



REPUBLIC OF KENYA



KENYA LAW
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**Ogada v Wilson (Environment and Land Case E535 of 2024)
[2025] KEELC 6550 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6550 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E535 OF 2024
CA OCHIENG, J
OCTOBER 2, 2025**

BETWEEN

QUINTER MERCY ANYANGO OGADA PLAINTIFF

AND

DARYL ALAN WILSON DEFENDANT

RULING

1. What are before Court for determination are two applications. In the Notice of Motion application dated 23rd December 2024, the Plaintiff seeks the following Orders:
 - a. Spent.
 - b. Spent.
 - c. This Honourable Court be pleased to grant a temporary injunction restraining the Respondent, his servants, agents, employees, representatives and/or any other person(s) acting on his behalf from interfering, trespassing and/or selling off, advertising, developing or completing any conveyance or transfer of any sale concluded by auction or private treaty or otherwise interfering with quiet and peaceful possession and ownership of the Applicant/Plaintiff in Apartment Number 13, Summer Breeze Apartment L.R. No. 2/274 Nairobi and Apartment Number 422, Greenspan Apartment, L.R. No. Nairobi/Block 82/8759 pending hearing and determination of this suit.
 - d. This Honourable Court be pleased to issue an order under the doctrine of lis pendens pending hearing and final determination of this suit in accordance with the law, all further registration or change of registration in the ownership, leasing, sub leasing, allotment, user, occupation or possession or in any kind of right, title or interest in Apartment Number 13, Summer Breeze Apartment L.R. No. 2/274 Nairobi and Apartment Number 422, Greenspan Apartment,



L.R. No. Nairobi/Block 82/8759 in any land registry, government department and all other registering authorities be and is hereby prohibited.

- e. This Honourable Court be pleased to make an order for Enforcement of the Settlement Agreement dated 27th August, 2019 as per the terms therein.
 - f. This Honourable Court be pleased to issue an order directed at the Officer Commanding Station (OCS) Kilimani Police Station and/or any other officers do assist with the Enforcement and Compliance of the orders issued herein.
 - g. This Honourable Court be pleased to make or grant any other order/relief as it may deem just and fair to meet the ends of justice.
 - h. The costs of this Application be provided for.
2. The application is premised on grounds on its face and on the Plaintiff's affidavits. She avers that around 2017, she got married to the Defendant, they had a son but later the said marriage got dissolved by the Court in 2021. She explains that when cracks in their marriage ensued, they had consultative meetings resulting to them executing a Settlement Agreement dated 27th August 2019 in which they agreed that she would move into Apartment Number A13, Summer Breeze Apartments, L.R. No. 2/274 Nairobi, registered in the Defendant's name while the Defendant undertook to complete payment of the mortgage within twelve (12) months after execution of the agreement and to surrender his share to her, upon full payment of the mortgage.
 3. She claims that it was agreed that Apartment Number D25, Signature Apartments, L.R. No. 209/21878 would be placed in the market for sale within thirty (30) days of execution of the agreement and that the asking price would be Ksh. 75 million but in the event that the said price would not be realizable after nine (9) months, parties would be bound to accept the highest price obtained. Further, that the proceeds of the sale would settle the balance of the mortgage and all incidental costs and the balance would be shared equally between the parties.
 4. She avers that as regards Apartment Number 422, Greenspan Apartment, L.R. No. Nairobi/Block 82/8759, it was agreed that the Defendant would transfer his share to her upon execution of the agreement. She contends that pursuant to the Settlement Agreement, she occupied Apartment Number 13, Summer Breeze Apartment L.R. No. 2/274.
 5. She states that she filed a child maintenance case and in a judgement, dated 22nd February 2024, the Court considered the Settlement Agreement dated 27th August 2019 and recognized that the Defendant had given their minor a home to stay in, being Summer Breeze Apartment. She also claims that in HCFP&A E022 of 2022: *Quinter Mercy Anyango Ogada v Daryl Alan Wilson*, the Court validated the Settlement Agreement dated 27th August 2019 in its judgement dated 13th May 2024.
 6. It is her case that about 20th December 2024, the Defendant sent twelve (12) goons to harass and evict her including their child as the Defendant laid claim over the Summer Breeze Apartment. She contends that he did so again on 23rd December 2024, and the incident was reported to the police. She reiterates that the Defendant's continued interference with her peaceful possession of the Summer Breeze apartment is not only causing a nuisance but is also exposing their child to security risks. Further, that she is apprehensive that the Defendant's share in Apartment Number 422, Greenspan Apartment, L.R. No. Nairobi/Block 82/8759 will not be transferred to her.
 7. The application is opposed by the Defendant who filed a replying affidavit. He claims that following divorce, the Plaintiff instituted a matrimonial cause, HCFP&A E022 of 2022 seeking an order declaring that she has equal beneficial interest in the two (2) apartments subject of this suit and



- the Court refrained from dealing with the suit properties, finding that they did not form part of matrimonial property since he had acquired them prior to their marriage.
8. He avers that he purchased the Summer Breeze apartment for Kshs.40 million, which was paid partially vide a mortgage of Kshs.24 million issued by Standard Chartered Bank and the property was registered in his name vide a Lease Agreement dated 12th July 2020. Further, that he has single handedly serviced the mortgage and it has a balance of about Kshs. 20 million. He contends that through his advocates on record, he served a demand letter to the tenant residing in the Summer Breeze apartment to cease paying rent to the Plaintiff and promptly commence paying to him but the tenant refused, prompting him to hire the firm of Styles Security Solutions to change locks of the property to allow him gain control.
 9. He further states that while the tenant eventually vacated the Summer Breeze apartment, the Plaintiff brought in her brother to live there and he is apprehensive that she seeks to unjustly enrich herself by taking over the apartment.
 10. He explains that he acquired the Green Span apartment in the year 2016 and although it is jointly owned with the Plaintiff as per the agreement for sale dated 7th November 2016, she did not contribute to its purchase.
 11. In his application dated the 11th February 2025, the Defendant seeks the following Orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. Spent.
 - e. The Honourable court be pleased to make any other and further orders that it deems just.
 - f. That costs of this application be provided for.
 12. The application is premised on grounds on its face and on the Defendant's affidavits. He avers that he has been working as the managing director of Coca-cola Beverages Africa (CCBA), based in Ethiopia but he retired effective 31st January 2025 and is set to return to Kenya and wishes to reside at the Summer Breeze apartment with his family as he has no alternative accommodation. Further, that neither the Plaintiff nor their son reside at the said apartment as they live with the Plaintiff's husband thus it would be unfair for him to continue to pay a mortgage for the said apartment while a stranger benefits from it.
 13. He also explains that prior to entering the suit property to change locks, the firm of Styles Security Solutions which he contracted to do so informed the Officer Commanding Kilimani Police Station of the planned activity. He contends that he executed the Settlement Agreement dated 27th August 2019 under duress, following constant threats, harassment & publication of false and highly defamatory statements published by the Plaintiff on social media with the intention to publicly embarrass and humiliate him as well as to jeopardize his employment with Coca -cola beverages Africa. Further, that the harassment and threats are ongoing to date on social media prompting him and his wife to file separate defamatory suits against her.
 14. The application is opposed by the Plaintiff who filed a replying affidavit which mirrors the averments in her affidavit in support of her application dated 23rd December 2024. She avers that she has never moved from the Summer Breeze Apartment and that the Defendant relinquished his right and advanced the apartment to her and their child. Further, that the mortgage to the said apartment was to be repaid



within twelve (12) months from the year 2019 and as such the Defendant cannot purport to say that he is still paying the loan and that the annexed account statement indicates that the Defendant cleared the loan arrears for the Summer Breeze Apartment.

15. The two applications were canvassed by way of written submissions.

Submissions

16. The Plaintiff submits that she is the beneficial owner and in rightful occupation of the suit property as per the Settlement Agreement between the parties in which the Defendant agreed to let her move in the Summer Breeze Apartment and relinquished his rights to her thus she has established a prima facie case worth of protection. Further, that if the orders sought are not granted, she will be deprived of her right to property as enshrined in Article 40 of the Constitution and that damages can never be adequate compensation for violation of a right. She also submits that the balance of convenience tilts in her favour for reasons that there is a valid Settlement Agreement between the parties.
17. She further submits that the Defendant's application seeks to evict her through the backdoor by seeking a variation and/or discharge of the status quo orders issued herein on 30th December 2024. She contends that the burden of proving that the beneficiary of an ex parte status quo order concealed or misrepresented some material facts which would have influenced the decision of the Court have not been met, thus the Defendant's application is not merited.
18. The Plaintiff relied on several authorities including; Atlas Copco Customer Finance AB v Polarize Enterprises [2016] Eklr, Chase International Investment Corporation and Another v Laxman Keshra And 3 Others [1978] eKLR, Chiva Carriers Limited v Imperial Bank Limited & Another [2018] eKLR, Niaz Mohammed Jan Mohammed V Commissioner For Lands & 4 Others (1996) eKLR, Isaac Musyoki Komoni v Sammy Kaumbulu Mbuvi [2022] eKLR, Said Almed v Mannasseh Benga & Another [2019] eKLR, Joseph Siro Mosioma V Housing Finance Company Of Kenya Limited & 3 others [2008] eKLR and Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 Others (2016) eKLR.
19. On his part, the Defendant submits that the Plaintiff failed to meet the principles of injunctions as enunciated in the case of Giella v Cassman Brown [1973] EA 358 since he is the one who solely purchased the Green Span Apartment which is jointly owned granting both parties undivided shares and fundamental right to possess and utilize the entire property. Further, with respect to the Summer Breeze Apartment, he has made consistent sole mortgage payments while the Plaintiff relies on a Settlement Agreement that does not restrict his inherent right to enjoy quiet possession of the said property.
20. He contends that the Plaintiff has also failed to demonstrate irreparable injury not adequately compensable by damages and that the balance of convenience favours him as sole owner of the Summer Breeze Apartment. Further, that the plaintiff's tenant's occupation of the Summer Breeze Apartment is an infringement on his constitutional right to property.
21. He argues that the contested enforceability of the Settlement Agreement dated 27th August 2019, stemming from allegations of coercion, the significant lapse of time and his material change of financial circumstances due to retirement will be canvassed in the suit thus he calls for the Court to vacate its ex parte status quo orders of 30th December 2024 and grant him quiet possession. To buttress his averments, he relied on the case of Chief Land Registrar & 4 Others v Nathan Tirop Koech & 4 Others [2018] eKLR.



Analysis and Determination

22. Upon consideration of the two Notice of Motion applications including the respective affidavits and rivaling submissions, the following are the issues for determination: Whether the Plaintiff has met the threshold for grant of a temporary injunction restraining the Defendant from interfering with the suit properties or if the Court should vacate the Status Quo Order issued on the 30th December, 2024. Whether the Plaintiff has made a case for issuance of an order prohibiting further registration/ change of registration in the ownership of Apartment No.14 on LR No. 2/274 and Apartment No. 422 on LR No. Nairobi/Block 82/8759.

As to whether the Plaintiff has met the threshold for grant of a temporary injunction restraining the Defendant from interfering with the suit properties of if the Status Quo Order issued on the 30th December, 2024 should be vacated.

23. The Plaintiff claims that she has been in peaceful possession of the suit property being the Summer Breeze Apartment and that the Defendant's attempts to evict her from the said apartment is an affront to her proprietary rights and a security threat to their child and herself. Further, that they executed the Settlement Agreement dated 27th August, 2019 which granted her rights to the suit properties, thus a temporary injunction restraining the Defendant from interfering with her occupation of the said properties should issue.
24. On his part, the Defendant claims that he has been making mortgage payments for the Summer Breeze Apartment solely thus the Plaintiff has no right to occupy the property. He also claims that although the Greenspan Apartment is jointly owned with the Plaintiff, he solely purchased it. He contends that the court in HCFP&A E022 of 2022: *Quinter Mercy Anyango Ogada v Daryl Alan Wilson* held that the two suit properties are not part of matrimonial property since he acquired them before his marriage to the Plaintiff. He further claims that the Plaintiff has since remarried and that he has retired and wishes to reside at the Summer Breeze Apartment.
25. In line with the principles set out in the case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, I will proceed to decipher whether the Plaintiff has established a prima facie case to warrant the orders as sought. I note both the Plaintiff and the Defendant executed the Settlement Agreement 27th August 2019 in which they agreed that she would move into Apartment Number A13, Summer Breeze Apartments, L.R. No. 2/274 Nairobi, registered in the Defendant's name while the Defendant undertook to complete payment of the mortgage within twelve (12) months after execution of the agreement and to surrender his share to her, upon full payment of the mortgage. Further, that the Defendant would transfer his share to Apartment No. 422 Greenspan Apartment on LR No. Nairobi/Block 82/8759 to the Plaintiff. The Defendant claims he signed the Settlement Agreement under duress but I note he has not informed Court if he applied to set it aside. Further, I note the said Settlement Agreement was validated in a judgment dated the 13th May, 2024 vide HCFP&A E022 of 2022: *Quinter Mercy Anyango Ogada v Daryl Alan Wilson*.
26. The Defendant has claimed that he seeks to live together with his family in the Summer breeze apartment as he is out of work. He contends that the Plaintiff does not reside therein and has rented it out. He further claims the Plaintiff seeks to unjustly enrich herself. I note the Settlement Agreement was a contract between the Plaintiff and Defendant and it has even been validated by a Court of Competent jurisdiction. It is trite that Courts cannot alter the terms of contract between parties. At this juncture, I opine that the terms of the said Settlement Agreement binds the parties herein unless it is set aside.



27. To my mind, I find that the Plaintiff and the child are indeed entitled to reside in the Summer Breeze apartment as had been agreed upon in the Settlement Agreement. In the foregoing, I find that the Plaintiff has indeed established a prima facie case to warrant the orders of injunction pending outcome of the suit. Further, that she will suffer irreparable harm which cannot be compensated by way of damages if she is evicted therefrom together with her child. I also find that the balance of convenience tilts in favour of letting the Plaintiff reside in Summer Breeze apartment. In that regard I am unable to set aside the Status Quo Orders issued on 30th December, 2024.
28. The Defendant filed the application dated 11th February 2025 seeking to set aside this Court orders issued on 30th December 2024, grant him unrestricted access to the Summer Breeze apartment and restrain the Plaintiff from interfering with his possessions. The said Orders Nos. 1-4 are sought pending hearing and determination of the application thus they are spent.
29. As to whether an Order of prohibition should issue to prohibit any further registration or change in ownership, leasing, or alienation of the two aforementioned properties during the pendency of the suit. Since I have already held that the Plaintiff and her child should continue residing in the Summer Breeze Apartment and since the parties herein had already agreed on how to share out the two suit properties, I find that it would suffice if the substratum of the suit was protected.
30. In the foregoing, I direct the Chief Land Registrar to register an inhibition Order, prohibiting any further change in ownership or disposal of the Apartment Number 13, Summer Breeze Apartment L.R. No. 2/274 Nairobi and Apartment Number 422, Greenspan Apartment, L.R. No. Nairobi/Block 82/8759, pending the outcome of this suit.
31. I note the Plaintiff has sought for an order to enforce the Settlement Agreement dated 27th August 2019. In my view since this forms the fulcrum of this dispute, it means she is seeking a final order at an interlocutory stage. The Court of Appeal held as follows in *Kenya Breweries Limited & Another vs. Washington O. Okeyo* Civil Appeal No. 332 of 2000 [2002] 1 EA 109:
- “...A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the Court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff.”
32. From the facts before me, I find that there are no special circumstances to warrant the granting of a permanent injunction for the implementation of the said Settlement Agreement and will decline to grant this order.
33. It is against the foregoing that I find the Plaintiff’s Notice of Motion application partially successful and will allow Prayers (c), (d) and (f) only while I will dismiss the Defendant’s Notice of Motion application.
34. Costs will be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF OCTOBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Nyaguthie for Plaintiff/Applicant



Ms Matasi for Defendant/Respondent

Court Assistant: Joan

