



**Njoroge (Suing as a Co administrator of the Estate of the Late Margaret
Wanjiru Njoroge) v Njoroge & another (Environment & Land Case
E286 of 2024) [2024] KEELC 6983 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6983 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E286 OF 2024
LN MBUGUA, J
OCTOBER 16, 2024**

BETWEEN

**FRANCIS MUNGAI NJOROGE PLAINTIFF
SUING AS A CO ADMINISTRATOR OF THE ESTATE OF THE LATE
MARGARET WANJIRU NJOROGE**

AND

**HUMPHREY GITAU NJOROGE 1ST DEFENDANT
NORBERT WAITHARI NJOROGE 2ND DEFENDANT**

RULING

1. Before me is the Plaintiff's Notice of Motion dated 12.7.2024 seeking orders that pending the hearing and determination of the suit, a temporary injunction do issue restraining the Defendants by themselves, their agents, servants or other persons whether acting on their own or on the Defendant's behalf from interfering, alienating, transferring or howsoever dealing with the suit property known as L.R. 4894/44 situated at Garden Estate in a manner likely to alienate, subdivide or transfer the suit property.
2. Further, that pending the hearing and determination of the suit, this Court do issue an order compelling the Defendants to deliver up the original title the Property known as L.R. 4894/44 situated at Garden Estate currently in their possession.
3. The application is premised on grounds set out on the face of the application and on the supporting affidavit of the applicant dated 12.7.2024. The case of the applicant is that himself and the 1st defendant are the co-administrators of the estate of the late Margaret Wanjiru pursuant to the grant of letters of administration issued on 20.10.2023.



4. However, the respondents have been intermeddling with the estate of the deceased and have also been wasting the property. Thus the applicant stands to suffer great prejudice unless the injunctive orders are granted.
5. In opposition thereof, the 1st defendant filed a replying affidavit dated 1.10.2024 where he admits that himself and the applicant are the co-administrators of the estate of the deceased pursuant to the grant given in the case High court succession case No. 1857 of 2012. He contends that the property in question is still under consideration. He avers that the order granting access to the suit property was issued in the succession cause, and this was to facilitate identification of the respective shares of the beneficiaries. He avers that the right forum for the determination of this matter is the succession court.
6. I have considered all the issues raised herein. There is no dispute that the property in question parcel L.R. 4894/44 is part of the estate of the deceased and that the applicant and the 1st respondent are co-administrators. It is also apparent that distribution of the estate has not taken place. Should this court proceed to grant the injunctive orders sought in such circumstances?
7. The law on grant of interlocutory injunctions is set out under Order 40 (1) of the Civil Procedure Rules 2010. It is one of the provisions of the Civil Procedure Rules imported into the [Law of Succession Act](#) by dint of Rule 63 of the Probate and Administration Rules.
8. The applicant has not given any plausible explanation as to why he did not make the application before the court which is seized of the substantive matter, that is the succession court, yet the said court can issue injunctions or interim measures to safeguard the property. To this end, I make reference to the case of *In re Estate of Kaleb Mwangi Hezekiah Muchoki (Deceased) (Succession Cause 1405 of 2019) [2021] KEHC 4667 (KLR) (Civ) (27 July 2021) (Ruling)*.
9. It is also not lost to this court that an order was issued in the succession court dated 29.2.2016 directing the applicant herein to allow all the beneficiaries of the deceased to access the suit property. The scope of compliance and or none compliance with the said order can only be canvassed before the succession court which issued the order.
10. I find that the granting of the orders sought may result in the issuance of conflicting and or overlapping orders. For now, it suffices to state that the application dated 12.7.2024 is not merited, the same is hereby dismissed with costs to the 1st defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16th DAY OF OCTOBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Weyambo for 1st Defendant

court assistant: Joan

