



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLC NO. E485 OF 2025

LUCY MUTHONI

GICHOHI.....PLAINTIFF/APPLICANT

VERSUS

MARGARET GATHINJA

NJANGIRU.....DEFENDANT/RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 5th February 2025, brought under Sections 3 and 13 of the Environment and Land Court Act, Article 40 of the Constitution of Kenya 2010, and Sections 1A, 1B, and 3A of the Civil Procedure Act, in which the Applicant seeks the following orders:-

a) Spent.

b) Spent.

c) Spent.

d) Spent.

e) That, pending the hearing and determination of this suit, this Honourable court be pleased to issue an interlocutory injunction restraining the Defendant/Respondent, by herself, her agents, servants, employees, or any other person acting under her authority, from collecting rent, trespassing upon, alienating, charging, transferring, disposing of, wasting, or in any other way interfering with the Plaintiff/Applicant's quiet possession and proprietary rights over the properties known as Umoja Innercore Plot No. D13A Umoja Innercore B87.A, now registered as NAIROBI/BLOCK 83/2204, and Plot No. 163 Umoja Innercore Sector V.

f) That, pending the hearing and determination of this suit, the Honourable Court be pleased to order and direct that the rental proceeds derived from the properties known as Plot No. D13A Umoja Innercore B87.A, now registered as NAIROBI/BLOCK 83/2204, and Plot No. 163 Umoja Innercore Sector V, less maintenance costs, be deposited into a joint interest-earning account opened in the names of the parties or their advocates.

g) That pending the hearing and determination of this suit, the Honourable Court be pleased to issue an interlocutory mandatory order compelling the Nairobi Chief Land Registrar to complete the process of registration and issuance of title in respect of Plot No. 163 Umoja Innercore Sector V in favor of the Plaintiff/Applicant.

h) THAT the costs occasioned by this application be borne by the Respondent.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Lucy Muthoni Gichohi, sworn on even date.

THE APPLICANT'S CASE

3. The Applicant averred that she is the lawful and first wife of the late Simon Njangiru Kuria. She further averred that she was actively involved in acquiring, developing, and managing the suit properties during their marriage.
4. She stated that in 2001, she and her late husband jointly acquired L.R. No. 4894/130 in Garden Estate with Raphael Mwangi Mwaura. She further stated that they later agreed that Raphael Mwangi Mwaura would retain L.R. No. 4894/130 in exchange for Plot No. D 13A Umoja Innercore B 87A, which they subsequently did and carried out extensive developments.
5. The Applicant argued that Plot No. D 13A Umoja Innercore was not transferred to their names due to the mutual trust between their family and Raphael Mwangi's family, as confirmed by a letter from Raphael Mwangi.

6. She further stated that the existence of the proceedings in Milimani ELC No. E234 of 2021 hindered the process of finalizing the registration of Plot No. D 13A Umoja Innercore B 87A, whose outcome remains unknown. She further stated that on 28th May 2024, she registered a transfer of the property in her name and was issued a lease certificate (L.R. No. NAIROBI BLOCK 83/2204) for Plot No. D 13A- Umoja Innercore B 87A, as there was no court order hindering her from effecting the registration in her name.
7. She argued that, despite her interest in the suit property, the Defendant had threatened her not to pursue the suit properties, which led to this application.
8. She stated that in 1997, she and her late husband jointly acquired Plot No. 163 Umoja Innercore from the Nairobi City Council and took possession thereof. She further stated that they diligently paid all rates, rents, and statutory obligations related to Plot No. 163 Umoja Innercore.
9. She also mentioned that when they attempted to register the property in 2016, they discovered that the original letter of allotment had been lost. She explained that her husband died

before they could complete the replacement and registration process, leaving her as the only surviving owner and beneficial proprietor of the suit property.

10. She further stated that upon realizing that Plot No. Umoja Innercore Plot No. 163 had not been transferred into her name after her husband's death, the Defendant instructed her Advocate to notify Nairobi City County that the property was the subject of Kiambu Succession Cause No. 431 of 2020, thereby preventing any transaction on the said property.
11. She argued that Nairobi City County is not justified in preventing her from registering Plot No. 163 in Umoja Innercore Sector V in her name.
12. She maintained that although she acquired and developed the suit properties before her husband married the Respondent in 2014, the Respondent is unlawfully claiming ownership and collecting rent to her detriment. She asserted that she has suffered significant financial loss and emotional distress due to the Respondent's continued unlawful interference with the suit properties.

13. The Applicant is apprehensive that, unless an injunction is granted, the Respondent will continue collecting rent and misappropriating the suit properties, thereby violating her proprietary rights.

THE RESPONDENT'S CASE.

14. The Respondent filed a replying affidavit dated 13th October 2025 in opposition to the application.

15. She deposed that she got married to Simon Njangiru Kuria as his second wife under Kikuyu customary law in 2001.

16. She further averred that the Applicant has no legal claim to Plot No. D 13A Umoja Innercore B 87A, as it is subject to a Succession Cause. She also mentioned that she has been managing the properties for five years since her husband's death. She also stated that in 2015, she paid security and survey fees for Plot No. D 13A Umoja Innercore B 87A.

17. She claimed that the Applicant registered Plot No. D 13A in her name on 28th May 2024, while the Succession Cause was still pending in court, which amounts to intermeddling with the deceased's property.

18. She argued that the letter dated 24th September 2020 by Raphael Mwangi Mwaura is intended to deprive the heirs of their inheritance from the deceased's estate. She also stated that no property can pass to the Applicant under the doctrine of survivorship unless the court determines that the property is jointly owned.
19. She also stated that the Plaintiff was aware she had filed Milimani ELC No. E234 of 2021, challenging the ownership of the suit property, which is pending judgment. She argued that the Applicant has not provided any evidence of joint ownership of Plot No. 163, Umoja Innercore, as payment of rates is not proof of ownership.
20. She stated that an interim distribution agreement was reached during a meeting held on 6th August, 2020, whereby the Applicant was to take control of Plot No. 186, Umoja Innercore, while she was to assume control of Plot No. 163, where she collects rent with the Applicant's knowledge.
21. She expressed her concerns that the Applicant did not disclose her receipt of rent from four additional properties during the ongoing Succession process.

22. She urged the court to maintain the status quo pending the hearing and determination of the suit.

23. The 1st Respondent filed a Notice of Preliminary Objection dated 15th October 2025, raising the following grounds:-

a) THAT the suit against the Defendant touching Plot No. D 13A Umoja Innercore B 87A is sub judice, as it is yet to be finalized in Milimani ELC Cause No. E234 of 2021.

b) The suit against the Defendant touching on Plot No. 163 Umoja Innercore Section V is sub judice as the property is the subject of distribution in Kiambu Chief Magistrate's Court Succession Cause 431 of 2021 in the Estate of Simon Njangiru Kuria

THE RESPONSE

24. In a supplementary affidavit dated 23rd October 2025, the Applicant reiterated the contents of her supporting affidavit.

25. She argued that the Respondent's alleged payment of security and survey fees for Plot No. D 13A Umoja Innercore B 87A does not confer any ownership rights in the property. She

maintained that the registration of the property in her name was lawful because it was jointly acquired and, after her husband's death, automatically vested in her name. She argued that the pendency of Succession Cause No. 431 of 2021 does not preclude her from transferring the title in her name, as there are no orders prohibiting her from completing the registration.

26. She asserted that the letter from Raphael Mwangi Mwaura confirms that she and her husband jointly acquired Plot No. 163 Umoja Innercore.

27. The application and preliminary objection were canvassed by way of written submissions.

THE PLAINTIFF/APPLICANT'S SUBMISSIONS

28. The Applicant filed her submissions dated 27th October 2025.

29. On behalf of the Plaintiff, Counsel outlined the following issues for the Court's determination:-

a) Whether the Plaintiff has a prima facie case capable of success?

b) Whether the Plaintiff would suffer irreparable loss if the orders sought are not granted?

c) Whether, on a balance of convenience, the interim orders sought should be granted?

d) Whether the Respondent's preliminary objection is warranted?

e) Who should bear the costs of the application?

30. On the first issue, Counsel relied on the case of **Mrao Ltd v First American Bank of Kenya and 2 others Civil Appeal No. 39 of 2002** to submit that the Applicant has established a prima facie case, as she has demonstrated that she acquired the properties through survivorship transmission following her husband's death. It was submitted that the Applicant and her late husband held the properties as joint owners, and upon his death, she became entitled to the properties by operation of law. To support this point, reliance was placed on Section 60 of the Land Registration Act. Counsel further submitted that the Respondent unlawfully interfered with the management of the said properties by collecting rental income and misappropriating the proceeds thereof. Counsel contended that the properties are not part of the deceased's estate.

31. Regarding the second issue, Counsel submitted that the Respondent has deprived the Applicant of her financial authority to manage her property by collecting rental income that rightfully belongs to her. It was submitted that an award in damages cannot adequately compensate the harm caused to the Applicant. To support this claim, reliance was placed on the case of **Nguruman Ltd v Jan Bonde Nielsen & 2 others (2014) eKLR.**
32. Regarding the third issue, Counsel submitted that the Plaintiff has established a prima facie case and that she will suffer irreparable harm if an injunction is not granted. Based on the foregoing, Counsel contended that the balance of convenience favours the Plaintiff. Counsel urged the court to maintain the status quo as of the time this case was filed. To support this point, reliance was placed on the case of **Joash Ochieng Ougo & another v Virginia Edith Wambui Otieno (1987)**
33. Regarding the fourth issue, Counsel submitted that in order to establish the validity of the preliminary objection, the court would need to ascertain the existence, nature, and scope of the alleged suits.

34. While acknowledging the existence of the suits, Counsel argued that the present suit is distinct as it pertains to unlawful occupation, control, and alleged trespass, and can be determined independently.

35. It was submitted that ELC Cause No E234 of 2021 relates to ownership, specifically whether the disputed property is part of the deceased estate, while the current lawsuit deals with the Respondent's unlawful interference with the Applicant's quiet possession, control, and use of the suit property, which are legally and factually distinct issues.

36. It was submitted that the plea of sub judice is misplaced and untenable because the proceedings before the Kiambu Chief Magistrate's Court pertain to the distribution of the deceased estate, while the current suit seeks relief against continuing acts of interference. Counsel argued that the preliminary objection does not meet the threshold set in the case **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696.**

37. In conclusion, Counsel urged the court to allow the application and dismiss the preliminary objection with costs.

THE RESPONDENT'S SUBMISSIONS

38. The Respondent filed her submissions dated 3rd November 2025.

39. On behalf of the Respondent, Counsel outlined the following issues for the Court's determination:-

a) Whether the preliminary objection is merited?

b) Whether the application is merited?

40. On the first issue, Counsel submitted that this suit is sub judice because it involves the same parties and subject matter as those in Milimani ELC Cause No. E234 of 2021 and Succession Cause No. 431 of 2020. To support this argument, reliance was placed on **Section 6 of the Civil Procedure Act** and the Supreme Court Case of **Kenya National Commission on Human Rights vs Attorney General, Independent Electoral and Boundaries Commission, and 16 others (Interested Parties) (2020) eKLR.** Further reliance was also placed on the cases of **Republic v Paul Kihara Kariuki (2020) eKLR, Shitanda v County Speaker of Kajiado County & 2 others (2023) KEHC 17822 (KLR), and Joyce Cherop Kaspandon and 609 others v Kenya**

Power and Lighting Company Limited HCCJR No. 202 of 2017.

41. Regarding the second issue, Counsel relied on the case of **Giella v Cassman Brown & Company (1973) EA 358** to submit on the principles applicable for the grant of an injunction.
42. It was submitted that the Applicant has not established a prima facie case because the suit herein is sub judice to Milimani ELC Cause No. E234 of 2021 and Kiambu Succession Cause No. 431 of 2020.
43. It was further submitted that the Applicant will not suffer irreparable harm if the injunction is not granted, since the Respondent has been collecting rent for the past five years.
44. It was further submitted that the balance of convenience does not favour the Applicant because she has not demonstrated her exclusive rights to the suit properties under the doctrine of survivorship.

ANALYSIS AND DETERMINATION

45. Having considered the application, the preliminary objection, and the rival submissions, the following issues arise for determination:-

a) Whether the preliminary objection is merited?

b) Whether the Applicant is entitled to the orders sought?

46. The law on Preliminary Objections is well settled. A Preliminary Objection must be based on a pure point of law.

In **Mukisa Biscuits Manufacturing Company Ltd Vs West End Distributors Ltd (1969) EA 696**, Law JA stated;

“So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

47. Further on, **Sir Charles Newbold JA** stated;

“The first matter relates to the increasing practice of raising points which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

48. In **Oraro Vs Mbaja (2005) eKLR**, Ojwang J (as he then was), described it as follows;

“I think the principle is abundantly clear. “A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual

details liable to be contested and, in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

49. It is therefore clear that a preliminary objection must raise a pure point of law, which assumes that all facts pleaded by the opposing side are correct. It cannot be raised if any facts need to be established or if the court must exercise judicial discretion.

50. In the matter at hand, the 1st Defendant's preliminary objection is based on the grounds that this suit is sub judice on account of Milimani ELC Cause No. E234 OF 2021 and Kiambu Succession Cause No. 431 of 2020.

51. Section 6 of the Civil Procedure Act provides as follows:-
No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also

directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or other court having jurisdiction in Kenya to grant the relief claimed.

52. It is clear that the *sub judice* rule applies where another suit or proceeding is pending in another Court relating to the same parties or their privies over the same subject matter. The purpose of the sub judice rule is to prevent conflicting orders emanating from two or more different courts over the same matter.
53. The 1st Defendant asserts that the parties and subject matter in this suit are the same as those in Milimani ELC Cause No. E234 of 2021 and Kiambu Succession Cause No. 431 of 2020, which are still pending for determination. The Plaintiff asserts that this suit is distinct from the other suits and can be determined independently.
54. The 1st Defendant did not produce the pleadings in the Milimani ELC Cause No. E234 of 2021 and Kiambu Succession Cause E431 of 2020 to enable this court to determine whether the parties, the cause of action, and the reliefs sought in this suit are the same as those in the aforementioned suits.

55. Be that as it may, for the court to determine whether the parties and the issues are directly and substantially in issue in the other suits, it will have to ascertain facts and probe evidence which falls outside the scope of a preliminary objection. Based on the foregoing, I find that the preliminary objection is not merited.
56. Regarding the second issue, the Plaintiff asserts that she is the owner of the suit properties by virtue of survivorship. She maintains that the suit properties are not part of her deceased husband's estate.
57. The Defendant produced a Notice and Grounds of Preliminary Objection dated 28th August 2025 filed on behalf of the Plaintiff in Kiambu Succession Cause No. 431 of 2020, challenging the jurisdiction of the Chief Magistrate's Court. It is clear from the preliminary objection that Plot No. 163 Umoja Innercore is subject to the said proceedings therein.
58. Although the court has not had sight of the pleadings related to Milimani ELC Cause No. E234 OF 2021, the parties' averments suggest that it involves Plot No. D 13A Umoja Innercore B 87A. Based on the evidence presented before me,

I find it prudent to stay this matter pending the outcome of the aforementioned suits.

59. Each party to bear its own costs.

RULING DATED, SIGNED & DELIVERED VIA MICROSOFT TEAMS THIS DAY, 24TH OF NOVEMBER 2025

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**T. MURIGI
JUDGE**

IN THE PRESENCE OF:

Ms Muganda holding brief for Ms Nyongesa for the Plaintiff
Ahmed- Court assistant