

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCLC NO. E293 OF 2025**

**FAITH  
MWANGI.....PLAINTIFF/APPLICANT**

**WANGARI**

**VERSUS**

**ROSE  
NDUNGU.....DEFENDANT/RESPONDENT**

**POLLY**

**RULING**

1. Before me is the notice of motion dated 11<sup>th</sup> June, 2025 filed by the plaintiff/applicant and it is expressed to be brought under **Order 40 Rules 1 and 2, Order 51 Rule 1** of the **Civil Procedure Rules** and **Sections 1A,1B and 3A** of the **Civil Procedure Act** seeking the following orders: -

**1. Spent.**

**2. That pending the hearing and determination of this application, this honourable court be pleased to issue a temporary injunction restraining the respondent, her agents, servants or employees from transferring, disposing of, or in any manner dealing with the property known as Title Number Nairobi/Block 149/510 (Formerly Land Reference Number 12494/67) to any third party.**

**3. That pending the hearing and determination of this suit, this honourable court be pleased to issue a temporary injunction restraining the respondent, her agents, servants or employees from transferring, disposing of, or in any manner dealing with the property known as Title Number**

***Nairobi/Block 149/510 (Formerly Land Reference Number 12494/67).***

- 4. That the respondent do release all the completion documents in respect of the sale of Title Number Nairobi/Block 149/510 (Formerly Land Reference Number 12494/67) to the applicant and/or her advocates to facilitate the completion process and to preserve the subject matter of the dispute.***
- 5. That this honourable court be pleased to grant such further orders as it shall deem fit and just in the circumstances.***
- 6. That costs of this application be awarded to the applicant.***

2. The application is premised on the grounds on its face. It is further supported by the affidavit of the plaintiff/applicant which is sworn on even date. The plaintiff/applicant deposed that they entered into an agreement with the defendant/ respondent for the sale of half-acre portion of land known as LR. No. 12494/34 in April, 2009 for the sum of Kshs.5,250,000/-. The plaintiff/applicant deposed that she paid a deposit of 10% to facilitate the transfer of the title from the defendant/respondent's deceased husband to the defendant/respondent. Further, that she paid KShs. 200,000/- towards survey and a further Kshs. 400,000/- for stamp duty assessment on transfer. That despite her compliance, the

subdivision was approved on 22<sup>nd</sup> October, 2012 after which the defendant/respondent objected to transfer the suit property.

3. The plaintiff/ applicant further deposed that there was conciliatory meeting, and thereafter she paid KShs. 3,000,000/- and an addendum was signed between the parties to have the portion of the suit property excised from LR. No. 12494/64. That since then, and while at the completion stage, she realized that the land rent payment receipts were not included. That in a letter dated 5<sup>th</sup> March 2025, the defendant/ respondent advocates informed her advocates that the outstanding rent exceeded Kshs.1,500,000/-, claiming that the balance of the purchase price could not offset this amount and further advised that she was unable and unwilling to complete the transaction. A request of an account of all monies was made to facilitate a refund and cancel the agreement.
4. In response thereto, she noted that the land rent was grossly overstated and enclosed copies of the actual invoice which was KShs. 140,598/-. However, the defendant/respondent responded by intimating that her position remained unchanged. That having fulfilled her obligations under the agreement over the last 16 years, she has demonstrated continuous effort in pursuit of completion and the defendant/respondent has persistently

frustrated the same. She deposed that unless the court intervenes, the suit property may be disposed to third parties occasioning irreparable harm.

5. The defendant/respondent filed her replying affidavit sworn on 30<sup>th</sup> June, 2025. She deposed that the plaintiff/applicant has registered a caution on the suit property, and that even if she had the intention to sell the same, she would be constrained by the caution. Further, she deposed that the court needs not to dwell on the issue of temporary injunction. While admitting the averments raised by the plaintiff/applicant, the defendant/respondent deposed that she is unable to deliver land payment receipts as she is financially constrained.
6. The defendant/respondent further deposed that there has been a drift between the parties to the extent that it is untenable to be neighbours with the plaintiff/applicant. She contended that the agreement makes provision by either party in case of breach of the agreement, and that the plaintiff/applicant will not suffer as she will be compensated by way of refund together with interest.
7. The plaintiff/applicant filed her supplementary affidavit in response thereto sworn on 8<sup>th</sup> July, 2025. The plaintiff/applicant reiterated the contents of her supporting affidavit and deposed

that a temporary injunction is necessary, since a caution does not afford sufficient legal protection over the suit property. She deposed that the defendant/respondent's financial constraints does not excuse non-compliance with contractual obligations. She reiterated that she stands to suffer loss that cannot be compensated by a refund which includes time, transactional costs and loss of the specific property which she has pursued for 16 years.

8. This court directed that the application to be canvassed by way of written submissions. By the time of writing this ruling, none of the parties had filed their written submissions. Be that as it may, I have considered the application and the replies. The issue for determination is *whether the plaintiff/applicant has met the threshold for the grant of temporary orders of injunction.*
9. The grounds for grant of interlocutory injunction are set out in the case of **Giella vs Cassman Brown Co. Ltd (1973) 358** that the applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of probabilities.

10. A prima facie case was defined by the Court of Appeal in [Mr Rao Ltd vs First American Bank Kenya Ltd & 2 others](#) [2003]

eKLR as follows:-

*“a prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case 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 by the opposite party as to call for an explanation or rebuttal from the latter.”*

11. Also, in the case of **Dr. Simon Waiharo Chege vs. Paramount Bank of Kenya Ltd. Nairobi (Milimani) HCCC No. 360 of 2001**: it was held:-

*“The remedy of injunction is one of the greatest equitable reliefs. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the applicant is normally required to show that damages would not be an adequate remedy for the*

***injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as appertains to the subject matter of the suit does not meet the approval of the eye of equity.”***

12. It is not in dispute that the parties entered into an agreement for sale of the suit property in April, 2009. However, and over the years, the parties are yet to complete the transaction. Sometime early in 2025, the plaintiff/applicant requested for land rent receipts and the defendant/respondent informed her that there were arrears which had accumulated and that she had no finances to settle the same. Upon further enquiry, the plaintiff/applicant noted that the land rent invoices were grossly stated and obtained an accurate invoice. Despite the same, the defendant/respondent maintained that she was unwilling to complete the transaction and instead she wants to refund the amounts so far paid and interests. The defendant/respondent contended that she has no intention of selling the suit property and even if she did, she is constrained by the caution registered by the plaintiff/applicant. From this analysis, it is evident that a contractual relationship existed between the parties, which parties were bound to the terms therein. From the documents relied upon by the parties, the plaintiff/applicant has

demonstrated effort to complete the transaction spanning a period of sixteen years and without preempting the main suit, it is my view that she has established a prima facie case.

13. Secondly, the plaintiff/applicant needed to demonstrate irreparable harm that cannot be compensated by damages. In the case of **Pius Kipchirchir Kogo versus Frank Kimeli Tenai [2018] eKLR**, irreparable injury was described as follows: -

*“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”*

14. On this issue, the plaintiff/applicant submitted that with respect to the land she has invested time and transactional costs towards this project and that she risks losing property. While it is evident that damages may be quantifiable in the circumstances owing to the nature of the transaction involved, the plaintiff/ applicant in this case had a legitimate expectation of owning property. There lies an imminent risk of damage owing to the time spent in

following up with the transaction especially so where it is evident that the subdivision was approved on 22<sup>nd</sup> August, 2012. On this issue, it is my finding that there is likely to be an injury that cannot adequately be compensated for in damages if the orders are not granted.

**15.** In sum, the balance of convenience lies in favour of the plaintiff/ applicant as the inconvenience caused will be greater if the orders are not granted in her favour as opposed to the defendant's/respondent's. In the interest of justice, it is fair that the suit property is preserved for the court to effectively determine the issues raised by the parties.

**16.** From the above, I find merit in the notice of motion dated 11<sup>th</sup> June, 2025 and it is hereby allowed as follows: -

***i. An order of temporary injunction is hereby issued restraining the defendant/ respondent, her agents, servants or employees from transferring, disposing of, or in any manner dealing with the property known as Title Number Nairobi/ Block 149/ 510 (Formerly Land Reference Number 12494/ 67) pending the hearing and determination of this suit.***

***ii. Costs of this application is assessed at Kshs.45,000/- to be borne by the defendant/ respondent.***

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 13<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. MBOGO C.G.  
JUDGE  
13/10/2025.**

**In the presence of:**

*Mr. Benson Agungo - Court assistant*

*Mr. Mwanja for the Plaintiff/Applicant*

*No appearance for the Defendant /Respondent*