



**Mumbi v Mureithi & another (Environment and Land Case  
E040 of 2025) [2025] KEELC 5790 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5790 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E040 OF 2025**

**YM ANGIMA, J  
JULY 31, 2025**

**BETWEEN**

**LILIAN MUMBI ..... PLAINTIFF**

**AND**

**DAVID MUREITHI ..... 1<sup>ST</sup> DEFENDANT**

**STANBIC BANK KENYA LTD ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**A. Plaintiffs' application**

1. By a notice of motion dated 04.04.2025 filed pursuant to Sections 13 & 19 of the *Environment and Land Court Act*, Order 40 Rules 1, 2 & 4 of the *Civil Procedure Rules*, Sections 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21) and all other enabling provisions of the law, the plaintiff sought an injunction to restrain the defendant from selling, disposing, interfering or otherwise dealing with Plot No. 2 MN/IV/927 pending the hearing and determination of the suit. The plaintiff also prayed for the court to grant any other order it may deem just and expedient to grant.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the plaintiff on 04.04.2025. The plaintiff pleaded that on or about 27.11.2014 she bought Unit No. 2 constructed on the suit property from the 1<sup>st</sup> defendant for valuable consideration. She also pleaded that upon completion of the unit she took possession thereof even though the date of possession was not disclosed.
3. It was the plaintiff's case that on or about 01.04.2025 she saw a newspaper advertisement for disposal of several units in Mtwapa including unit No. 2 which was said to be on parcel MN/IV/927. The plaintiff stated that upon investigating the issue she discovered that the 1<sup>st</sup> defendant had secretly and fraudulently charged the entire property on which the units stood to the 2<sup>nd</sup> defendant (the bank) to secure payment of a loan of Kshs.38,400,000/=. The plaintiff further stated that unit No. 2 which she



bought from the 1<sup>st</sup> defendant was actually on parcel 927 and not 934 as indicated in the relevant sale agreement dated 27.11.2014.

4. The plaintiff contended that the bank had failed to conduct due diligence before creating a charge over parcel 927 otherwise it would have discovered that the relevant unit had long been sold by the 1<sup>st</sup> defendant since she was in occupation of unit No.2 at the material time. It was the plaintiff's case that she stood to lose her lifetime investment in the circumstances hence she urged the court to grant the interim injunction sought.

#### **B. Defendants' response**

5. The bank filed a lengthy replying affidavit sworn by Angela Njeri on 09.05.2015 in opposition to the application. The bank's response mainly dealt with the merits of the main suit. The bank contended that the court had no jurisdiction to entertain the suit in the first place because the dispute was of a commercial nature. It was stated that the plaintiff had no capacity to challenge the exercise of the bank's statutory power of sale since she was not party to the charge. It was also contended that the bank was not aware of or privy to the alleged sale transaction between the plaintiff and the 1<sup>st</sup> defendant hence it was not bound by it.
6. The bank pleaded that it conducted due diligence prior to the creation of the charge and it was satisfied that the 1<sup>st</sup> defendant was the registered proprietor of the charged properties. It was further stated that there was no caveat, restriction or other encumbrance registered against the title at the material time hence there was no reason not to proceed with the transaction with the 1<sup>st</sup> defendant.
7. It was also the bank's case that whereas the units which were advertised fell on parcel 927 the plaintiff's alleged sale agreement referred to unit 2 on MN/IV/934 which was not the subject of the charge. It was further contended that the plaintiff's sale agreement provided for a completion period of one month from the date of the agreement hence there was no plausible reason why there was no completion and transfer of the relevant unit by the time the charge was caveated several years later.
8. The bank contended that the plaintiff had no legitimate claim or cause of action against it and that she had not satisfied the principles for the grant of an interim injunction. As a result, the court was urged to dismiss the application with costs.
9. There is, however, no indication on record of the 1<sup>st</sup> defendant having filed a response to the application despite service.

#### **C. Directions on submissions**

10. When the application was mentioned for further orders on 12.05.2025 the parties were granted an extension of 30 days to file and exchange their respective submissions on the application. However, none of the parties had filed submissions by the time of preparation of the ruling.

#### **D. Issues for determination**

11. The court has perused the notice of motion dated 04.04.2025, the replying affidavit in opposition thereto as well as the material on record. The main prayer sought by the plaintiff is an interim injunction to restrain the bank from selling unit No. 2 in Mtwapa pending the hearing and determination of the suit. The court is of the view that the following issues arise for determination herein;
  - a. Whether the court has jurisdiction to entertain the suit.



- b. Whether the plaintiff has satisfied the principles for the grant of an interim injunction.
  - c. Who shall bear costs of the application.
12. The principles to be considered in an application of this nature were summarized in the case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358 as follows;
- a. First, an applicant must demonstrate a prima facie case with a probability of success at the trial.
  - b. Second, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which cannot be compensated by an award of damages.
  - c. Third, in case the court is in doubt on the second principle it shall decide the application on a balance of convenience.

## E. Analysis and determination

### Whether the court has jurisdiction to entertain the suit

13. The question of jurisdiction was raised by the bank in its replying affidavit. It was contended that the dispute before court was a purely commercial dispute for determination by the High Court hence the Environment and Land Court had no jurisdiction to entertain the suit under Article 162 (2)(b) of the *Constitution* and the *Environment and Land Court Act*. It would appear that the bank was relying on the distinction between commercial and environment and land matters enunciated by the Court of Appeal in the case of *Cooperative Bank of Kenya Ltd vs Patrick Kang'ethe & 5 Others* [2017]eKLR.
14. The court is aware of the said decision and fully subscribes to its ratio decidendi. The court agrees that the jurisdiction of the court is confined to disputes relating to the use, occupation and title to land and does not extend to determination of disputes as between chargors and chargees on the creation of charges and the exercise of the lender's statutory power of sale.
15. The court is, however, of the view that the Co-operative Bank of Kenya case is clearly distinguishable from the instant suit. The instant suit is not a dispute between a chargor and a chargee over the taking of accounts or the exercise of the chargee's statutory power of sale. In fact, both the chargor and the chargee have been sued as defendants in this suit. The plaintiff's claim is clearly a claim for title to land (Unit No. 2) which she claimed to have purchased for valuable consideration from the 1<sup>st</sup> defendant before the creation of the charge in favour of the bank. The court is thus of the opinion that the instant suit falls within the jurisdiction of the court as stipulated under Section 13 of the *Environment and Land Court Act* and Article 162(2) (b) of the *Constitution*.

### a. Whether the plaintiff has satisfied the principles for the grant of an interim injunction

16. The principles to be considered in an application of this nature were summarized in the case of *Giella vs Cassman & Co Ltd* supra. The court has considered the material and submissions on record on this issue. The plaintiff claims to have bought unit No. 2 from the 1<sup>st</sup> defendant vide a sale agreement dated 27.11.2014. A copy of the sale agreement was exhibited in the plaintiff's supporting affidavit. Clause 5.1 of the said agreement stipulated that the construction period shall be one month or such other date as the parties may agree in writing.
17. There is no indication on record that the agreement was ever completed and, if not, the reasons for non-completion. There is also no indication on record if the parties to the agreement ever agreed on another completion period. There is no indication on record to show when construction of the unit was completed and when the plaintiff actually took possession of the unit. There is also no credible



material on record to show whether the charge was created before or after the plaintiff took possession of the unit.

18. It is also evident from the material on record that there is uncertainty as to whether unit 2 was actually constructed on parcel MN/IV/934 or 927. The plaintiff's sale agreement makes reference to parcel 934 whereas she lays a claim to parcel 927 by stating that the reference to 934 in the agreement was an error. There is response from the 1<sup>st</sup> defendant to confirm which parcel number was intended to be sold and whether or not there is any error in the number appearing in the sale agreement of 27.11.2014.
19. The court finds it strange that despite apparent non-completion of the sale transaction and non-registration of a transfer the plaintiff never took steps to cause a caution, restriction, or other encumbrance to be registered against the relevant title pending completion. There is probably no way a third party such as a bank dealing with a registered owner would have known of any purchaser's interest in the absence of an encumbrance in the register. The court is thus not satisfied that the plaintiff has made out a prima facie case with a probability of success at the trial.
20. The court has also considered the material on record as it relates to the second principle. The court has noted that plaintiff did not allege or demonstrate in her application what irreparable loss and injury, if any, she stood to suffer in the absence of an injunction. It was not demonstrated that any such injury cannot be adequately compensated by an award of damages. The material on record shows that the plaintiff may have purchased the property for Kshs. 1,200,000/- in 2014 hence it is possible for plaintiff to obtain monetary compensation together with interest if her suit against the 1<sup>st</sup> defendant is ultimately successful. In view of the court's finding on the first the principle, it shall not be necessary to consider the third principle on balance of convenience. The plaintiff's application has simply failed at the first two principles.

#### **Who shall bear the costs of the application**

21. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general principle. Consequently, the 2<sup>nd</sup> defendant shall be awarded costs of the application.
22. The upshot of the foregoing is that the court finds and holds that the plaintiff has not made out a case for the grant of an interim injunction. As a result, the court makes the following disposal orders;
  - a. The plaintiff's notice of motion dated 04.04.2025 is hereby dismissed with costs to the 2<sup>nd</sup> defendant.
  - b. Since the suit property is located within Kilifi County as per the plaintiff's sale agreement the suit is hereby transferred to the ELC at Malindi for trial and disposal.
  - c. The suit shall be mentioned before the presiding Judge at Malindi on 09.10.2025 for further orders.

Orders accordingly.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Mr. Mkan for the plaintiff

No appearance for the 1<sup>st</sup> defendant

Mr. Wafula for the 2<sup>nd</sup> defendant

