

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

ELC E003 OF 2023

PRISCILLA MUTHONI

WAMBUGU.....PLAINTIFF/RESPONDENT

-VERSUS-

FAITH NJERI MUGUKU.....

1ST DEFENDANT/APPLICANT

GERALD

NDONGA.....2ND DEFENDANT/APPLICANT

AND

EQUITY BANK (KENYA) LIMITED.....INTERESTED PARTY

RULING

1. The Appellant/Applicant filed the Notice of Motion dated 27th May 2025 seeking the following **ORDERS:**

a) Spent

b) THAT pending the inter- parties hearing and determination of this Application and the main suit, this Honourable Court be pleased to issue an order of injunction restraining the Plaintiff/Respondent, whether by herself, her agents, servants, employees, or any other person acting on her behest, from collecting, demanding,

receiving or otherwise interfering with the rental income accruing from the property known as Title No. Nyeri/Municipality Block 1/1434.

c) THAT pending the *inter parties* hearing and determination of this Application and the main suit, this Honourable Court be pleased to issue a preservative order directing all rental income generated from the suit premises erected on Title No. Nyeri/Municipality Block 1/1434 be deposited in a joint interest escrow account to be opened and operated in the names of the respective Advocates on record for the parties herein.

d) THAT pending the hearing and determination of the main suit, this Honourable Court be pleased to order that a portion of the monthly rental income, as agreed by consent of all the parties be applied from the escrow account towards the reasonable costs of maintenance, repairs and general upkeep of the property known as Title No. Nyeri/Municipality Block 1/1434.

e) THAT pending the hearing and determination of the main suit, this Honourable Court be pleased to order that a further portion of the monthly rental income, specifically the sum of Ksh.45,507.00/= be applied from the escrow account towards the monthly loan repayments due to the Interested Party, for which Title No. Nyeri/Municipality Block 1/1434 is held as security.

f) THAT costs of this Application be provided for.

2. The Application is supported by the Affidavit of the 1st Defendant/Applicant on her own behalf and on behalf of the 2nd Defendant/Applicant who is her son. She deposed that she is the widow of the late Vincent Ernest Muguku Muriu(Deceased) and that during the course of the marriage, the Deceased and herself acquired the suit property known as Title No. Nyeri/Municipality Block 1/1434 in 1998, which they developed together and undertook a loan facility which she personally secured to facilitate the construction of rental units on the suit property.

3. Therefore, notwithstanding the sole registration in the name of the deceased, the 1st Applicant stated that the suit property constitutes matrimonial property and she holds overriding proprietary interests over the same.

4. The 1st Applicant deposed that she was shocked to learn that following the Deceased's death, the Plaintiff had caused herself to be registered as joint proprietor of the suit property in unclear and suspicious circumstances, which registration she deposes was irregular, fraudulent, unlawful and intended to defeat the rights of the true beneficiaries of the estate of the deceased.

5. That pending the determination of this suit on ownership, the Plaintiff continues to collect rental income from the suit property, thus unjustly enriching herself. She deposed that she has been

advised by her Advocates on record that no person shall be permitted to benefit from their own wrongdoing.

6. The Applicant urged the Court to intervene to prevent the Plaintiff from profiting from her unlawful acts until rightful ownership is determined and to preserve the suit property so that the substratum of the suit is not lost, invoking the maxim that 'equity will not suffer a wrong without a remedy.'

The Plaintiff/Respondent's Replying Affidavit

7. The Plaintiff/Respondent filed a Replying Affidavit in response to the instant Application sworn on 10th June 2025, in which she deposed that the suit property has never been registered solely in the name of Vincent Ernest Muguku Muriu and attached a copy of the suit property's Green card, terming annexure 'FNM 2' of the Applicant's supporting Affidavit as suspect.

8. She further deposed that on 22nd September 2023, Hon. Justice Olola already issued an injunction restraining the Defendants herein from entering or remaining on the suit property and from collecting rent and interfering with the Plaintiff's quiet possession of the suit property, stating that if the Applicants were dissatisfied with the Ruling of Justice Olola, then they ought to have appealed against the Ruling and not this Application.

9. The Respondent denied the Plaintiff's allegations and deposed that she is rightfully and legally registered as joint proprietor to

the suit property. She admitted that the same is charged to Equity Bank with regard to a loan that was advanced to her joint proprietor, which is now in arrears but she is in the process of organizing joint payment thereof.

10. She deposed that she has intended to sell another property in which she was jointly registered together with the deceased to offset the loan balance, but the transaction fell through as the 1st Applicant had a restriction placed on the property.

11. The Respondent denies that the suit property forms part of the estate of the deceased, as she is the current registered proprietor and denied that the 1st Applicant contributed to the buying and development of the suit property, and stated that the deceased was her husband with who they have 6 children. She also noted that a succession case is yet to be filed for the deceased's estate.

12. It is her prayer that it is in the interest of justice that the suit herein is heard and concluded as it will resolve the issue of ownership of this property, without having her quiet possession of the parcel interfered with.

The hearing of the Application

13. Parties appeared before the Court for the inter-parties hearing of the Application on 23rd July 2025, in which Counsel for the Applicant submitted that the grounds for the orders sought are that the suit property was acquired by the Deceased, husband

to the 1st Applicant and father to the 2nd Applicant, terming the suit property as matrimonial property.

14. Counsel for the Respondent opposed the Application, relying on their Replying Affidavit, stating that they had already been issued an injunction which was sought for after the Applicants entered suit premises.

15. Counsel for the Interested Party submitted that they are in support of the Application. It was highlighted that parties do not dispute that the deceased undertook a loan, which is now in arrears. They prayed that the subject matter be preserved pending the hearing and determination of the suit.

16. The Court then gave interim orders that the monies collected as rental income from the suit property from the months of April to October should be directed to settling the loan facility at the Interested Party 's Bank, save for Electricity and water charges.

Analysis and determination

17. The Application before this court dated 27th May 2025 seeks a number of orders; an injunction against the Plaintiff/Respondent from dealing with the suit property's rental income, which they pray be directed into a joint interest account and a portion thereof of Ksh.45,507.00/= be directed towards servicing a loan undertaken at the Interested Party bank, which the suit property is security of.

18. It is not in dispute that the suit property is registered in the joint names of the Plaintiff/Respondent and Vincent Earnest Muguku Muriu (Deceased), which the Applicants/Defendants herein claim was a fraudulent registration.

19. I observe that there is a Ruling by Hon.J.O. Olola J dated 22nd September 2023, in which the Court granted the Plaintiff herein a temporary injunction against the Defendants herein, from entering and/or remaining on the suit premises and interfering on the Plaintiff's quiet possession, due to the fact that the Plaintiff as a joint proprietor of the suit land would automatically become wholly entitled to the land once the deceased passed on.

20. This means therefore, that this Court cannot issue orders restraining the Plaintiff from dealing with the suit property and its income thereof as it is *prima facie* evident that she is registered as the proprietor thereof, with the issue of ownership pending hearing and final determination in the main suit, as we are only in the interim stage of the suit. In the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)** the Learned Judges of the Court of Appeal held as follows regarding an injunction Ruling:

“It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.”

21. The Applicants herein however express that they wish the substratum of the suit to be preserved, which the Interested Party agrees with. The suit property is charged as security for a pending loan to the Interested Party herein, which is in arrears, and if the Interested Party exercises its statutory power of sale, then the subject matter of the suit will be lost.

22. M.D Mwangi J in the case quoted severally in other Court of Appeal authorities in the case of **Gitau v Kariuki & 3 others (Environment & Land Case E132 of 2024) [2024] KEELC 3421 (KLR)** on the importance of the Court using its jurisdictional power over a suit property to preserve the same pending hearing and determination of a suit, in keeping with the doctrine of '*Lis Pendens*':

“The Provisions of Section 13 (7) of the ELC Act are in agreement with the doctrine of ‘Lis Pendens’. The doctrine, ‘Lis Pendens’ is defined in the Black’s Law Dictionary, 9 th Edition, as the ‘jurisdictional power or control acquired by a Court over property while legal action is pending’. 12. Madan, J (as he then was) in the case of Mawji v US International University & another (1976) KLR 185 observed that the doctrine of Lis Pendens is necessary in adjudication, especially of land matters, particularly for its expediency and the orderly and efficacious disposal of justice.

The Court of Appeal in the case of ***Ruth Kinyua v Patrick Thuita Gichure & Another (2015) eKLR*** embraced the doctrine of 'Lis Pendens' noting that a Plaintiff would be liable in every case to be defeated by the Defendant's alienation of the subject property before conclusion of the case and would be forced to commence his proceedings de novo subject again and again to defeat by the same course of proceedings, if alienation 'pendent lite' was permitted to prevail."

23. The court finds that it is necessary to preserve the suit property pending the final determination of this suit and issues the following orders:

- 1. The sum of Ksh.45,507.00/= be applied from the already registered account towards the monthly loan repayments due to the Interested Par, for which Title No. Nyeri Municipality Block 1/1434 is held as security.**
- 2. The suit to be set down for hearing to facilitate expeditious settlement of the case. The matter to be mentioned on the 16/10/2025 for case management conference and taking out a hearing date by which time the Interested Party who has not yet filed a Response to the suit shall have complied fully with Order 11 of the Civil Procedure Rules.**

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT
NYANDARUA THIS 3RD DAY OF OCTOBER 2025.**

HON. MUGO KAMAU

JUDGE

In the presence of:

C/A Samson.

Ms Mwikali for the Plaintiff/ Respondent.

Mr. Kamunde for the 1st and 2nd Defendants/ Applicants.

Njeri Magee for the Interested Party