



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kabiro v Jerotich (Environment and Land Appeal E030 of 2025)
[2026] KEELC 256 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 256 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E030 OF 2025**

EM WASHE, J

JANUARY 28, 2026

BETWEEN

JENNIFER WAIRIMU KABIRO APPELLANT

AND

EVERLYNE JEROTICH RESPONDENT

RULING

1. The Appellant (hereinafter referred to as “the Applicant”) did file a Notice of Motion Application dated 30th May, 2025 (hereinafter referred to as “the present Application”) against the Respondent (hereinafter referred to as “the Respondent”) seeking the following Orders: -
 - i. That this Application be certified urgent and be heard ex-parte in the first instance. (Spent)
 - ii. That pending the hearing and determination of this Application, a stay of execution do issue against the Ruling and Order pronounced on the 23.05.2025 In the proceedings known as Eldoret Chief Magistrates Court Case No. E002 of 2025. (Spent)
 - iii. That pending the hearing and determination of this Application, an Order of Stay of proceedings do issue in regard to the proceedings Eldoret Chief Magistrates Court Case No. E002 of 2025
 - iv. That pending the inter-parte hearing and determination of this Appeal, a stay of execution do issue against the Ruling and Order of the Magistrates Court (Hon. Cheronoh Kesse) dated 23rd May, 2025 in MCELC Cause No. E002 of 2025.
 - v. That pending the hearing and determination of this Appeal an order of stay of proceedings do issue in regards to Chief Magistrates Court at Eldoret MCELC Cause No. E002 of 2025.
 - vi. That costs of this application be provided for.



2. The grounds in support of the prayers above are contained in the body of the present Application and the supporting Affidavit of the Applicant attached therein and are summarized as follows; -
- i. The Applicant herein was the Respondent in the Application dated 08.01.2025 which was determined on 23.05.2025.
 - ii. The Applicant herein did oppose the Application dated 08.01.2025 on the following grounds; -
 - a. The Applicant did plead that she was the wife of one Samson Kipchirchir Kipruto (Deceased).
 - b. Both Samson Kipchirchir Kipruto (Deceased) and the Applicant herein were the beneficial owners of the property known as LR. No. Kaptagat/Kaptagat Block 1(Misoi)/260 (hereinafter referred to as “the suit property”).
 - c. During the subsistence of their marriage, the Applicant and her husband Samson Kipchirchir Kipruto did enter into a Joint Investment Agreement dated 18.10.2018 for the construction a commercial building on the suit property.
 - d. One of the terms in the Joint Investment Agreement dated 18.10.2018 was that the Applicant would be the beneficiary of all rental income until the total amount applied towards the construction of the commercial building on the suit property had been fully offset.
 - e. Based on the Joint Investment Agreement dated 18.10.2018, the Applicant did provide the funds for the construction of the commercial building on the suit property and upon its completion began collecting the rent as was envisaged in the said Agreement.
 - f. Upon the demise of Samson Kipchirchir Kipruto, the Applicant alleges that the Respondent together with her son unlawfully and unprocedurally did transfer the suit property to their names.
 - g. Thereafter, the Respondent and her son did attempt to take possession of the suit property as well as the commercial building through collection of rent to the detriment of the Applicant.
 - h. The Applicant herein did resist the Respondents action of interfering with the management of the commercial building as well as the collection of the rental income.
 - i. Due to this dispute between the Applicant and the Respondent, the suit known as Eldoret Chief Magistrates Court Case No. E002 of 2025 between Everylyne Jerotich-versus- Jennifer Wairimu Kabiro (hereinafter referred to the “Trial Court Proceedings”) were filed including the Application dated 08.01.2025.
 - j. On the 23.01.2025, the Trial Court did grant Temporary Injunction Orders against the Applicant prohibiting her from interfering with the suit property pending the hearing and determination of the said Application.
 - k. The Applicant being aggrieved by the Ruling of the Trial Court pronounced on the 23.01.2025 did file an Application dated 04.02.2025 seeking the Trial Court to review and/or Set-aside the Orders issued on the 23.01.2025.



1. Both the Applicants dated 08.01.2025 and 04.02.2025 were heard on their merits and the Trial Court did make a Ruling on the 23.05.2025 to the following effect;-
 - a. The Application dated 08.01.2025 was allowed and the Temporary Injunctive Orders prohibiting the Applicant from interfering with the suit property pending the hearing and determination of the main suit before the Trial Court.
 - b. The Application dated 04.02.2025 seeking for a review and/or setting-aside of the Orders issued on the 23.01.2025 was dismissed thereof.
3. The Applicant being aggrieved by the Ruling of 23.05.2025 by the Trial Court did file a Memorandum of Appeal dated 30.05.2025 before this Court.
4. In addition, the Applicant did file the present Application seeking for a Stay of the Temporary Injunctive Orders issued on the 23.05.2025 in favour of the Respondents and a Stay of the Proceedings before the Trial Court pending the hearing and determination of present Application as well as the main Appeal before this Court.
5. According to the Applicant, the Order of Temporary Injunction issued on the 23.05.2025 through the Application dated 08.01.2025 in effect did result to an Order of eviction from the commercial property before the actual dispute could be determined.
6. Further to that, the Applicant was of the view that the Trial Court erred in making a finding in its Ruling pronounced on the 23.05.2025 declaring the Respondent herein as the lawful registered owner even before the substantive suit could be heard.
7. In essence therefore, the Applicant herein did seek this Court to grant the prayers in the present Application pending the hearing and determination of the Appeal.
8. The present Application was duly served on the Respondent.
9. Upon service of the present Application on the Respondent, the same was opposed through a Replying Affidavit dated 08.07.2025 on the following grounds; -
 - i. The Respondent also did claim to be the wife of the late Samson Kipchirchir Kipruto.
 - ii. The Respondent also did plead that she jointly acquired the suit property together with the late Samson Kipchirchir hence the suit property was matrimonial property.
 - iii. According to the Respondent, the Applicant herein is not married to the late Samson Kipchirchir Kipruto but to one Robert Kabiru Ngige.
 - iv. The Respondent stated that the registration of the suit property in her name and that of her son was undertaken before the demise of Samson Kipchirchir Kipruto on 13.06.2024 as evidenced in the letter of consent issued on 06.06.2024 by the Relevant Land Control Board.
 - v. The Respondent did plead that the development of the commercial building was done by the late Samson Kipchirchir Kipruto and herself as a matrimonial asset for the benefit of the family.
 - vi. Consequently, the Respondent did deny that the Applicant has any proprietary interest over the commercial property erected on the suit land which is registered jointly in her name and her son.



- vii. The Respondent further stated that the Applicant's claim over the suit property together with the commercial building, if granted, would interfere with the assets of the late Samson Kipchirchir Kipruto and disposes the lawful family of their rightful inheritance.
 - viii. In conclusion therefore, the Respondent pleaded and stated that the Applicant herein did not have any ownership rights over the commercial building or the suit property upon which it was erected.
10. Upon filing of the Replying Affidavit dated 08.07.2025 the Applicant did not put in any response by way of a further or supplementary Affidavit.
 11. The Court therefore directed the parties to file written submissions on the present Application.
 12. The parties did comply with the Appellant filing her submissions dated 21.08.2025 while the Respondent's submissions are dated 24.11.2025.
 13. The Court has considered the present application, the Replying Affidavit by the Respondent and the submissions filed and the issues for determination are as follows: -
 - Issue No. 1 - Whether or not this court can issue an order of stay of execution of the injunctive orders pronounced on 23.05.2025 pending the hearing and determination of the present appeal?
 - Issue No.2 - Whether or not this court can issue an order of stay of proceedings pronounced on the 23.05.2025 before the trial court pending the hearing and determination of the present appeal?
 - Issue No. 3 - Whether the present application is merited or not
 - Issue No. 4 - Who shall bear the costs of this application?
 14. Having identified the above issues for determination, the Court will proceed to discuss them as herein-below.

Issue No. 1 - Whether or Not This Court Can Issue an Order of Stay of Execution of the Injunctive Orders Pronounced on 23.05.2025 Pending the Hearing and Determination of the Present Appeal?

15. The first issue for determination is whether or not this Court should issue a stay of execution of the Temporary Injunctive Orders issued on the 23.05.2025.
16. From the pleadings filed by both the Applicant and the Respondent, the main dispute before the Trial Court was ownership of the suit property and secondly, who should collect the rental income from the commercial building erected thereon.
17. Both the Applicant and the Respondent claim to be wives of the late Samson Kipchirchir Kipruto and their ownership rights were either passed over from him or should be passed over from him.
18. As this dispute hereinabove is pending for determination, the Trial Court did prohibit the Applicant from either or interfering with the suit property which seems to now be registered in the name of the Respondent and her son.
19. From the pleadings by the Applicant and the Respondent, there is a consensus that the suit property was the asset of the late Samson Kipchirchir Kipruto.
20. The question that this Court now seeks to answer is whether the Order of Temporary Injunction against the Applicant issued on 23.05.2025 should be stayed or not in view of the pending dispute.



21. The Applicant in particular did allege that the Temporary Orders 23.05.2025 amounted to an Eviction Order against her in terms of collection of rent from the commercial building and the suit property in dispute.
22. In the Court's view, the Applicant's interpretation that the Temporary Injunction Orders granted on 23.05.2025 are effectively Eviction Orders is misleading and incorrect.
23. This is because from a plain reading of the Temporary Orders issued on 23.01.2025, the Trial Court did not direct any eviction of the Applicant from the suit property.
24. The Temporary Injunctive Orders issued on the 23.01.2025 by the Trial Court simply directed the Respondent to manage the suit property pending the hearing and determination of the main suit before it.
25. In other words, in the event the Applicant would emerge the winner in the dispute before the Trial Court, the suit property would be declared her asset and the Commercial Building would revert to her.
26. In addition to the above, the Applicant would still have a recourse for loss of income and/or use of the suit property and/or rent collected from the commercial building within the period which the dispute was pending determination.
27. In essence therefore, the Trial Court had the legal obligation and jurisdiction to make the Orders of Temporary Injunction in its Ruling dated 23.05.2025.
28. Unfortunately, the Trial Court in its Ruling dated 23.05.2025 did only prohibit the Applicant from interfering with the suit property but failed to state with clarity on who was to collect the rental income from the commercial building erected on the same.
29. This aspect of the dispute was critical pending the hearing and determination of the proceeding before the Trial Court.
30. The Applicant in one of the grounds pleaded in support of the present Application is that she is entitled to the collection of rent on the commercial building erected on the suit property.
31. The Respondent on the other hand in her Replying Affidavit in opposition of the present application pleaded that if the Applicant is allowed to collect rent from the commercial building erected on the suit property then it would mean that there is an interference and diversion of the proceeds from the estate of the late Samson Kipchirchir Kipruto.
32. Looking at the conflicting positions hereinabove and the pending dispute before the Trial Court, this Court is of the considered opinion that any proceeds collected from the commercial building erected on the suit property should be deposited in a neutral account pending the hearing and determination of the present Appeal.
33. In a nutshell, this Court is of the considered view and finding that the Order of Temporary Injunction prohibiting the Applicant from interfering with the suit property pending the hearing and determination of the dispute before the Trial Court issued 23.05.2025 should be observed pending the hearing and determination of the present Appeal.



Issue No.2- Whether or Not This Court Can Issue an Order of Stay of Proceedings Pronounced on the 23.05.2025 Before The Trial Court Pending the Hearing and Dtermination of the Present Appeal?

34. The second issue for determination is whether or not this Court should stay the proceedings before the Trial Court pending the hearing and determination of the present Appeal.
35. The Applicant pleads that due to the Temporary Injunction Orders issued on 23.05.2025 before the Trial Court, this Court should grant an Order of Stay of proceedings before the Trial Court pending the hearing and determination of the present Appeal.
36. the Applicant's main reason is that in the Ruling pronounced on the 23.05.2025, the Trial Court did make a finding that the Respondent's registration as the owner of the suit property was legitimate and therefore the lawful owner of the suit property.
37. According to the Applicant, the Trial Court's determination that the Respondent was the lawful owner of the suit property was a finding with finality even before the main suit was heard on merit and all facts placed before it.
38. As such, the Applicant was of the view that the Trial Court finding that the Respondent was the lawful owner of the suit property made on the 23.05.2025 was prejudicial to her and the proceedings should not continue until the present Appeal is heard and determined.
39. the Respondent did not really address this issue in their Replying Affidavit.
40. This being the case, the Court is now required to consider whether or not the Applicant's prayer for an Order of Stay of Proceedings pending the hearing and determination of the Appeal is merited or not.
41. In answer to this question, the Court is required to revisit the Ruling pronounced on the 23.05.2025 and appreciate the contents therein with a view of evaluating if the Trial Court gave an Order of Finality in an Interlocutory application or not.
42. Indeed, one of the ingredients in an application for Temporary Injunction is the establishment of a prima facie case.
43. In the Ruling of 23.05.2025, the Trial Court did acknowledge that the suit property was registered in the name of the Respondent and her son.
44. Similarly, the Trial Court in its ruling of 23.05.2025 did acknowledged that the Applicant herein was challenging the ownership of the Respondent and her son as regards the suit property.
45. However, in the second last paragraph of the Ruling dated 23.05.2025, the Trial Court did make a finding that the Applicant's allegation of fraud against the Respondent had not been substantiated.
46. This finding by the Trial Court in the Ruling pronounced on the 23.05.2025 was pre-mature and misguided as the same was determining an issue that was not to be considered in an Interlocutory Application.
47. According to this Court, the Trial Court in considering the Respondent's Application dated 08.01.2025 was supposed to look at only the ingredients of granting a Temporary Injunction and not the merits or demerits of the parties substantive claims including the issue of Fraud raised by the Applicant.
48. The Appeal before this Court is supposed to re-evaluate the merits and demerits of the Application dated 08.01.2025.



49. In other words, there is a possibility that this Court in determining the pending Appeal will either be persuaded that the application dated 08.01.2025 is merited or may not be persuaded to grant the same.
50. If this is the case, then it is only fair and proper that the Trial Court proceedings be stayed until the present Appeal is heard and determined.
51. The determination of the Appeal before this Court will give a clear direction on how the suit property should be handled pending the hearing and determination of the Trial Court proceedings including the collection of the rental income accruing from the commercial building therein.
52. As such, this Court is of the view and finding that indeed the Trial Court proceedings be stayed pending the hearing and determination of the Appeal herein.

Issue No. 3 - Whether the Present Application is Merited or Not?

53. On Issue No. 3, the Court is of the considered view that the Applicant partially succeeded on the Issue of Stay of proceedings pending hearing and determination of this Appeal but has not succeeded in Staying the Order of Temporary Injunction issued on 23.05.2025.

Issue No. 4 - Who Shall Bear the Costs of this Application?

54. On costs, the Court is of the considered view and finding that the same will abide the outcome of the Appeal.

Conclusion

55. In conclusion therefore, this Court makes the following orders in determination of the Notice of Motion Application dated 30th May, 2025:
 - A. That Pending The Hearing And Determination Of The Present Appeal, The Court Hereby Makes The Following Directions; -
 - I. The County Land Registrar Uasin Gishu Be And Is Hereby Directed To Register An Inhibition On The Property Known As Kaptagat/kaptagat Block 1(misoi)/260 Pending The Hearing And Determination Of The Present Appeal.
 - Ii. An Order Of Stay Of Proceedings Be And Is Hereby Issued In Relation To The Trial Court Proceedings Known As Eldoret Chief Magistrates Elc No. E002 Of 2025 Pending Hearing And Determination Of This Appeal.
 - Iii. Both The Applicant And The Respondent Are Further Directed To Vacate The Residential House Located Within The Suit Property As Was Directed On 31st July, 2025 Pending The Hearing And Determination Of This Appeal.
 - Iv. All Rental Proceeds From The Commercial Building Erected On The Suit Property Be Deposited In The Court's Account Pending Hearing And Determination Of This Appeal.
 - V. That Costs Of This Application Will Abide The Outcome Of The Main Appeal.

DATED, SIGNED AND DELIVERED IN ELDORET THIS 28TH DAY OF JANUARY, 2026.

EMMANUEL.M. WASHE

JUDGE



In The Presence Of:

Court Assistant: Brian

Counsel for the Applicant: Ms. Wanjohi holding brief for Mr. Munyiri

Counsel for the Respondent: Mr. Okari

