

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC OS NO. 006 OF 2025**

**IN THE MATTER FOR IMPOSITION OF A CONSTRUCTIVE  
TRUST OVER LAND PARCEL NUMBER L.R.**

**NGONG/NGONG/105610**

**AND**

**IN THE MATTER OF TRUSTEE ACT, CAP 167 LAW OF KENYA**

**BETWEEN**

**ELIZABETH WAMBU GITAU.....**  
**APPLICANT**

**VERSUS**

**JOHN GITAU KIOI.....**  
**RESPONDENT**

**RULING**

1. This **Ruling** is in respect of the **Notice of Motion** dated **9<sup>th</sup> May 2025**.

2. It seeks orders that;

**a) Spent.**

**b) An interim injunction be and is issued restraining the Respondent, by themselves, their agents, servants, employees or any other person acting under their authority, from entering, trespassing, transferring, alienating, or in any other way interfering with Land Parcel Number LR. NGONG/NGONG/105610 pending the hearing and determination of the Applicant's application for the imposition of a constructive trust.**

**c) The costs of this application be in the main cause.**

3. The grounds are on the face of the application and set out in paragraphs 1 to 7.

4. The application is supported by the affidavit of Elizabeth Wambui Gitau, the Applicant herein, sworn on the 9<sup>th</sup> May 2025.

5. The application is opposed.

There is a Replying Affidavit sworn by John Gitau Kioi, the Respondent herein, on the 5<sup>th</sup> June 2025.

6. On the 17<sup>th</sup> June 2025, the court with the consent of the parties directed that this Notice of Motion be canvassed by way of written submissions.

7. The Applicant's Submissions are dated 16<sup>th</sup> June 2025.

They raise one issue for determination; whether the plaintiff has satisfied the threshold for grant of injunction orders as sought.

Counsel submitted that the Applicant has demonstrated a legally recognizable interest in the suit property arising from a valid and enforceable sale agreement executed between herself and the original registered owner the late Mr. Job Ole Kango, dated 10<sup>th</sup> August 1987.

8. It is further submitted that the Respondent's claim to title is marred by fraudulent misrepresentation. That the Respondent falsely declared the Applicant as deceased in order to unlawfully obtain registration in his name. Reliance is placed on **Section 26(1)(b) of the Land Registration Act.**

9. It is also submitted that the Applicant faces irreparable harm which cannot be adequately compensated by monetary damages. Further that the court has a duty to preserve the subject matter of these proceedings as there is a risk that the court's decision will be rendered nugatory. Reliance is placed on the case of **Nguruman Limited Vs. Jan Bonde Nielsen & 2 Others (2014) KECA 606 (KLR)**.

10. It is submitted that the court should consider that it is the Applicant who would suffer greater harm were the suit property to be disposed of or otherwise alienated. Reliance is placed on the cases of **Pius Kipchirchir Kogo Vs. Frank Kimeli Tenai (2018) eKLR**; **Films Rover International Limited Vs. Cannon Films Sales Limited (1987) 1 WLR 670 at 680**. He prays that the Application be allowed.

11. The Respondent's Submissions are dated **23<sup>rd</sup> July 2025**. They raise three issues for determination;

- i. **Whether a constructive trust has arisen in favour of the Applicant with respect to the suit property.**
- ii. **Whether the Applicant has satisfied the requirements for the grant of an injunction.**

**iii. Whether this Honourable Court should stay these proceedings pending the final determination of Civil Appeal (Application) No. E243 of 2023.**

12. Counsel submitted that the Applicant has never taken possession of occupied, developed or used the suit property since the alleged purchase in 1987.
13. It is further submitted that the essential elements for the imposition of a constructive trust are manifestly absent. He has put forward the cases of **Juma V. Omollo & 2 Others (sued as the legal Representatives of the Estate of the late Raphael Okoth Omollo (2025) KECA 1170 (KLR); Shah & 7 Others Vs. Mombasa Bricks & Tiles Limited & 5 Others (2023) KESC 106 (KLR).**
14. It is submitted that there is no evidence of an express or implied agreement that the suit property was to be shared beneficially or held in trust for the Applicant. That the Applicant has not shown that she has acted to her detriment in reliance or any common intention to share a beneficial interest in the suit property as the purchase price was refunded to her. That this Honourable court ought to decline

to allow the imposition of a constructive trust over the suit property.

15. It is also submitted that the Applicant has not demonstrated a prima facie case because she lacks any legitimate proprietary interest in the suit property. The Respondent on the other hand was issued with a valid Title to the suit property on the 29<sup>th</sup> April 2024. The Respondent maintains that his current claim to title was lawfully procured and has been upheld by the court Rulings in **Kajiado ELC 743 of 2017** and **ELC 118 of 2018**.

16. It is submitted that the Applicant has failed to establish the existence of a clear and unmistakable right that is directly threatened by the Respondent's conduct as the lawful owner of the suit property.

17. It is also submitted that the balance of convenience favours the Respondent, who is the registered proprietor of the suit property. He would be unfairly restricted in exercising his lawful rights if an injunction were granted.

18. It is submitted that there is a pending **Appeal Civil Appeal No. E.243 of 2023** in which the Court of Appeal

issued a status quo order on 8<sup>th</sup> May 2024 directing that the titles to the suit properties remain unchanged until the Appeal is determined. He urged that these proceedings be stayed pending hearing and determination of the Appeal.

He prays that the Application be dismissed.

19. I have considered the Notice of Motion, the affidavits in support, the response thereto, the rival submissions and the authorities cited. The issues for determination are;

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

**ii. Who should bear costs of the Application?**

20. It is the Applicant's case that the Respondent holds title to the suit property in trust for herself.

21. It should be noted that the existence of a constructive trust is a matter of fact that has to be proved. This can only happen once the hearing commences.

22. It is not in dispute that the Respondent is the registered owner of the suit property.

There is also an Appeal in the Court of Appeal being Civil Appeal No. E243 of 2023 which is pending. The Court of

Appeal directed that status quo with respect to the titles be maintained in the meantime.

23. I find that the Applicant has failed to establish a prima facie case with a probability of success at the trial.

24. I also find that the Applicant has not demonstrated that she will suffer irreparable harm that cannot be compensated by an award of damages if these orders are not granted. She is not in possession of the suit property neither is she the registered owner.

25. I find that the balance of convenience tilts in favour of the Respondent as he is the registered owner of the suit property. He is also in occupation of the same and has undertaken developments thereon. These facts were not rebutted by the Applicant.

26. In conclusion, I find no merit in this application and the same is dismissed. The costs will abide the outcome of the main suit.

**Dated, Signed and Delivered virtually at Kajiado this  
13<sup>th</sup> day of November 2025.**

**L. KOMINGOI -**

**JUDGE.**

**IN THE PRESENCE OF:**

Mr. Ojala for Mr. Ochiel for the Applicant.

N/A for the Respondent.

Court Assistant - Peter.

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