



**Singombe (Suing as the Administrator of the Estate of Sospeter Manyisa Orwendo - Deceased) v Orwenyo & another; Nanok (Interested Party) (Environment & Land Case E007 of 2024) [2025] KEELC 5010 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5010 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT & LAND CASE E007 OF 2024**

**MN MWANYALE, J**

**JULY 3, 2025**

**BETWEEN**

**DRUCILLA KERUBO SINGOMBE (SUING AS THE ADMINISTRATOR OF THE ESTATE OF SOSPETER MANYISA ORWENDO - DECEASED) PLAINTIFF**

**AND**

**DAVID ORWENYO ..... 1<sup>ST</sup> DEFENDANT**

**RODAH MOMANYI ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**HON. JOSPHAT NANOK ..... INTERESTED PARTY**

**RULING**

1. Orders (i), (ii), (iii) (iv) and (v) as sought in the application dated 12<sup>th</sup> March 2024 filed by the Plaintiff/Applicant Drucilla Kerubo Singombe through her Advocates are a replica of the substantive declaratory reliefs of the Plaint dated 12<sup>th</sup> March 2024.
2. Of course, declaratory orders cannot be sought and granted at an interlocutory stage like in the application subject of this Ruling hence the court shall determine the application based on prayers (vi) thereof to wit;
  - i. Spent.
  - ii. Spent.
  - iii. Spent.
  - iv. Spent.



- v. Spent.
  - vi. A permanent injunction to restrain the Respondents from entering into, fencing, building, selling, transferring and/or in any way interfering with the deceased's estate or beneficiaries lawful use of all that parcel of land known as Transmara/Moyoi/344.
3. The application is supported on grounds interalia; -
    - i. That Transmara/Moyoi/344 had been transferred sometimes in 2024 to the interested party on the strength of a power of Attorney whose Donor had died before the transfer was effected.
    - ii. That the suit property thus ought to form party of the original owners Estate and the family stands to be deprived its right of inheritance, if orders sought are not granted.
  4. The application is further supported by the supporting affidavit of Drucilla Kerubo Singombe who reiterates the ground in support of the application and has annexed interalia, a copy of letters of administration ad litem, copy of deceased's death certificate
  5. In opposition to the application, a Notice of Preliminary Objection dated 15<sup>th</sup> of May 2024 was filed by the defendants as well as a Replying affidavit of Mr. David Nyamota Orwenyo the 1<sup>st</sup> Defendant herein who deposed interalia; -
    - i. that the marriage between the Applicant and the deceased was contested and
    - ii. that the 1<sup>st</sup> Defendant had a power of Attorney donated to him by the deceased and that the suit property was sold on the strength of the said power of Attorney.
  6. Vide a Ruling dated 23<sup>rd</sup> September 2024, the issues raised vide the Notice of Preliminary Objection were dealt with; and thus suit was struck out, however vide an application dated 27<sup>th</sup> September 2024, the Plaintiff/Applicant sought a review of the ruling dated 23.09.2024, and the suit was reinstated vide the ruling dated 12<sup>th</sup> February 2025.
  7. Upon reinstatement of the suit, the Applicant thus sought for the disposal of the application dated 12.03.2024, while the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sought time to file responses to the said application; which they were granted, thereafter the court directed the disposal of the application by way of written submissions.

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

8. The Applicant submits that the Application is merited and has cited the case of Giella Vs. Cassman Brown on the principles of grant of a temporary injunction and the decision of Mrao Limited Vs. First American Bank Ltd and 2 Others, on the definition of a prima facie case.
9. It is the Plaintiff's submission that the suit property ought to form part of the Estate of the deceased (Sospeter Manyisa Orwenyo) but was transferred posthumously pursuant to a power of Attorney; and that demonstrates the infringement of a right.
10. On irreparable loss, the Applicants placing reliance on the decision in Nuguruman Limited Vs. Jan Bonde Nielsen and 2 Others, submit that the Estate will be robbed off their property but virtue of the fraudulent activities of the Respondents, hence suffer irreparable loss.
11. On the issue of balance of convenience, the Applicant submits that the balance of convenience tilts in her favour.
12. The Applicant also submit for the award of costs; and relies on Section 27 of the [Civil Procedure Act](#).



### **1<sup>st</sup> and 2<sup>nd</sup> Defendant's/Respondent's Submissions**

13. The said Respondents have framed one issue for determination to wit, whether or not the Application is merited. It is their submission that the Application is not merited as it is premised on provisions of the *law of Succession Act* and that the Applicant has not established a prima facie case with probability of success, as the plaintiff was never bethrowed to the deceased under the Abagusii Customary Law, and hence the Applicant has no locus to institute the case.
14. That the sale of the suit property was lawfully done by way of a power of Attorney. Thus, no prima facie has been established, The Respondents submit for the dismissal of the case.

### **Interested Party's Submission**

15. The interested party submits that he acquired the suit property legally vide an Agreement for sale dated 15.08.2023, made pursuant to power of Attorney which authorised the 1<sup>st</sup> Defendant to transact on behalf of the deceased (Sospeter Manyisa Orwenyo). He cites the decision in the case of Anne Murambi Vs. John Munyao Nyamu and Another (2018) on the proposition, that a sale done under a power of Attorney is valid and places further reliance on Section 26(1) on the indefeasibility of ownership conferred to a title holder.
16. He further submits that he is a Bonafide purchaser for value and that the suit property having been already transferred renders the application moot.
17. On the strength of the above the interested party submits that the Application be dismissed.
18. Before framing issues for determination, the court notes that the two previous Rulings herein made findings of facts in relation to;
  - i. The transfer of the suit property to the interested party was made after the death of Sospeter Manyisa Orwenyo (paragraph 42 of Ruling dated 12.02.2025).
  - ii. That the Applicant has sufficient locus standi to institute the proceedings having acquired letters of administration Ad Litem (paragraph 31 and 32 of the Ruling dated 23<sup>rd</sup> September 2024).
19. The above two findings of the court are undisputed and thus essentially dispose off the contentions raised by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their Responses and submissions, and the court having made findings on them in the previous Ruling, the same shall not form part of the issues for determination, herein.

### **Issues for Determination**

20. Having analysed the application, the affidavits and submissions the court frames the following as the only issues for determination to wit,
  - i. Whether or not the application is merited?
  - ii. What reliefs ought to issue.
  - iii. Who bears the costs of the suit.



## Analysis and Determination

21. In order to determine issue number 1 as to whether or not the application is merited; the court shall examine whether the Applicant has met the conditions for grant of a temporary injunction.
22. Upon perusal of the court file, the court found out that an inhibition order was issued on 11.04.2024 by Hon. E.M. Washe J when he was seized of the matter and that the said inhibition order lapsed when the suit was struck out, but is now in force upon reinstatement of the suit.
23. The principles for grant of a temporary injunction are well settled. In *Giella Vs. Cassman* the principles were stated to be “Firstly, an Applicant must show a prima facie case with a probability of success, secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer imperable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”
24. On the issue prima facie, the same was defined in *Mrao Limited Vs. First American Bank Limited* to be “a prima facie case in a civil includes but is not confined to a genuine and arguable case. It is a case on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has been apparently been infringed by the opposite party so as to call for an explanation or rebuttal from the later”.
25. Has the Applicant established a prima facie case? In the previous two rulings, the court made a finding that a transfer had been executed on the strength of a power of Attorney that had been extinguished by death of the donor.
26. As a result of the said transfer the property was registered in the name of the interested party, while the same ought to form part of the Estate of Sospeter Manyisa Orwenyo (deceased).
27. The Applicant by virtue of the irregular transfer of the property by the 1<sup>st</sup> Defendant to the Interested party has demonstrated an infringement of a right and on that score has established a prima facie case, with probability of success.
28. On the issue of irreparable damages and balance of conveniences the 2<sup>nd</sup> and 3<sup>rd</sup> principles in *Giella Vs. Cassman Brown*. By virtue of the existence of the inhibition order, already in place, there can be no transfer of the suit property to 3<sup>rd</sup> parties, hence the issue of irreparable damages does not arise, as the suit property cannot be transferred and/or be subdivided. On the 3<sup>rd</sup> principle of balance of convenience, the Applicant is not in possession of the suit property, which suit property was already transferred albeit irregularly to the interested party.
29. The court finds that while the Applicant has established a prima facie case she has not established the two other principles and therefore an injunction in terms of prayer 6 of the application cannot issue.
30. The court is cognisant of the need of preserving the suit property, and the inhibition order been already in force is one way of preserving the suit property and thus in exercise of the powers under practice direction 28k issued vide Gazette Notice No. 5178/2014, the court issues an order of status quo pending hearing and determination of the suit.
31. The status quo on the register shall mean that the inhibition order in place shall remain to prevent any transfers, charges and/or subdivision of Transmara/Moyoi/344 while the status quo on the ground to mean that the person in occupation to remain in possession of the suit property but not to subdivide and/or waste the same, pending hearing and determination of this suit.
32. Costs of the application shall be in the cause.



**DATED AT KILGORIS THIS 3<sup>RD</sup> DAY OF JULY, 2025.**

**HON. M.N MWANYALE**

**JUDGE**

In the presence of

CA – Emmanuel/Sylvia/Sandra

Ms. Achieng for the Applicant

Mr. Kiprotich for Interested Party

Mr. Onderi for the Respondent

