



**MGN v ANK (Environment & Land Case E004 of 2024)  
[2025] KEELC 4591 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4591 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E004 OF 2024**

**JM ONYANGO, J  
JUNE 17, 2025**

**BETWEEN**

**MGN ..... PLAINTIFF**

**AND**

**ANK ..... DEFENDANT**

**RULING**

1. MGN, the Plaintiff herein filed suit against ANK (the Defendant) vide a Complaint dated 30<sup>th</sup> September, 2024 seeking a declaration that the Defendant is holding part of the adjacent properties known as L.R 26XXXX/2 and L.R 266XXXX/5 in trust for him. He also sought an order of injunction restraining the Defendant from interfering with his peaceful and quiet possession of the suit properties and the dwelling house built thereupon including any purported ejection or exclusion from the property.
2. Contemporaneously with the Complaint, the Plaintiff/Applicant filed a Notice of Motion of even date seeking an order of temporary injunction restraining the defendant by herself, her servants, workers, agents, 3<sup>rd</sup> parties or any persons appointed by or claiming through her from interfering with the Plaintiff/Applicant's peaceful and quiet possession of the suit properties.
3. The application is premised on the grounds outlined in the Notice of Motion and the Applicant's Supporting affidavit sworn on 30<sup>th</sup> October 2024 in which he deposes that he became acquainted with the Defendant in 2002 after which they cultivated a personal cum business relationship. Sometime in 2014 during the course of the said relationship, they formed a company known as [Particulars Withheld] Housing Kenya Limited in which the Plaintiff became the Managing Director. They thereafter jointly constructed a residential dwelling maisonette which was to be their residence as a couple.
4. It is the Applicant's contention that he was closely involved in the project from the planning stage through procurement of the construction permits, engagement of architect and quantity surveyors



upto the time when the actual construction commenced. He deposes that he utilized all his savings derived from being a board member of the National [Particulars Withheld] as well as job as the Managing Director of [Particulars Withheld] Limited to finance the construction. Additionally, he took a personal loan of Kshs. 6,000,000 thus incurring a total amount of Kshs. 16,000,000 towards the said project.

5. He subsequently moved into the house in May 2020 before they fixed all the necessary fittings. In June of the same year, he resigned from [Particulars Withheld] Housing Kenya Limited as the company was adversely affected by the Covid-19 pandemic and was therefore unable to pay him. His resignation strained his relationship with the Defendant causing it to collapse.
6. He avers that on 28th December 2020 the Defendant drew up a lease in which she described him as a tenant and informed him that she was willing to let him stay in the house for a period of 2 years for free in order for him to recoup any expenses he had incurred in its construction. He declined to sign the lease as he did not consider himself as a tenant since he had incurred a considerable amount in the project. What followed was a demand letter from the Defendant's advocate requiring him to vacate the house and when he failed to vacate the defendant instructed auctioneers to demand that he pays rent in the sum of Kshs. 1,170,000 failing which they would levy distress.
7. The Applicant avers that he and his children live on the suit property and if the defendant is not restrained, she will evict them without any regard to his beneficial interest in the suit property. He maintains that the Respondent holds the suit property in trust for him and she should not be allowed to eject or exclude him from the same.
8. The application is strenuously resisted by the Defendant through her Replying affidavit sworn on 20<sup>th</sup> November 2025 in which she accuses the Defendant of deliberately misrepresenting the facts. She maintains that the suit properties are registered in her sole name and she solely financed the development of the same through [Particulars Withheld] Housing Kenya Limited where the Plaintiff was a Managing Director, hence his involvement in the project. She confirms that the Applicant kept her apprised of the details and particulars of the development either physically or through email.
9. She avers that the Applicant subsequently moved into the house on the suit property solely on account of and during the course of his personal relationship with the Respondent and has remained there despite the end of the said relationship. It is her deposition that upon the end of their relationship, she requested the Applicant to vacate the suit property but he failed to do so claiming that he had contributed to its development.
10. She deposes that as an act of good faith and to amicably resolve the dispute they mutually agreed that the Application would occupy the suit property as a tenant for a period of 2 years from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2022 in lieu of any purported contribution to the development of the suit properties. She then drew up a tenancy agreement and the Applicant suggested some variations to it but the Respondent declined. She claims that the Applicant enjoyed uninterrupted stay on the suit property during the agreed period and in an act of bad faith extended beyond 31.12.22 despite promising to vacate. This prompted the Respondent to levy distress for rent at the rate of Kshs.130,000 per month for the period January 2023 to September 2024.
11. She denies that she has expressly stated or conducted herself in a manner to suggest that she was holding the suit property in trust for the Applicant and that the Applicant has no beneficial interest therein.
12. It is her deposition that the Applicant has not produced any receipt, or any evidence to demonstrate that he contributed Kshs. 16,000,000 towards the purchase or development of the suit property. She adds that there is no proof that the Applicant took a personal loan of Kshs. 6.000,000 to develop the



- suit property and that there is no proof that the annuity of Kshs. 5,000,000 which he has brought to the court's attention was utilized towards the development of the suit property.
13. She denies that the Applicant resigned from [Particulars Withheld] Housing Kenya Limited due to lack of remuneration and states that he voluntarily resigned from the company.
  14. It is her contention that the Applicant's prolonged occupancy of the suit property has occasioned her loss which she would continue to suffer if the orders sought are granted. She maintains that the Applicant has failed to prove that he deserves the orders sought and as such his application should be dismissed.
  15. The application was canvassed by way of written submissions which were duly filed by the parties.

### **Analysis and Determination**

16. I have considered the application, Replying Affidavit, annexures and the parties' rival submissions and the sole issue for determination is whether the Applicant is entitled to an order of temporary injunction.
17. In order for the court to exercise its discretion in granting injunctive relief, the applicant must meet the conditions set out in the case of *Giella vs Cassman Brown & Company Ltd* 1973 EA 358 which are as follows:

“First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”
18. In the case of *Mrao vs First American Bank of Kenya Limited* (2003) eKLR Bosire JA (as he then was) stated as follows:

“A prima facie case is one which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed.
19. In the instant case, the Applicant acknowledges that the suit properties are registered in the Respondent's name. However, he claims that the Respondent is holding part of the suit properties in trust for him as he claims to have made substantial contribution towards the purchase and development of the suit property.
20. Although the court is not required at this interlocutory stage to determine whether a trust exists in favour of the Applicant, it is clear that the Applicant's claim is based on the financial contribution he purports to have made towards the purchase and development of the suit properties.
21. As was stated in the case of *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* 2014 eKLR.

The Applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.



22. Although the Applicant denies that the Applicant's allegations, she acknowledges that she was in a relationship with the Applicant and she allowed him to occupy the suit properties for a period of two years between 1<sup>st</sup> January 2022 and 31.12.2023 for what she refers to as "purported contribution to the development of the suit properties" This implies that the Respondent acknowledges that the Applicant made some contribution to the development of the suit property although the nature and extent of the contribution appears to be in dispute and it will only become clear after a full hearing. On the material placed before the court, I am persuaded that the Applicant has established a prima facie case with a probability of success.
23. With regard to irreparable loss, the Applicant has averred that he stays in the house constructed on the suit properties with his children. However, he has not stated that he would be unable to secure alternative accommodation given that he has only stayed there since 2021.
24. The test for irreparable loss is defined in Halsbury's Laws of England, Third Edition Volume 21, P.352 as follows:
- "Where the court interferes by way of injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds; first that the injury is irreparable and second that it is continuous. By irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter."
25. The Applicant has quantified what he considers as his contribution to be Kshs. 16,000,000/= . This of course will have to be strictly proved during the hearing. The Applicant has not demonstrated that the Respondent intends to alienate or dispose of suit property. If anything, it has been submitted that the Applicant and her children expected to stay in the house. Additionally, she has alleged that she will suffer loss if the Respondent continues to stay in the house without paying rent. In the circumstances, I am not persuaded that the Applicant has established that he would suffer irreparable loss that cannot be compensated by damages if an injunction is not granted.
26. Since the court is not in any doubt, there is no need to consider the balance of convenience. Suffice is to say that the Applicant has not met all the conditions for the grant of an injunction.
27. Consequently, I find no merit in the application and I dismiss it with costs to the Respondent.

**Dated, signed and delivered virtually at Thika this 17th day of June 2025.**

.....  
**J. M ONYANGO**

**JUDGE**

In the presence of:

Mr Oundo for the Plaintiff/Applicant

Miss Mwangela for Mr Gitonga for the Defendant/Respondent

Court Assistant: Hinga

