



REPUBLIC OF KENYA



Tuwei v Kariuki (Suing as the Administrator of the Estate of Rose Wangeci Kariuki); Kariuki & 2 others (Applicant) (Environment and Land Case E039 of 2025) [2025] KEELC 7884 (KLR) (12 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7884 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E039 OF 2025
CK NZILI, J
NOVEMBER 12, 2025**

BETWEEN

LILIAN CHEPCHUMBA TUWEI PLAINTIFF

AND

CHARLES MACHARIA KARIUKI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF ROSE WANGECI KARIUKI) DEFENDANT

AND

IRINE WAIRIMU KARIUKI APPLICANT

FRIDAH WANJIRU KARIUKI APPLICANT

RUTH NJERI KARIUKI APPLICANT

RULING

1. This ruling relates to two applications dated 4/8/2025 and 12/9/2025. The 1st application seeks:
 - a. ...spent
 - b. ...spent
 - c. Temporary injunction barring and restraining the defendant, whether by himself, his agents, servants, or any other person acting under his instructions, from transferring, subdividing, leasing, charging, entering into, interfering with, or otherwise dealing with Title No. Kitale Municipality Block 15/Koitogos/221, pending hearing and determination of this suit.
 - (d) Order directed at the Land Registrar, Trans Nzoia County, barring and or prohibiting any dealings, entries, transfers, subdividing, charging, or altering on the land register for Title



No. Kitale Municipality Block 15/Koitogos/221, except with the leave of the court, pending hearing and determination of this suit.

2. The grounds are set out on the face of the application and in a supporting affidavit of Lilian Chepchuma Tuwei, sworn on 4/8/2025. The applicant deposes that she has sued the defendant as the legal administrator of the estate of the late Rose Wangeci Kariuki, the former registered owner of the suit property.
3. The applicant deposes that the suit property came under her name on 24/5/2021, following a lawful purchase of the same on 20/12/2018. The applicant deposes that the purchase of the suit property from the defendant in his capacity as the legal administrator was with full knowledge and the concurrence of his siblings and other beneficiaries to the estate.
4. The applicant deposes that after the purchase, the defendant executed all requisite instruments and facilitated the transfer of the suit land to her name, culminating in the issuance of a title deed under her name on 24/5/2021.
5. The applicant deposes that the state and transfer of the suit land were done lawfully and procedurally, as the grant of letters of administration had been confirmed on 28/7/2011.
6. The applicant deposes that despite the registration of the property and the issuance of a title deed in her favour, the defendant failed and or refused to hand over vacant possession, instead offering repeated but unfulfilled assurances even after numerous demands.
7. The plaintiff deposes that shockingly and without her knowledge, the defendant moved to Kitale High Court Succession Cause No. 199 of 2010 on 18/5/2023 and again on 22/11/2023, where he obtained orders canceling her title and reverting the property to the estate of the deceased, all without notifying or involving her in the said properties.
8. The plaintiff deposes that the defendant clandestinely included the suit property as part of the deceased estate despite the above, and irregularly procured a rectified certificate of confirmation of grant purporting to distribute the said land among the beneficiaries.
9. Further, the plaintiff deposes that the orders of 22/11/2023 have since been implemented, leading to the cancellation of her title and including the suit property in the said rectified grant, thereby interfering with her proprietary right, yet she had lawfully and procedurally obtained a title to it.
10. The plaintiff terms the said acts as interfering with her rights under Sections 24, 25, and 26 of the [Land Registration Act](#) and Articles 40 and 50 of [the Constitution](#).
11. The plaintiff has annexed copies of her identification card, certificate of confirmation of grant, sale agreement dated 2012, acknowledgment dated 30/12/2018, title deed, court order of 18/5/2023, rectified grant dated 31/7/2023 and orders dated 18/5/2023, 22/11/2023, letter dated 3/5/2025, extract of the register, and a bundle of pleadings in Kitale HC P&A No. 199 of 2010 as annexure marked "LC".
12. In the 2nd application dated 2/9/2025, the court is asked for leave to join Irine Wairimu Kariuki, Fridah Wanjiru Kariuki, and Ruth Njeri Kariuki as interested parties and for a stay of the proceedings herein. The reasons are contained on the face of the application and in a supporting affidavit of Irine Wairimu Kariuki, on behalf of the other intended interested parties, sworn on 2/9/2025.
13. The proposed interested parties depose that they are beneficiaries of the estate of the late Rose Wangeci Kariuki, as indicated in the affidavit in support of the application for letters of administration, attached



- as IKW-(1), who did not participate or agree to the alleged sale of Kitale Municipality Block 15/ Koitogos/221 to the plaintiff.
14. It is deposed that investigations were carried out by the Directorate of Criminal Investigations, who established that the Kenya Revenue Authority Personal Identification Number certificate used by the plaintiff in the transfer of the title did not belong to any of them as part of the trust imposed by the family court.
 15. The proposed interested parties depose that the sale agreement between the defendant and the plaintiff remains disputed and cannot and could only be pursued under the auspices of the Law of Succession Act, as it is the court that deals with the disposition of the estate of a deceased.
 16. The proposed interested parties urge the court to find that they are necessary parties as the plaintiff has made serious allegations against them, which are false.
 17. When the matter came up for interpartes hearing on 25/9/2025, the defendant, though served with the application and a return duly filed by Archibald Nyukuri, sworn on 24/9/2025, did not attend court or oppose the same. Learned counsel Mr. Teti urged the court to allow the application.
 18. As to the 2nd application, learned counsel Mr. Teti opposed the same because the intended interested parties have not met the threshold by showing how they shall be affected by the decree of the court.
 19. Learned counsel submitted that on a stay of proceedings, the intended interested parties have not become substantive parties to the suit; otherwise, the prayers in the application dated 12/9/2025 are not merited.
 20. Order 1 Rule 8(3), 9, and 10 of the Civil Procedure Rules provide that any person on whose behalf or for whose benefit a suit is instituted or defended may apply to the court to be made a party. The court has the power to join a party whose presence before the court may be necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.
 21. In *Meme -vs- Republic* [2024] KEHC 2623 [KLR], the court cited *Departed Asians Property Custodian Board vs Jaffer Brothers Ltd* (1999) 1 E.A. 55, that for a person to be joined, one has to show either that the orders sought would legally affect their interest, and it would be desirable to join them to avoid multiplicity of suits.
 22. An interested party was defined in *Communications Commission Kenya -vs- Royal Media Services Ltd* SCOK Petition No. 14 of 2014, as one who has a stake in the proceedings though he or she was not party to the cause ab initio and is likely to be affected by the decision of the court, when it is made, either way, so that he can articulate his interest and or champion his cause.
 23. The court cited *Mumo Matemu -vs- Trusted Society of Human Rights Alliance & 5 others* [2014] eKLR, that a suit in court is a solemn process owned solely by the parties, and where a party is enjoined as an interested party, cannot be heard to seek to strike out the suit on the grounds of defective pleadings.
 24. In the 2nd application, the proposed interested parties have attached the certificate of confirmation of grant dated 28/7/2011, listing the suit land a part of the estate of the late Rose Wangeci Kariuki, which the defendant held in trust for them. The sale agreement dated 20/12/2018 is made between the defendant and the plaintiff, where the defendant describes himself as the administrator of the estate. It has not been signed by the proposed interested parties.
 25. A suit by a purchaser of immovable property regarding Order 37 of the Civil Procedure Rules, determination of any question which may arise over a contract of sale, or a person claiming to be



- interested in the relief sought as heirs, or a cestui que trust under the terms of any deed or instrument, has a right to join such suit. The *Trustee Act* and the *Trusts of Land Act* are the laws governing property held in trust.
26. Any land limited in trust for any person or by way of succession is deemed to be settled land for purposes of the *Trusts of Land Act*, and any deed, will, agreement, or other instruments passed is referred to as a settlement under Section 16 of the Act.
 27. The powers of a trustee for the sale of land are defined under Section 17 of the Act. Any transaction affecting or concerning land held upon trust for sale may, under the order of a court, be effected by the trustees for sale under Section 36 of the Act. In *M'Inoti Nthai -vs- Naomi Karegi M'Imanyara* [2014] eKLR, the court said registration of land recognizes trust in general form without specifically excluding trusts.
 28. In *Shah & 7 others -vs- Mombasa Bricks & Tiles Limited & 5 others* (Petition 18 (E020) of 2022) [2023] KESC 106 (KLR) (28 December 2023) (Judgment), the court cited the *Trustee Act* Cap 167 as to the definition of trust and trustee, the former being the right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title, a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary). Rule 60 of the Probate and Administration Rules also defines who an interested party is.
 29. From the foregoing, I think the proposed interested parties have demonstrated sufficient stake or interest to participate in this suit. See *Civicon Ltd -vs- Kivuwatt Ltd & Others* [2015] eKLR.
 30. The applicant in the 1st application seeks temporary orders of injunction and inhibition after his title deed was revoked through the succession cause by a court of competent jurisdiction in November 2023. A party seeking temporary orders of injunction must establish a prima facie case, demonstrate that it will suffer irreparable damage, and that the balance of convenience tilts in favour of granting the orders sought. A prima facie case is established where a right has been violated to call for a rebuttal from the other side. See *Mrao Ltd -vs- First American Bank of (K) Ltd* [2003] eKLR.
 31. The plaintiff's rights alleged to have been breached arise out of a finding of a sister court issued on 15/8/2023 and 22/11/2023. Annexure marked 'LC' is an affidavit, attaching bundles of pleadings in Kitale HC P&A No. 199 of 2010. Among them is an application by the plaintiff dated 13/11/2024 seeking to set aside and the stay of execution of court orders dated 18/5/2023 and 22/11/2023, and for the amendment of the rectified grant to exclude Kitale Municipality Block 15/Koitogos/221. This court has not been told what became of that application.
 32. In *Re Estate of David Kyuli Kaindi (deceased) Succession Cause No. 3403 of 2005*, the court held that a personal representative as a trustee under Section 2 of the *Trustee Act* Cap 167, has an obligation to account for the land belonging to another, which vests in him and which hold for the benefit of the beneficiaries in the deceased's estate, heirs, dependants or survivors.
 33. The court said that a personal representative stands in a fiduciary position in relation to the estate property and the beneficiaries. The court held that the position is both an equitable duty and a statutory obligation.
 34. The proposed interested parties have complained that the defendant did not disclose the sale, there was fraud in the use of their personal details or documents, which the DCI has found to have been forged. A personal representative must be transparent and accountable to the beneficiaries.
 35. In an application for an injunction, an applicant must make full and frank disclosure to the court on all material facts known. See *Uhuru Highway Development Limited -vs- Central Bank of Kenya &*



- Others [1995] eKLR. The proposed interested parties urge the court to find the sale agreement tainted with irregularities or fraud, and also as a basis to deprive them of the estate property where they have a beneficial interest.
36. The applicant, on the other hand, invokes the doctrine of a bona fide purchaser for value, who the defendant despite obtaining consideration has not handed over vacant possession but has, without his knowledge, caused the title deed to be revoked, alleging that the property belongs to the estate of the deceased.
 37. A land sale agreement must abide by the provisions of Section 3(3) of the [Law of Contract Act](#) and Section 38 of the [Land Act](#). Capacity to contract is key. A court of law may not be used as an instrument for enforcing an illegal contract. A contract of sale of land relating to trust property, like a deceased estate, post-confirmation of a grant, is only binding or valid if and when the sale is completed with consultation of all the beneficiaries or their representatives under Section 93 of the [Law of Succession Act](#).
 38. Equity follows the law. It is only when the law is followed that a contract of land sale can be enforced before a court of law. The Family Division of the High Court has powers under Section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules to order a title deed to revert to the names of a deceased person, where the deceased's property has been fraudulently taken away by non-beneficiaries. See *Santuzza Bilioti alias Mei Santuzza (Deceased) -vs- Giancarlo Falasconi* [2014] eKLR and in *Re Estate of Simon Kiprop Cheruiyot (deceased)* [2021] eKLR.
 39. In *Sehmi & Another -vs- Tarabana & Co. Ltd & Others*, Petition No. E033 of 2023, the court held that a title is only as good as its root. The court said that an innocent purchaser was the one who carried out the requisite due diligence, the estate property had no defects, paid full value, did not know of adverse interest, and was not involved in the alleged fraud.
 40. The jurisdiction of the Family Division of the High Court vis-à-vis this court is clearly defined under Section 13(2) of the ELC Act, Section 47 of the [Law of Succession Act](#), and Article 162 (2)(b) of [the Constitution](#). See *Re Estate of Priscilla Ndubi & Another -vs- Gerishon Gatobu Mbui* [2013] eKLR, *Estate of M'Muriauki M'Mugwika (deceased)* [2019] eKLR, *Re Estate of Alice Mumbua Mutua* [2017] eKLR, and *Isaac Kinyua & Others -vs- Hellen Koigongi* [2018] eKLR. The two courts are distinct and do not act in contradiction. Both serve the citizens as defined by [the Constitution](#). The two are coequal.
 41. The plaintiff invites this court to find he has prima facie rights which have been infringed by the defendant, hence the court should issue equitable orders of injunction. Equity follows the law. He who comes to equity must come with clean hands. The order revoking the title was issued by a court of concurrent jurisdiction on an issue where the court had concurrent jurisdiction on the revocation of a title deed under Section 47 of the [Law of Succession Act](#) and Section 80 of the [Land Registration Act](#).
 42. Co-ownership of the suit property and a trusteeship relationship between the defendant and the beneficiaries to the estate was declared by a court of competent jurisdiction, yet the defendant went behind and breached his trusteeship to deal with the plaintiff at the expense of the proposed interested parties.
 43. In *Eighty Four Investments Ltd -vs- Irungu & Others* [2025] KECA 1365 [KLR], the disputed land had raised questions of co-ownership, succession right, competing agreements of sale, and the misuse of the statutory power of sale.
 44. The sale or transfer was cancelled by the sister court on account of fraud, and the non-acknowledgment of the rights of the co-owners. The court reverted the title to the deceased's estate and the co-owners as



tenants in common. Irreparable damage cannot be quantified. It must be real, apparent, and imminent. See Nguruman Ltd vs Jan Bonde Nielsen [2014] eKLR.

45. In this suit, the plaintiff is entitled to a refund of the sum paid to the defendant in the event the suit does not succeed. He has not taken vacant possession or expended anything to develop the suit property.
46. On the balance of convenience, the title to the land has merely reverted to the estate of the deceased. The defendant is still a beneficiary of the estate. The delay in moving to this court since the reversal of the title has not been explained. The orders leading to the cancellation of the title have not been appealed against.
47. In Wambui -vs- Wambui Civil Appeal No. 272 of 2019 [2024] KECA 474 [KLR] (9th May 2024) (Judgment), the court held that a court of equal and concurrent jurisdiction cannot overrule or overturn another court, because it believes the earlier court did not consider material and pertinent issues. The court cited Bellevue Development Co. Ltd -vs- Gikonyo & Others, Kenya Commercial Bank & Others IP [2018] KECA 330 [KLR] (21st September 2018), that it would be a strange aberration for a judge to embark on what is essentially an examination of the judicial conduct and the pronouncement of a judge of the same status as himself, as that task is left to courts and judges of higher status in the hierarchy, by way of an appeal.
48. In my view, for the applicant to attempt to move from the High Court to this court in a bid to achieve a desired goal or result amounts to an abuse of the court process. Asking this court to issue an injunction and an inhibition order, while the court of equal and competent jurisdiction has issued orders dated 18/5/2023 and 22/11/2023, based on a rectified certificate of confirmation of grant dated 31/7/2023, is akin to asking this court to injunct execution of lawful orders of a court of equal status
49. It amounts to asking this court to sit on an appeal of orders given by a sister court; such an attempt aims at endangering the administration of justice between the High Court and the Environment and Land Court, as if competing in upsetting one another, resulting in disharmony and bad blood between judicial officers, as held in Wambui -vs- Wambui (supra).
50. The upshot is that the application dated 4/8/2025 is not only incompetent but lacking merit. It is dismissed with no orders as to costs.
51. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 12TH DAY OF NOVEMBER 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Teti for plaintiff present

Oigara for Interested Party present

