



**Masoni (Suing as the Legal Representative of the Estate of Ben Masoni) v Shimenga
t/a Webuye Printers & Farmers Hotes (Environment and Land Miscellaneous
Application E014 of 2025) [2025] KEELC 5221 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5221 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2025
EC CHERONO, J
JULY 3, 2025

BETWEEN

SELINA NAMALWA MASONI APPLICANT

SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF BEN MASONI

AND

**WASHINGTON SHIMENGA T/A WEBUYE PRINTERS & FARMERS
HOTES RESPONDENT**

RULING

1. Before me is the Notice of Motion dated 11/04/2025 seeking the following orders:
 - a. That This application be certified as extremely urgent and service be dispensed with in the first instance THAT Respondent be directed to deposit rent in this court pending the hearing and determination of Environment and Land case Number 160 of 2017.
 - b. That the Deputy Registrar to visit the suit plot 75 and serve the Respondent who is a tenant operating various businesses under Webuye Municipality Plot 75 to deposit rent in court
 - c. The costs of this application be borne by Respondent.
2. The application is based on the grounds set out on the face of the application supported by the affidavit of the Applicant sworn on an even date.
3. In her supporting affidavit, the Applicant deposed that she is the widow and Administrator of the Estate of Ben Masoni (deceased) who was the registered owner of Webuye Municipality Plot 75(hereinafter referred to as “the suit land”) and a grant issued to her on 08/11/2010. That the Respondent who is a tenant in the suit land was erroneously omitted when the court directed that rent be deposited in this court vide a Ruling delivered on 19/07/2018 and 14/12/2023 in ELC cause 160



- of 2017 pending hearing and determination of ownership of the subject Plots. That it will be just and equitable for the Respondent who is a Tenant in the suit land to be ordered to deposit rent in this court since he has benefitted with the situation of lack of a legitimate Landlord.
4. In opposition, the Respondent filed a replying affidavit sworn on 06/05/2025 in which he confirmed that he is a tenant in the suit land but the same is registered in the name of Marygorret Nasimiya Munoko and is currently being managed by the legal administratrix namely Scholastica Wakasa. That this suit is misplaced as neither he nor his landlady are parties to ELC cause 160 of 2017. He sought for a dismissal of the application.
 5. The Applicant filed a supplementary affidavit sworn on 12/05/2025 where she deposed that the Respondent has not produced any document to support the ownership of the said plot in the name of Marygorret Nasimiya Munoko (deceased) as alleged. That the Business Premises Rent Tribunal sitting at Kakamega on the 01/06/2018 ordered the Respondent to pay rent to her as the Administrator of the Estate of the Late Ben Masoni at the time the tenancy Agreement attached was executed in September 2016 when the suit land still belonged to the Estate of the Late Ben Masoni under High Court Succession Case 51 of 2005. That the ownership of the suit land is yet to be determined and this court has the duty to preserve the estate so as not to go into waste. Lastly, she deposed that the other tenants occupying the suit land are depositing rent with the court save for the Respondent and that he will not be prejudiced if the Respondent is ordered to make the deposits in court the same way others are doing.
 6. When the application came for directions, the parties agreed to have it canvassed by way of written submissions.
 7. The Applicant filed submissions dated 15/04/2025 and argued that there are two Plots that are subject of ownership dispute before this Honourable Court being Webuye Municipality Plot 74 and 75 which is the suit land. That previously, the Deputy Registrar of the Environment and Land court visited Webuye Municipality Plot 74 pursuant to a ruling delivered on 19/07/2018 and served the tenants with a court order who have since then been paying rent in accordance with the said Court order. She argued that it has come to her realization that Webuye Municipality Plot 75 was erroneously omitted when the Court issued the said orders and that the Court in a subsequent ruling delivered on 11/12/2023 in ELC Cause 160 of 2017 made further orders that the Rent for Webuye Municipality Plot 74 and the suit land be deposited in court pending the full determination of the ownership case.
 8. The Applicant submitted that vide Succession Cause No 51 of 2005, the High Court later amended the grant on the 25/04/2023 removing the Subject Plot from the grant and directed the parties to seek an ownership dispute resolution of Webuye Municipality Plot 74 and the suit land plot NO. 75 through the Environment and Land Court which is mandated to determine ownership disputes under Article 162 (2) of *the Constitution* of Kenya 2010. She argued that the Environment and Land Court is granted powers under Section 13(7) of the *Environment and Land Court Act* to grant interim or permanent preservation orders including injunctions.
 9. The Applicant further submitted that the substratum of the Application can be done through Interim Preservation orders of the suit land by directing the Respondent to deposit Rent in court pending the hearing and determination of Environment and Land case 160 of 2017. Reliance was placed in the case of Rose Njeri Ndegwa v Samuel Sobi J. Misingu [2019] eKLR. Lastly, she submitted that it is in the interest of justice that the Respondent be directed to deposit rent in this honourable court pending hearing and determination of the Environment and case NO. 160 of 2017.
 10. The Respondent on his part filed submissions dated 25/04/2025 and submitted that the Respondent lacks capacity to sue or be sued over the said parcel of land. He stated that he is only entitled to quiet



possession of his tenancy. He argued that the suit referred to as Bungoma ELC no. 160 of 2017 is a dispute over ownership of plot no. Webuye Municipality no. 74 only and has never included plot no. 75. That the owners of plot no. 75 have never been sued in the said suit. It was further submitted that the orders sought by the Applicant are substantive in nature yet there is no suit that the Respondent can be heard if the orders were to be granted. He argued that she is not a party and neither is her landlady in ELC Case NO. 160 of 2017.

11. He submitted that there is no law that provides for a separate file or suit to cure or review orders in a different suit. He submitted that the Applicant has been making attempts to introduce plot no. 75 in Bungoma ELC no. 160 of 2017 without success and now wants to obtain unsustainable and oppressive orders through these proceedings.

Legal Analysis And Decision

12. I have carefully considered the parties' submissions, the pleadings on record, and the legal issues arising from the same.
13. The gist of the application is that the Applicant seeks preservation orders requiring the Respondent to deposit rent in court in relation to Webuye Municipality Plot No. 75, pending the hearing and determination of Bungoma ELC Case No. 160 of 2017. The Applicant's argument is that the ownership of both Plot No. 74 and the suit land (Plot No. 75) is in dispute before this court in ELC 160 of 2018 which I must note is between Ashon Sikolia Wanyonyi & Luka Makhoka Wanyonyi vs. Selina Namalwa Masoni, the County Government of Bungoma & Alexander Muchai. The Applicant also contends that the High Court, in Succession Cause No. 51 of 2005, directed that the ownership of the said plots be heard and determined in the ELC, hence justifying the preservation orders sought.
14. However, upon close scrutiny of the record, it is evident that the Applicant has not annexed any of the rulings allegedly delivered in Bungoma ELC Case No. 160 of 2017 to demonstrate that the issue of ownership of Plot No. 75 is in controversy in that case. The documents availed before me is an order from the High Court in the succession cause NO. 51 of 2005 which excluded Plots Nos. 74 and 75 from the confirmed grant and directed that the issue of ownership be determined in the appropriate forum. The other document relied on is the ruling of this court delivered on 14/11/2024 disallowed an application for the release of monies deposited in the court on account of the parties herein pursuant of the order of the court issued on 20/07/2018.
15. The court in its ruling delivered of 14/11/2024 acknowledged the Succession Court's directions on the issue of ownership of Webuye Municipality Plots Nos. 74 and 75 but did not make an order for the deposit of rent in respect of the suit land to the court as alleged by the Applicant but in accordance with the initial orders of 20/07/2018 which are subsisting pending determination of the suit being ELC 160 of 2018. This court is of the view that the documents in support of the Applicant's case alone do not establish that such litigation has been commenced or is active in respect of the suit land.
16. This court has suo moto perused the proceedings in ELC No. 160 of 2018 as well as the order issued on 20/07/2018 and note that the said order was in fact issued on 19/07/2018 by Hon. Justice B. Olao. From the court record, it emerges that the court directed the deposit of rent in respect of Webuye Municipality Plot No. 74, which is the subject of the dispute in that suit. Accordingly, the assertion by the Applicant that the suit property herein, namely Webuye Municipality Plot No. 75, is part of the litigation in ELC No. 160 of 2018 is unfounded and erroneous. As a matter of fact, there are no orders made in that suit in relation to Plot No. 75.
17. Further, it emerges that the alleged landlord or owner of plot no.75, whether lawful or otherwise is not a party to Bungoma ELC Case No. 160 of 2017, nor that any pleadings in that case touch on the suit



land. As such, the Applicant's reliance on that case as the substantive basis for interim conservatory orders over Plot No. 75 is not supported by the materials on record. Again, if the orders sought were granted, it would effectively bind individuals who have not been heard in any other case, raising serious concerns of procedural fairness. In essence, the Applicant cannot obtain substantive orders affecting a third party's interest in land through a miscellaneous application unsupported by a valid suit in which ownership is contested and parties are properly joined. Any such orders would be contrary to the principles of natural justice and due process.

18. As was stated by the Court in *Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others* [1995] eKLR, courts will not grant injunctive or preservation orders in a vacuum or where the legal rights in question are not properly anchored in existing proceedings. In the present matter, the absence of any pleading or proceeding directly addressing any dispute on the suit land undermines the existence of such a prima facie case for granting of the orders sought. In as much as the court acknowledges that the issue of ownership of Webuye Municipality Plots Nos. 74 and 75 is in contention by virtue of the orders of the succession court and although it is flexible, it is not blind to structure and process.
19. In my view, I find the Respondent's argument that the orders sought are not tenable in law is persuasive. The upshot of my finding is that the Applicant's Notice of Motion application dated 11th April, 2025 is devoid of merit and the same is hereby dismissed with costs to the Respondent.
20. Orders accordingly.

DATED AND SIGNED AND DELIVERED AT BUNGOMA THIS 3RD DAY OF JULY, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

Mr. Wekesa H/B for Mr. Sichangi for Respondent.

Mr. Oira for the Applicant.

Bett C/A.

