

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC LC CASE NO. E355 OF 2025

DINTA DEVANI
PANTHANIA.....PLAINTIFF/APPLICANT

-VERSUS-

SAMUEL NDINGUIRI.....1ST
DEFENDANT/RESPONDENT

ANYA ESTHER IVAN.....2ND
DEFENDANT/RESPONDENT

MONROVIA ENTERPRISES LTD.....3RD
DEFENDANT/RESPONDENT

THE CHIEF LANDS REGISTRAR.....4TH
DEFENDANT/RESPONDENT

RULING

1. The plaintiff/applicant filed an undated notice of motion application under certificate of urgency dated 17th July, 2025. The same is expressed to be brought under **Order 40 Rules 1,2,3, Order 5 Rule 17** and **Order 50 Rule 1** of the **Civil Procedure Rules** as well as **Sections 1A,1B,3** and **3A** of the **Civil Procedure Act** seeking the following orders:-

1. ***Spent.***

2. ***Spent.***

3. ***That this honourable court be pleased to issue an order of injunction to restrain the***

defendants/respondents by themselves jointly and severally, their individual and collective, their employees, servants and/or agents from trespassing, alienating or charging, interfering, intermeddling in any manner whatsoever or howsoever with the plaintiff's quiet and peaceful enjoyment and use of Land Reference Numbers 209/12555 and 37/754(suit properties) pending the hearing and determination of this suit.

4. Spent.

5. An order be issued declaring that the Plaintiff is the lawful registered owner of Land Reference Numbers 209/12555 and 37/754(suit properties).

6. The Officer Commanding Langata Police Station does assist in the enforcement of the orders of the Court.

7. Costs of this application be provided for.

2. The application is premised on the grounds on its face. It is further supported by the affidavit of the plaintiff/applicant sworn on 17th July, 2025. The plaintiff/applicant deposed that she is the legitimate owner of the suit properties herein, and attached copies of the searches thereof to the affidavit. The plaintiff/applicant further deposed that 1st defendant/respondent

was appointed director over the company, to assist in management of the same, subject to authorization by the said company.

- 3.** Further, that being involved in attending family events and some family affairs, the 1st defendant/ respondent began scheming with some family members to enrich himself without the plaintiff/applicant's knowledge. The plaintiff/ applicant deposed that she issued authorization of the sale and purchase of some properties and contracted the services of the 2nd defendant/respondent by the 1st defendant/respondent's recommendation, to assist in digitization of the said properties into the ardhi sasa platform.
- 4.** Further, that the 2nd defendant/respondent being an advocate of the High Court, was expected to behave in a professional manner. The plaintiff/applicant deposed that the 2nd defendant/respondent suggested that she hands over the original titles to her for conversion, but failed to regularly make updates on the status and progress of the same. The plaintiff/applicant deposed that the said titles were handed over by the 1st defendant/respondent to the 2nd defendant/ respondent.

5. The plaintiff/ applicant deposed that they learnt that they were being cited for trespassing on their own land, and later learnt that the 1st and 2nd defendants/respondents through fraudulent means caused the transfer of the suit properties to the 3rd defendant/respondent without any authorization or written resolution. Further, that upon conducting a search at the lands registry, they established that the signature on the transfer instrument had been forged and the lodged transfer documents had been drafted by the firm of Anya Kalwa Advocates, who they did not instruct to do so. Further, that the 1st defendant/respondent has also duly affixed his signature on the transfer instruments.

6. The plaintiff/applicant denied instructing the 1st and 2nd defendants/respondents to proceed with the sale of the suit properties to the 3rd defendant/respondent, and reported the matter to Langata Police Station. Further, that they later discovered through their bank that transactions of up to Kshs.20,000,000/= were done in fulfilment of the purported sale. The plaintiff/ applicant is apprehensive that they will suffer substantial loss if the orders sought herein are not granted.

7. The 1st defendant/respondent filed his grounds of opposition dated 3rd November, 2025 challenging the instant application on the following grounds:

1) That the dispute between the plaintiff and the 1st defendant is about shares and shareholding in a company known as Pelican Signs Ltd and thus, this honourable court has no jurisdiction to hear and determine the said dispute pursuant to Article 162(2)(b) of the Constitution of Kenya, 2010, as the dispute falls squarely under the jurisdiction of the High Court by virtue of section 3 of the Companies Act CAP 486 Laws of Kenya (Legal Notice 233 of 2015).

2) That the plaintiff's suit is misconceived, bad in law and an abuse of the court process.

8. The 2nd defendant/respondent filed the replying affidavit in response to the application which is sworn on 6th October, 2025. The 2nd defendant/respondent deposed that she is an advocate of good standing and reputable record. Further, that her interaction and involvement in the matter was limited to the conveyance process following her appointment by Pelican Signs Limited, to which she annexed a copy of the board resolution.

9. The 2nd defendant/respondent deposed that the suit property was owned by Pelican Ltd and not the plaintiff/applicant. She deposed

that she is stranger to the allegation of the 1st defendant/respondent enriching himself as a director of the company. Further, that all transaction monies were accounted for and that the plaintiff/applicant was involved in the transaction process, including the transfer of the properties.

10. The 3rd defendant/respondent opposed the application through the replying affidavit of Ibrahim Rashid Adan, its manager sworn on 29th August, 2025. The 3rd defendant/respondent deposed that the plaintiff/applicant was never the registered owner of the suit properties, as they were the properties of Pelican Signs Ltd. He further deposed that the 3rd defendant/respondent is now the registered owner of the suit properties after going through a conveyancing process that was above board.

11. Further, it was submitted that sometime in 2023, the 3rd defendant/respondent met the plaintiff/applicant and 1st defendant/respondent, who informed them that they had some properties to sell and he expressed his interest to buy the suit properties located in Nairobi West.

12. The 3rd defendant/respondent further deposed that after conducting a search to confirm that the plaintiff/applicant and 1st

defendant/respondent were indeed the directors of Pelican Signs Ltd, he also sought for a board resolution authorizing disposal of the properties, which he was given dated 5th December, 2023. It was further deposed that after discussions and negotiations, it was agreed that the 3rd defendant/ respondent would purchase the suit property for a joint total sum of Ksh.110,000,000/=.

Further, that the parties went through the usual conveyance process after conducting due diligence and signing an agreement for sale. The 3rd defendant/respondent annexed copies of RTGS slips indicating that it paid the purchase price.

- 13.** Further, the 3rd defendant/respondent deposed that upon successful registration of the transfers and upon full repayment of the purchase price, it became the registered proprietor of the suit properties and was given vacant possession thereof. The 3rd defendant/respondent accused the plaintiff/applicant of reporting that the transaction was fraudulent to Langata Police Station, despite having full knowledge and participation in the same. Further, that they later learnt that there was a dispute of how the plaintiff/applicant and 1st defendant/respondent would share the sale proceeds, and thus, there is no cause of action against it.

- 14.** The application was canvassed by way of written submissions. The plaintiff/applicant filed the written submissions dated 21st October, 2025. The 1st defendant/respondent filed his written submissions dated 19th November, 2025. The 3rd defendant/respondent filed its written submissions dated 3rd October, 2025.
- 15.** I have carefully analyzed and considered the application, the replies thereof and the written submissions filed. The issue for determination is *whether the plaintiff/applicant has met the conditions necessary for the grant of injunction orders pending the determination of the main suit.*
- 16.** The 1st defendant/respondent raised grounds of opposition that this court lacks the jurisdiction to handle the case as the dispute is with regards shares and shareholding in a company known as Pelican Signs Ltd. The court however notes that it is the ownership of the suit properties that the plaintiff/applicant has raised issue on, laying claim on the same, which falls squarely in the provision of **Article 162(2)(b)** of the **Constitution** of Kenya, as a matter regarding the use and occupation of, and title to, land.

17. The plaintiff/applicant has prayed for, among other orders, an order of injunction against the defendants/respondents, restraining them from interfering with the suit property. **Order 40 Rule 1(a)** of the **Civil Procedure Rules** encompasses the provision for temporary injunctions and provides as follows:

“Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or.....the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

18. The conditions set for consideration in granting an injunction are now well settled in the case of **Giella vs Cassman Brown & Company Limited (1973) E A 358**, where the court expressed itself on the conditions that a party must satisfy for the court to grant an interlocutory injunction: -

“First, an applicant must show a prima facie case with a probability of success. Secondly, an

interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

19. Therefore, the first criteria for grant of an injunction, is that one must be able to show that they have prima facie case with a probability of success. In the case of **Vivo Energy Kenya Limited v Maloba Petrol Station Limited & 3 others [2015] eKLR**, the Court of Appeal detailed what probability of success means when it quoted itself thus:-

“In AGIP (K) LTD V. VORA [2000] 2 EA 285, at page 291, while reversing a grant of an order of injunction by the High Court, this Court stated:

“With reference to ground 19 of the appeal, it is as well to remember that the Commissioner had before him an application, which by law required him to consider whether on all the facts in support or in opposition, a prima facie case with a probability of success had been made out to justify the grant of an injunction. In our view, the Commissioner was not entitled to

delve into substantive issues and make finally concluded views of the dispute. He was not at that interlocutory stage of the matter, to condemn one of the parties before hearing oral evidence that party being condemned had in opposition to the claims in the suit.” (Emphasis added).”

- 20.** We are at the interlocutory stage and the parties cannot yet fully prove their claims until the matter is heard and determined. Thus, while it is important to preserve the property until the final hearing and determination of the matter, it is also important not to deprive a possible deserving party of their property rights. It is therefore evident that prayer number 5 of the application is not plausible and cannot issue as the plaintiff/applicant is yet to be heard on the full merits of the case.
- 21.** The plaintiff/applicant has attached copies of searches that were done on one of the suit properties, LR. 209/12555 back in 14th February, 2024 registered in the name of Pelican Ltd, and not her own name. However, the defendants/respondents on the other hand have produced documents indicating a sale of land transaction over the suit properties, which the plaintiff/applicant claims were forged, a matter that requires a full hearing to be determined.

- 22.** As to whether the plaintiff/applicant stands to suffer irreparable injury incapable of being compensated by damages, the court observes that such claim is grave enough to cause irreparable injury if it turned out that the defendants/respondents fraudulently transferred the suit property to themselves. On the other hand, the 3rd defendant/respondent also lay claim to have validly purchased the suit properties and also stand to suffer irreparable harm if their claim is true and the plaintiff/applicant is granted an injunction.
- 23.** Having said this, and if at all it is found that the suit properties were transferred through fraudulent means, I believe that any loss can be recovered through damages.
- 24.** From the above, this court finds that the undated notice of motion filed under the certificate of urgency dated 17th July 2025, lacks merit and it is hereby dismissed. The costs shall be in the cause.
- It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 26TH DAY OF JANUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
26/01/2026.**

In the presence of:

Ms. Vena Aron - Court assistant

Ms. Anisa holding brief for Mr. Mubea for the 3rd

Defendant/Respondent

Mr. Molla Ahenda for the 2nd Defendant/Respondent

No appearance for the Plaintiff/Applicant

ORIGINAL