



**Basmer (Suing as the Administrator of the Estate of Ali Said Basmer - Deceased) v I & M Bank Limited & another (Environment and Land Case E018 of 2024) [2025] KEELC 4676 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4676 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E018 OF 2024**

**YM ANGIMA, J  
JUNE 19, 2025**

**BETWEEN**

**BARKA SAID BASMER (SUING AS THE ADMINISTRATOR OF THE ESTATE OF ALI SAID BASMER - DECEASED) ..... PLAINTIFF**

**AND**

**I & M BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**RANJITSINGJI MANGALSINJI VAGHELA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a notice of motion dated 08.03.2024 filed pursuant to Section 1A, 1B and 3A of the [Civil Procedure Act](#), Order 40 Rule 2 of the Civil Procedure Rules and all other enabling provisions of the law the plaintiff sought a temporary injunction to restrain the defendants from interfering with her possession and quiet enjoyment of portion No. 9586(original No.4088/2) or Malindi (the suit property) or from evicting her, demolishing, alienating, disposing of or dealing with the suit property pending the hearing and determination of the suit.
2. The plaintiff pleaded that she was the administrator of the estate of her late husband Ali Said Basmer (the deceased) who was at all material times the registered proprietor of the suit property. It was pleaded that the 1<sup>st</sup> defendant had purported to register a charge over the suit property in 2019 to secure the payment of an overdraft facility granted to Coast Battery Distributors not exceeding Kshs. 15 million without spousal consent as required by law. It was contended that the person who purported to give spousal consent known as Barikech Saad Rashid was not a spouse of the deceased.
3. It was the plaintiff's case that she was not made aware of the alleged overdraft facility and that she later on learnt that the 1<sup>st</sup> defendant had issued a statutory notice for the intended sale of the suit property on account of the impugned charge document. It was claimed that the notices dated 2022 and 2023



were addressed to the deceased who died on 23.10.2020. It was the plaintiff's case that the deceased had only 2 wives during his lifetime and that the said Barikech Saad Rashid was not one of them. The plaintiff therefore contended that the charge over the suit property was illegal, null and void and that any intended sale on account of the impugned charge would be a nullity.

4. The plaintiff further pleaded that unless the interim injunction sought was granted the estate of the deceased stood to suffer irreparable loss and damage which could not be adequately compensated by an award of monetary damages. As a result, the court was urged to allow the application.
5. There is no indication on record to show that the defendants filed any response to the application. The record shows that the 2<sup>nd</sup> defendant informed the court that he did not wish to participate in the application. However, the 1<sup>st</sup> defendant requested for more time on 16.01.2025 and 24.03.2025 to file a response to the application. However, none had been filed by the time of preparation of the ruling.
6. The court has considered the material and submissions on record. The main issue for determination is whether or not the plaintiff has satisfied the principles for the grant of an interim injunction pending the hearing and determination of the suit.
7. The court has noted that the factual basis of the plaintiff's application has not been challenged or controverted by any affidavit. The court is thus inclined to accept the plaintiff's affidavit evidence as true for purposes of the application for interim orders. The court is of the view that the plaintiff has demonstrated a prima facie case with a probability of success at the trial and that the estate of the deceased may suffer irreparable and injury in the absence of an interim injunction.
8. The upshot of the foregoing is that the court finds merit in the plaintiff's application dated 08.03.2024 and makes the following disposal orders;
  - a. The notice of motion dated 08.03.2024 is hereby allowed in terms of order no. 3 thereof pending the hearing and determination of the suit.
  - b. The costs of the application shall be in the cause.

Orders accordingly.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 19<sup>TH</sup> DAY OF JUNE, 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Mr. Gikandi for the plaintiff

Mr. Darr for the 1<sup>st</sup> defendant

Ms. Essajee for the 2<sup>nd</sup> defendant

