



**Njoroge (Suing as Co-administrator of the Estate of the Late Margaret Wanjiru Njoroge) v
Waiharo & 4 others (Land Case E165 of 2024) [2025] KEELC 4100 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4100 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E165 OF 2024
CA OCHIENG, J
MAY 14, 2025**

BETWEEN

**FRANCIS MUNGAI NJOROGE (SUING AS CO-ADMINISTRATOR OF THE
ESTATE OF THE LATE MARGARET WANJIRU NJOROGE) PLAINTIFF**

AND

**DAVID NJONJO WAIHARO 1ST DEFENDANT
MIDDLE EAST AFRICA AUTO SPARES LIMITED 2ND DEFENDANT
HUMPHREY GITAU NJOROGE 3RD DEFENDANT
THE CHIEF LANDS REGISTRAR 4TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 5TH DEFENDANT**

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated the 6th April 2024 where he seeks the following Orders:
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing and determination of this suit, this Honourable court be pleased to grant a temporary injunction restraining the 1st and 2nd Defendants/ Respondents by themselves, their servants, agents or any one of them from in any way interfering with the property known as LR No. 209/8675 located at Industrial area, Nairobi, Kenya either by leasing, further sub-leasing, charging, or in any other way interfering with the property.
 - d. That pending the hearing and determination of this suit, this Honourable court be pleased to grant an order directing the 1st and 2nd Defendants/ Respondents herein to deposit any



proceeds of the rent received for any of the sub-leases issued on the mother title deed of all that property known as LR No. 209/8675 located at Industrial Area, Nairobi Kenya to this Honourable court.

- e. That pending the hearing and determination of this suit, this Honourable court be pleased to issue an order directing the 1st and 2nd Defendants /Respondents to render complete accounts to this Honourable court from the debit entries and credit entries accruing from the sub-leases entered into between the 1st and 2nd Defendants and 3rd party sub –lessees as well information relating to any charges registered on the property known as LR No.209/8675 located as Industrial area, Nairobi ,Kenya currently in their possession.
 - f. That the costs occasioned by this application be borne by the 1st and 2nd Defendants/ Respondents.
 - g. That this Honourable court be pleased to grant any further orders as it may deem fit to meet the ends of justice.
2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that the 3rd Defendant is his brother and a co - administrator of the estate of their late mother, Margaret Wanjiru Njoroge, herein referred to as 'deceased'. Further, that before the deceased passed away, she had entered into a Lease Agreement dated the 2nd May 2006 with the 2nd Defendant, for lease of her property known as LR No. 209/8675 for a period of eight (8) years, which Lease was to run until 3rd May 2014, but even after its expiry in 2014, the 1st and 2nd Defendants continue to illegally occupy the deceased's property.
 3. He claims that there has been registered another Lease extending the 1st Defendant's occupation of the suit property for twenty - five (25) years from 4th May 2012. He asserts that the said Lease was entered into after their mother's demise on 31st October 2008 and before Letters of Administration had been procured. Further, he refers to the huge sums of money that were allegedly advanced to the deceased but not backed up by any documentary proof. He argues that the alleged extension of Lease was obtained at a gross undervalue. He insists that the signatures on the alleged extended Lease are forged, as there are discrepancies in the signature patterns. He contends that the 1st Defendant and his lawyer have been Charged with various offences relating to fraud and forgery of the said Lease in Makadara Criminal Case No. 4902 of 2023. He avers that the 1st and 2nd Defendants have issued long term sub-leases to third parties on the suit property in order to frustrate any attempts at recovering the said property. Further, that they have unlawfully obtained the original title deed of the property, which they continue to retain.
 4. The 1st and 2nd Defendants opposed the instant application vide the replying affidavit of the 1st Defendant, who is also the Managing Director of the 2nd Defendant. He confirms the existence of a valid extended Lease Agreement between the deceased and the 2nd Defendant and contends that it is on this basis that the 2nd Defendant erected buildings, offices and Go-downs, which it sub-lets to tenants. He admits that the initial Lease between the deceased and the 2nd Defendant was for an eight (8)-years term commencing in May 2006 but in 2008, the deceased, in exchange for a Kshs. 5 million advance, which she intended to utilize in subdividing her property in Garden estate, agreed to extend the existing Lease by a further twenty-five (25) years, by depositing the original title deed with him, as security but he lost it in a fire tragedy at his shop in 2014, which loss he reported and was issued with an abstract on 12th July 2024.
 5. Further, that an agreement to that effect was executed on 10th August 2008 and thereafter Kimamo Muchiri Advocate was instructed to prepare a new Lease document reflecting the extension of the



- twenty-five (25) years, which he did and all the parties executed it, but it remained undated in order not to attract penalties at the time of registration as regards payment of stamp duty and it was subsequently registered after the deceased's demise. He maintains that the 2nd Defendant has consistently paid rent equally to all the deceased's children, including the Plaintiff.
6. He contends that subsequent to execution of the extension of Lease, the Lessor was admitted following an illness but she succumbed on 31st October 2008 having accumulated hospital bills, which he helped in paying including part of the burial expenses. Further, that the Plaintiff lived in the United Kingdom and when he moved back to Kenya in 2010, he started harassing the 2nd Defendant necessitating it to file Business Premises Rent Tribunal Case No. 197 of 2010. In the said matter, the 3rd Defendant herein and his sibling Nobert Wathari Njoroge swore replying affidavits clarifying that they were aware of deceased's intention to extend the Lease and the Kshs. 5 million advanced to her by the 2nd Defendant, following which the Tribunal issued orders stopping the Plaintiff herein from evicting the 2nd Defendant from the suit property.
 7. He also highlighted other previous cases between the parties herein including a second BPRT Case No. 522 of 2014 and High Court Nairobi Civil Suit No. 406 of 2011, where a temporary injunction was issued restraining the Plaintiff from interfering with the suit property. Further, in Succession Cause No. 1857 of 2012, a Ruling dated the 29th February 2016 was delivered by Justice Muigai who directed the administrators of the deceased's estate to facilitate a valuation of the suit property with a view to determine rent payable at market value before distribution amongst beneficiaries of the deceased and maintained that beneficiaries would continue to share rent receivables from the said parcel equally pending distribution.
 8. He asserts that while a complaint was lodged and a criminal case initiated, the matter (Criminal Case No. 3299/2021) was withdrawn following a forensic document examiner's report and the Director of Public Prosecutions' confirmation through the letter dated 25th September 2015, addressed to the Directorate of Criminal Investigations confirming that there was no evidence of forgery.
 9. He reiterates that on the 8th August 2023 he was re – arrested and arraigned in court on 11th August 2023 and Charged afresh together with Christopher Kimamo Muchiri, the advocate, who drafted the extended Lease. He points to a letter dated the 4th October 2023 from J.W Kamuyu, Land Registrar, confirming the Registrar's authenticity of his signature on the relevant documents and contends that it is inevitable that the criminal charges levelled against them will be dismissed.
 10. He argues that the Plaintiff has not demonstrated any apparent right that has been violated to warrant the injunctive orders sought emphasizing that he continues to receive monthly rental income. Further, that granting the orders as sought would cause significant prejudice to the 2nd Defendant and the sub-tenants occupying the premises under the existing Lease arrangements.
 11. The application is also opposed by the 3rd Defendant who is the Plaintiff's co-administrator of the estate of their deceased mother vide his replying affidavit and a further affidavit sworn on 28th October 2024. He avers that he is aware that the deceased was advanced a sum of Kshs.5 million by the 2nd Defendant and that she deposited the original title deed to the suit property, with the 1st Defendant as security to extend the Lease for a further twenty-five (25) years and allowed the 2nd Defendant to undertake further developments on the said suit property.
 12. He avers that the 1st Defendant greatly assisted them by paying hospital bills that the deceased had incurred and they agreed to reconcile them on account of rent. He claims that the Plaintiff came back to Kenya in 2010 after being in the United Kingdom for thirteen (13) years and even after being briefed



about the extended Lease, he started harassing the 2nd Defendant in relation to its occupation of the subject property.

13. He confirms that there have been various suits concerning the suit property. He contends that as an Intended Administrator of the estate of the deceased, he approached the 1st Defendant and they entered into an agreement dated the 4th May 2012 whose terms were that the 1st Defendant would facilitate the intended process of administration of the estate of the deceased. Further, that the 2nd Defendant would revoke the extended Lease of twenty-five (25) years after expiry of the eight (8) years Lease, provided they would refund to him the advance payment of Kshs.5 million paid to the deceased within sixty (60) days from the date of issuance of the Letters of Administration.
14. He avers that in attempt to frustrate the process of administration, the Plaintiff lodged a Complaint with the Directorate of Criminal Investigations alleging that the 2nd Defendant through its director had fraudulently extended the Lease in relation to the suit property. He insists that the Plaintiff is abusing the criminal justice system in collusion with some officers at the Directorate of Criminal Investigations to coerce the 2nd Defendant to vacate the suit property and as a consequence, Criminal Cases No. E4902 of 2023 and No. E7952 of 2023 are live at the Makadara Chief Magistrate's Court.
15. He contends that it is hypocritical for the Plaintiff to seek the orders sought herein yet he continues to receive rent from the 2nd Defendant who is complying with orders issued on 29th February 2016 in Succession Cause 1857 of 2012 and had even made payments for the months of August – October 2024. He contends that status quo should be maintained without interfering with the 2nd Defendant's occupation as doing so would greatly cause harm to all the occupants yet the alleged forgery of Lease has not been determined.
16. The 4th and 5th Defendants did not file responses to oppose the instant application, which was canvassed by way of written submissions.

Submissions.

17. The Plaintiff in his submissions contends that he has established a prima facie case as there is evidence of illegal extension of the impugned Lease since it was obtained after his mother's demise and before Letters of Administration of her estate were issued. He argues that the Court cannot enforce an illegal contract. Further, that the issue of whether or not damages can be an adequate remedy does not fall for determination since the action complained of is unlawful. He further submits that the suit property is a commercial property wherein, the 1st and 2nd Defendants are accruing benefits to the detriment of the deceased's estate and they should not be allowed to benefit from their illegality. He reiterates that on a balance of convenience, he will be occasioned greater loss if the court does not grant the injunction since the 1st and 2nd Defendants did not demonstrate that the impugned Lease was legally extended. To buttress his averments, he relied on the following decisions: *Mrao Limited v First American Bank of Kenya Limited & 2 Others* [2003] KLR 125; *Kenya Airways Limited v Satwant Singh Flora* [2013] eKLR; *Mistry Amar Singh v Kulubya* [1963] EA 408; *Banis Africa Ventures Limited v National Land Commission* [2021] eKLR; *Chevii Kipkoech v Barnabas Tuitoek Bargarora & Another* [2019] eKLR, *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 Others* [2016] eKLR and *Kenleb Cons Ltd v New Gatitu Service Station Ltd & Another* [1990] eKLR.
18. The 1st and 2nd Defendants in their submissions reiterated their averments as per their replying affidavit and insisted that the Plaintiff has not met the threshold for the grant of temporary injunction as the Lease registered against the suit property by the 1st and 2nd Defendants herein dated the 29th December 2008 for a period of twenty five (25) years remains in force to date as no determination has been made yet on its authenticity. Further, that the 1st and 2nd Defendants continue to honour the terms of the said



Lease by paying monthly rent to the Plaintiff together with his siblings as directed by the High Court in a Ruling delivered on 29th February 2016 by Justice Muigai in Succession Cause No. 1857 of 2012. They insist that no irreparable injury would be suffered by the Plaintiff if a temporary injunction is not granted, as they are the ones who would suffer irreparable injury as they are the tenants who have sublet the suit property and would not be able to access it including their businesses. They aver that the Plaintiff will not suffer any irreparable injury as together with his siblings, he is receiving rent and the balance of convenience is in favour of not granting an injunction. To support their arguments, they relied on the following decisions: *Giella v Cassman Brown* [1973] EA 358 and *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR.

19. In his submissions, the 3rd Defendant reiterates the averments in his affidavits and contends that the suit property is subject to an active succession cause being Nairobi High Court Succession cause No. 1857 of 2012. Further, that the succession court will eventually oversee the distribution of the deceased's estate. He explains that the Court had already issued directions on rent collection and distribution of the same, to the beneficiaries of the estate thus this court might issue contradictory orders if it proceeds with the matter. He argues that this Court lacks jurisdiction to hear and determine the application for reasons that the suit property touches on the succession cause. To support his arguments, he relied on the Supreme court case of *Mary Wambui Munene v Peter Gichuki King'ara and 2 Others* [2014] eKLR.

Analysis and Determination.

20. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivaling submissions, at this juncture, the only issue for determination is whether the Plaintiff is entitled to orders of interlocutory injunction restraining the Defendants from interfering with the suit property pending the outcome of this suit.
21. In relying on the principles as stated in the case of *Giella vs Cassman Brown* [1973] EA 358 as well as the description of a prima facie case as espoused in the case of *Mrao Ltd v First American Bank Limited* [2003] eKLR, I will proceed to decipher if the Plaintiff has established a prima facie case to warrant the orders of interlocutory injunction as sought.
22. The Plaintiff's claim is primarily based on the contention that a subsequently registered Lease on the suit property, which is owned by the deceased estate, purportedly extending the 2nd Defendant's occupation of the said land, for a further twenty-five (25) years from May 4, 2012, is invalid due to the fact that the same was entered into after the deceased's demise and prior to the Grant of Letters of Administration. The Plaintiff has not disputed the fact that the suit property has been subject to various law suits including the aforementioned succession cause, wherein Justice Muigai had made orders on the sharing of rental proceeds therefrom. The Plaintiff has further not denied that he has been receiving a portion of the rental proceeds in respect to the suit property, from the 1st and 2nd Defendants.
23. Looking at the documents presented and referring to the Ruling dated the 29th February, 2016 in Nairobi High Court Succession Cause No. 1857 of 2012, I note the Plaintiff and 3rd Defendant are administrators of the estate of their late mother. Further, that prior to their mother's demise, she had entered into a Lease Agreement with the 1st and 2nd Defendants. The 3rd Defendant even admitted that the 1st and 2nd Defendants paid their deceased mother an advance of Kshs. 5,000,000 prior to her demise, which was supposed to be set off from the rental proceeds. The Plaintiff has further not disputed the orders granted in the aforementioned succession cause.
24. From this analysis, it is my considered view that since the issue of the suit property is being dealt with in the aforementioned succession cause, at this juncture, I opine that this court is devoid of jurisdiction



to handle a matter that is subject to succession proceedings in Nairobi HC Succession Cause No. 1857 of 2012. It is my considered view that since Justice Muigai in the said Succession Cause No. 1857 of 2012, vide her Ruling dated the 29th February 2016 directed the administrators of the deceased's estate to facilitate a valuation of the suit property with a view to determine rent payable at market value before distribution amongst beneficiaries of the deceased and maintained that beneficiaries would continue to share rent receivables from the said parcel equally pending distribution, this court should not hence not interfere with the current status quo. Further, on the prayer for accounts, I opine that Statement of Accounts should actually be presented in the aforementioned succession proceedings prior to distribution of the deceased estate.

25. In the foregoing, I find that the Plaintiff has indeed not established a prima facie case as against the Defendants, to warrant the orders of temporary injunction as sought.
26. Further, in relying on the parameters set in *Nguruman Ltd v Jan Bonde Nielsen* [2014] eKLR, where the Court of Appeal held that if a party fails to establish a prima facie case, then irreparable injury and balance of convenience need no consideration, I will decline to deal with these two limbs.
27. In the circumstances, I find the Notice of Motion application dated the April 6, 2024 unmerited and will disallow it.
28. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF MAY 2025.

CHRISTINE OCHIENG.

JUDGE.

In the presence of:

Ms Gwembere holding brief for Nyongesa for Plaintiff/Applicant

Kiongera for 1st and 2nd Defendant

Weyombo for 3rd Defendant

Court Assistant: Susan

