collecting rent on the suit land, solely as he has been doing.
  5. The Plaintiff did not file any response to oppose the instant application.

### **Analysis and Determination**

6. Upon consideration of the instant Notice of Motion application including the respective affidavits, the only issue for determination is whether an order should issue directing that all rental income generated from the suit land, be deposited in a joint interest earning account to be opened in the names of the Defendants' Advocates and if the Plaintiff should provide statement of account of rental proceeds from 1994 to date.
7. The 2<sup>nd</sup> Defendant has sought for the rental proceeds from suit land to be deposited in a joint interest earning account in the Defendants' Advocates' names. Further, he has sought for the Plaintiff to provide statement of rental income from the suit land from 1994 to date. The Plaintiff did not file a response to oppose the instant application but the 1<sup>st</sup> Defendant opposed the application insisting he is the registered proprietor of the suit land and should solely collect rent therefrom.
8. Upon perusal of the court record, I note the 2<sup>nd</sup> Defendant in his Defence and Counterclaim admitted that it is the Plaintiff who constructed permanent structures on the suit land. Further, he sought for statement of accounts in respect to rental proceeds and mesne profits. I note the orders he is seeking in the instant application form part of the prayers sought in the Counterclaim. Be that as it may, I note the 1<sup>st</sup> Defendant is also claiming ownership of the suit land and has annexed a Certificate of Title to that effect.



9. The Defendants have argued that there are previous proceedings in respect to the suit land, but I note that on 30<sup>th</sup> April, 2024, Justice E. K. Wambwoto granted an interlocutory injunction pending outcome of this suit, restraining the Defendants from enforcing an eviction notice dated the 23<sup>rd</sup> May, 2023 as against the Plaintiff, which were not appealed against.
10. I note the 2<sup>nd</sup> Defendant has sought for prayers which are mandatory in nature, and will culminate in the determination of this suit. In *Nation Media Group & 2 Others v John Harun Mwau* [2014] eKLR, the Court of Appeal held that:

“It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrate as we have stated a temporary mandatory injunction can only be granted in exceptional and in the clearest of cases.”
11. While in *Kenya Breweries Ltd & Another v Washington O. Okeyo* [2002] eKLR, the Court of Appeal stated as follows:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence or 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 be easily remedied or where the appellant had attempted to steal a march on the appellant. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”
12. Insofar as I have had a chance to peruse a related judgement by Justice Oguttu Mboya, dismissing the Plaintiff's claim on adverse possession over the suit land, noting that both Defendants stake a claim over the said property, I am of the view that the prayers of mandatory injunction being sought by the 2<sup>nd</sup> Defendant cannot issue at this interlocutory stage as none of the Defendants constructed on the suit land. Further, there are already injunctive orders in favour of the Plaintiff, which are yet to be set aside.
13. At this juncture, I opine that since there are no special circumstances to warrant the granting of the mandatory orders as sought, it would be pertinent for viva voce evidence to be adduced to enable the court make a final determination on who is the owner of the suit land and the period within which, the Plaintiff has received rental proceeds therefrom as this will form part of the mesne profits to be awarded.
14. In the circumstances, while associating myself with the decisions cited, I find that the instant Notice of Motion application is unmerited and will decline to grant the orders as sought.
15. I hence dismiss the Notice of Motion application dated the 26<sup>th</sup> October, 2023 but with no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5<sup>TH</sup> DAY OF MAY 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:



Ligunya for 2<sup>nd</sup> Defendant/Applicant

Jane Okoth for Plaintiff

Ms Nyaga holding brief for Mukami for 1<sup>st</sup> Defendant

Court Assistant: Susan

