

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC LC CASE NO. E031 OF 2025

VIRGINIA GAKUHI BORO.....
PLAINTIFF

VERSUS

MARY WARIARA MBORO.....1ST
DEFENDANT

LAND REGISTRAR KAJIADO.....2ND
DEFENDANT

RULING

1. This **Ruling** is in respect to the **Notice of Motion** application dated **17th March 2025**. It is brought pursuant to **Section 73 & Section 48 of the Land Registration Act; Rules 1, 2 & 3 of the Civil Procedure Rules; Sections 3, 3A of the Civil Procedure Act; Article 159 (2) (d) of the**

Constitution of Kenya and all other enabling provisions of the law.

2. It seeks for orders that;

i. Spent;

ii. This Honourable court be pleased to issue a temporary injunction restraining the Defendants either by themselves, servants, agent or anybody claiming through them from alienating, disposing off, occupying, cultivating, constructing and/or developing the property or interfering in any way with the Plaintiff's interest of all that parcel of land known as Kajiado/Kisaju/2055 & Kajiado/Kisaju /2056 pending hearing and determination of this application and the main suit.

iii. This Honourable court be pleased to compel the Chief Land Registrar, 2nd Respondent to place a caution on the suit properties know Kajiado/Kisaju/2055 & Kajiado/Kisaju /2056

to prevent the Defendants either by themselves, servants, agent or anybody claiming through them from alienating, disposing off, occupying, cultivating, constructing and/or developing the suit property or interfering in any way with the Plaintiff's interest pending hearing and determination of this application and the suit or as the court deems fit.

iv. This Honourable court be pleased to compel the Land Registry, Kajiado to immediately issue certified copies of the land records in regards to Kajiado/Kisaju/2055 & Kajiado/Kisaju/2056 to the Applicant pending hearing and determination of this application and the suit or as the court deems fit.

v. In the alternative this Honourable court be pleased issue an order of status quo to be maintained to prevent any further dealings

on the suit properties known as Kajiado/Kisaju/2055 & Kajiado/Kisaju/2056 pending hearing and determination of this application and the suit or as the court deems fit.

vi. The costs of this application be borne by the 1st Respondent.

3. The grounds are on the face of the application as set out in paragraphs a to k. It is supported by the sworn Affidavit of **Virginia Gakuhi Boro**, the Plaintiff/Applicant herein.

4. She claims that the 1st Defendant/Respondent identified the suit properties and requested her to undertake the purchase and registration of the same. She claims that there was a deficit of Kshs. 500,000 which she offset with the understanding that the 1st Defendant/Respondent would refund. In 2014 she discovered fraudulent activities on the suit properties and upon informing the 1st Defendant/Respondent, she was requested to secure her interests. This resulted to the dispute in ELC No. 944 of 217 formerly ELC 1281 of 2015. The 1st

Defendant/Respondent granted her an irrevocable Power of Attorney dated 27th April 2018 which she used in testifying in that suit. She claims that she used her personal finances to settle legal fees and the matter was concluded in favour of the 1st Respondent on the 12th October 2022. She then presented the decree of the judgement in ELC 944 of 2017 (formerly ELC 1281 of 2015) to Kajiado Land Registry where the decree was verified on 7th September 2023 and upon presentation of requisite document the suit properties were transferred to her and Titles issued on the 28th December 2023.

5. It is her case that on 16th April 2024 she was charged in **Kajiado Law Courts vide MCCR/E392/2024 R Vs Virginia Gachuki Boro** for transferring the property under false pretence but the charge was withdrawn on the 3rd November 2011. On 11th November 2024, she lodged a complaint at the Kajiado Lands Registry after learning of fraudulent dealings in respect of the suit properties. It is then that the title issued to her was illegally cancelled and re-issued to the 1st Defendant /Respondent on 4th October

2024 in contravention of the irrevocable Power of Attorney and without reimbursing her the money spent. She claims that these actions are illegal as the Power of Attorney was still valid.

6. The 1st Defendant /Respondent in her Replying Affidavit contested the application pointing out that the Plaintiff/Applicant was not entitled to the orders sought on grounds that she was the registered owner of the suit properties having purchased them in 2002 and 2004 from one Meneto Simingorr Olongurro. She averred that in 2015 she discovered fraudulent activities against the suit property and filed ELC Milimani 1281 of 2015 which was later transferred to Kajjado as ELC No. 944 of 2017. It is her case that due to the geographical distance and the requirement for her to testify in Court, she donated a Special Power of Attorney to her sister, the Plaintiff to testify on her behalf. This was done and a judgement entered in her favour on 12th October 2022 and the suit properties were reverted back to her by the 2nd Defendant. It is her case that, the Plaintiff fraudulently

and by misrepresentation caused the suit properties to be transferred to her.

7. She then lodged a criminal case, **MCCR/E392/2024** in Kajiado Law Courts, which was withdrawn under Section 87A of the Civil Procedure Code without her knowledge. She denied that she owed the Plaintiff any money and stated that she had begun the process of revoking the Power of Attorney donated to the Plaintiff. She further stated that the Plaintiff's application was an abuse of the court process and ought to be dismissed because the plaintiff can be adequately compensated by way of damages. She stated that the Plaintiff had placed a restriction placed on the suit property on 11th November 2024.

8. The Plaintiff/Applicant in her **supplementary affidavit** contested the 1st Defendant/Respondent's claim arguing that even though there was a restriction on the suit property, the 1st defendant was still interfering with them. Though she had contributed to their purchase. She also averred that the 1st Defendant/Respondent had

contradicted herself because she first stated that the Power of Attorney was to institute the suit but in the same breath states that she was the one who instituted the suit. It is her case that the costs incurred in prosecuting the suit was to be offset by the 1st Defendant /Respondent by apportioning a part of the suit property to her. She prays that the Application be allowed.

9. This application was canvassed by way of written submissions.

10. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the rival submissions and the authorities cited.

The issues for determination are;

i. Whether the Plaintiff/Applicant's application meets the threshold for grant of temporary injunction.

ii. Who should bear costs of this Application?

11. The principles governing the grant of temporary injunction were set out in the precedent setting case of

Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358.

These principles were reaffirmed by the Court of Appeal in the case of **Nguruman Limited Vs. Jan Bonde Nielsen & 2 Others (2014) KECA (60) KLR.**

12. The Plaintiff/Applicant states in her affidavit in support that she was charged with the criminal offence of Obtaining Registration by false pretences **Contrary to Section 320 of the Penal Code.**

It is her case that the charges have since been withdrawn. It is clear from the letter of the Office of the Director of Public Prosecution that the Plaintiff/Applicant herein admitted that she held the two titles on behalf of her sister, the 1st Defendant/Respondent herein.

There is also a special Power of Attorney dated 27th April 2018 which had been donated by the 1st Defendant/Respondent to the Plaintiff/Applicant herein.

13. I have considered the above facts and find that the Plaintiff/Applicant has failed to establish a prima facie case with a probability of success at the trial.

14. It is the 1st Defendant/Respondents contention that the Plaintiff/Applicant herein fraudulently caused the suit properties to be transferred to her.
15. I also find that the Plaintiff/Applicant has failed to demonstrate that will suffer irreparable harm if these orders are not granted.
16. The balance of convenience tilts in favour of the 1st Defendant/Respondent who is the registered owner of the suit properties.
17. In conclusion I find no merit in this application and the same is dismissed with costs to the 1st Defendant/Respondent.

Dated, Signed and Delivered virtually at Kajiado this 30th day of October 2025.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Ms. Kemunto for Ms. Miima for Plaintiff.

Mr. Nairi for the 1st Defendant.

N/A for the 2nd Defendant.

Court Assistant - Peter.

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