



Karunditu (Suing Through Raphael Ngubia Karunditu) & another v Karunditu (Environment and Land Case Civil Suit E002 of 2023) [2025] KEELC 5648 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5648 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND CASE CIVIL SUIT E002 OF 2023**

**JO OLOLA, J
JULY 31, 2025**

BETWEEN

**STEPHEN REUBEN KARUNDITU (SUING THROUGH RAPHAEL NGUBIA
KARUNDITU) 1ST PLAINTIFF**

KAWAME LIMITED 2ND PLAINTIFF

AND

ALICE WANJIRU KARUNDITU DEFENDANT

RULING

1. By the Notice of Motion dated 30th June, 2024, Stephen Reuben Karunditu suing through Raphael Ngubia Karunditu (the 1st Plaintiff/Applicant) prays for an order that the Defendant/Respondents be restrained from selling, transferring, charging or otherwise dealing with the suit properties being 18 sub-divisions of the parcel of land previously known as LR. No. 6392/40 situated within Nyeri Municipality.
2. The application is supported by an Affidavit sworn by the Applicant and is premised on the grounds, *inter alia*, that:
 - a. On 3rd August, 2023, the Applicant filed a similar application for an interlocutory injunction but the same was dismissed on the 7th June 2024;
 - b. The consequences of the said dismissal is that the Respondent who is unemployed and hence has no means of income can now dispose of all the 18 properties subject matter of the suit thus removing them out of the jurisdiction of the court;
 - c. The Applicant intends to appeal against the said decision dismissing his application on a number of grounds to the Court of Appeal and has filed a Notice of Appeal and requested for proceedings to enable him lodge the Appeal.;



- d. This Court has power to grant an injunction pending appeal where it has declined an injunction pending the hearing and determination of a suit as in this case; and
 - e. The 1st Plaintiff was the registered proprietor of the suit properties which the Defendant has by use of coercion and undue influence caused the 1st Plaintiff to transfer to her name.
3. Alice Wanjiru Karunditu (the Defendant/Respondent) is opposed to the application and has filed both Grounds of Opposition as well as a Replying Affidavit sworn on 16th September, 2024. The Respondent avers that contrary to the Applicant's assertion, that she is unemployed, she is the CEO and Lead Management Consultant with an entity known as Saxe Blue Consulting and earns an adequate income.
 4. The Respondent further avers that the intended grounds of appeal on the basis of an alleged claim of undue influence are misconceived and unmeritorious as the issue of transfer of the properties in her favour are matters to be determined on merit in the substantive suit.
 5. The Respondent avers that she acquired the properties freely and that they were unconditionally transferred to herself by her father. It is her case that the Applicant has not demonstrated that the properties are at the risk of being disposed, charged or alienated and that she has maintained the same for more than twelve (12) years.
 6. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
 7. By his application before the court, the Applicant prays for an order of injunction restraining the Defendant/Respondent from selling, transferring, charging or otherwise dealing with some 18 properties which are said to have been sub-divisions of a parcel of land known as LR. No. 6392/40 situated within Nyeri Municipality.
 8. It is the Applicant's case that on 3rd August, 2023, he had filed a similar application for an interlocutory injunction but the same was dismissed on 7th June, 2024. The Applicant avers that the consequence of the dismissal of the said application is that the Respondent is now at liberty to dispose of all the 18 properties which are the subject matter of this suit thereby removing them out of the jurisdiction of this court.
 9. The Applicant asserts that he is dissatisfied with the decision of this court and that he intends to appeal the same. In the meantime, the Applicant craves an order of injunction to issue restraining the Respondent from dealing in any manner with the suit properties pending the determination of the Appeal.
 10. I was however not persuaded that the mere fact that the court had declined to issue the temporary order of injunction pending the determination of the suit is tantamount to allowing the Respondent to dispose of the same. The said properties are still subject to litigation and a determination of the rightful owner thereof can only be made upon hearing of the substantive suit on merit.
 11. As it were, this court had the opportunity to consider the Applicant's Notice of Motion dated 2nd August, 2023 seeking orders to restrain the Respondent from dealing with the same properties. Having weighed the same application against the principles for the grant of an interlocutory injunction, this court in its Ruling delivered on 7th May, 2024 found that the application did not meet the threshold for the grant of such an injunction.



12. By the present application, the Applicant prays for the very same orders and on the same grounds on account that he now desires to file an appeal against the court's Ruling. In the absence of any new facts to support the application, it was clear to me that the second application for injunction was misconceived and barred under the doctrine of res judicata.
13. This court dismissed the application after considering the facts and the merits thereof and it came to the conclusion that the Applicant had not made out a prima facie case with the probability of success at the trial. Having rendered that decision, and in the absence of any new facts, this court became functus officio and can no longer delve into the issue of whether or not a temporary order of injunction should issue pending the Applicant's Appeal.
14. In the premises, the Motion dated 30th June 2024 is hereby dismissed with costs to the Respondents.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 31ST DAY OF JULY, 2025

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J. O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Gacheru Advocate for the 1st Plaintiff/Applicant
- c. No appearance for the Defendant

