



REPUBLIC OF KENYA



BK (A Minor Suing Through Her Next Friend CKM) v KMM & another (Environment and Land Case E011 of 2025) [2026] KEELC 478 (KLR) (2 February 2026) (Ruling)

Neutral citation: [2026] KEELC 478 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CASE E011 OF 2025
BM EBOSO, J
FEBRUARY 2, 2026**

BETWEEN

BK (A MINOR SUING THROUGH HER NEXT FRIEND CKM) PLAINTIFF

AND

KMM 1ST DEFENDANT

DMM 2ND DEFENDANT

RULING

1. Through the notice of motion dated 2/7/2025 the plaintiff seeks the following orders:-
 1. Spent.
 2. Spent.
 3. That the honourable court be pleased to issue a temporary order of inhibition against land parcel No Ntima/Igoki/9XXX and 9XXX pending interpartes hearing of this suit.
 4. Spent.
 5. That the honourable court be pleased to issue a temporary order of injunction, restraining the 2nd defendant/respondent, his agents, servants, employees, assignees, and/or anybody else acting on his behalf, from selling, disposing of, chasing tenants, demolishing the tenants' buildings and structures in land parcel No Ntima/Igoki/9XXX and/or in whatsoever manner dealing and/or interfering with the said land parcel No. Ntima/Igoki/9XXX pending the hearing and determination of this suit.
 6. Spent.
 7. That the honourable court do issue a temporary order of injunction restraining the 1st defendant, his agents, servants, employees and/or anybody else acting on his behalf from



selling, disposing of, and/or in whatsoever manner dealing or interfering with land parcel No Ntima/Igoki/9XXX pending interpartes hearing of this application.

8. Spent.
 9. That the honourable court be pleased to issue an order requiring the next friend in this suit namely, CKM, and the defendant herein, KMM, to open an interest earning account in their joint names in a reputable bank in Meru and/or as shall be directed or ordered by the court and all the rental income accruing from the rentals in land parcel No Ntima/Igoki/9XXX be deposited in the said joint account for upkeep, education, medication, subsistence, leisure and/or any other necessity or needs of the minor plaintiff in this case pending the hearing and determination of this case.
 10. That the costs of this application be provided for.
2. The application is the subject of this ruling. It was premised on the grounds outlined in the motion; in the supporting affidavit sworn on 2/7/2025 by CKM; in the same deponent's supplementary affidavit dated 8/11/2025; and in her second supplementary affidavit dated 8/11/2025. I will outline a contextual background to the application and summarize the parties' respective cases before I analyze and dispose the issues that fall for determination.
 3. The context of the application is that, CKM [hereinafter referred to as "C"] is a step-mother to KMM [hereinafter referred to as "K"]. The two properties that are the subject matters of the suit [land parcel numbers Ntima/Igoki/9XXX and 9XXX together with the developments thereon] belonged to the late SMA [hereinafter referred to as "the late S"], who was husband to C and father to K. The suit properties are subdivisions that devolved to K pursuant to succession orders issued in Meru CMC Succession Cause No. 100 of 2016. C got her share of the subdivisions. So did C's two biological sons, FKM and KMM.
 4. BK [hereinafter referred to as "B"] is a biological daughter to K and a step-grand daughter to C. C initiated this suit contending that she is the next friend of B. At this point, she has not exhibited any court order granting her parental responsibilities over the minor or appointing her a guardian ad litem of the minor. Among other reliefs, she sought a declaration that K holds the two properties in trust for himself and for B.
 5. K contests C's locus standi, contending that she has no right to initiate proceedings for and on behalf of his daughter. He also contests the plea for the above interlocutory orders, contending that the suit properties and all the other assets that were distributed by the succession court devolved to the respective beneficiaries absolutely. He is opposed to the application.
 6. In summary, the case of C is that the two properties originated from parcel number Ntima/Igoki/2XXX which belonged to the late Ayub who had inherited it from his father, the late M. During his lifetime, the late S subdivided parcel number 2XXX into Ntima/Igoki/3XXX and 3XXX. He further subdivided parcel number 3XXX into Ntima/Igoki/4XXX, 4XXX, 4XXX and 4XXX. He caused parcel number 4XXX to be registered in the joint names of himself and one SKM in equal shares on 16/01/1XXX.
 7. C adds that the estate of the late S carried out succession through Meru CMC Succession Cause No 100 of 2016 and his assets were distributed to the beneficiaries, among them, K. Through the succession cause, K got a subdivision measuring 0.05 hectares out of parcel number 4XXX. The subdivision was surveyed and registered as parcel number Ntima/Igoki/9XXX. He further got a subdivision portion measuring 0.34 hectare out of parcel number 4243. The subdivision was surveyed and registered as parcel number Ntima/Igoki/9XXX.



8. She contends that K is dealing with the two properties as if he owns them absolutely, adding that K is bent on disposing the two properties to the detriment of the minor. It is her case that the two properties were registered in the name of K as a trustee to hold them in trust for himself and for his daughter. She urges the court to grant her the above interlocutory orders.
9. The case of the K [1st defendant] is that B is his daughter and C has no locus standi to initiate or maintain a suit in his daughter's name against him. He contests the allegation that the two suit properties are subject to customary trust, pointing out that when the late S subdivided his land, he sold a portion of it to SKM who in turn disposed the land to Lawrence Kiautha Arithi [the plaintiff's witness] and Zipporah K Kiautha. He faults C and Mr Kiautha for withholding this part of evidence and contends that if the suit land was subject to a customary trust, the late S could not have sold part of it to Silas.
10. K further argues that the suit properties were registered into his name absolutely, adding that during the entire succession exercise in which C and Kiautha participated, the element of trust did not exist and never featured. He adds that parcel number 9XXX is commercial land located at Makutano in Meru Town.
11. He contests the claims of child neglect and terms them false, emphasizing that he has always been a responsible parent. He adds that on 1/4/2025, C unlawfully removed his daughter from his lawful custody by taking her out of school two days prior to the official closing date. He contends that C did this with the goal of fabricating the allegation of child abuse at the Children's Office.
12. The 2nd defendant opposed the application through a replying affidavit sworn on 15/9/2025. His case is, by and large, similar to the case of the 1st defendant [K]. He states that through due process, he purchased and the 1st defendant transferred parcel number Ntima/Igoki/9XXX to him and he was registered as proprietor of the said parcel on 23/5/2025. He urges the court to reject the application.
13. The court has considered the application, the responses to the application and the parties' respective submissions. The two issues that fall for determination in the application are: (i) Whether the application under consideration meets the criteria for granting an interlocutory injunction by a trial court; and (ii) Whether a proper case has been made to warrant the court's interference with the rental income from the suit properties. I will analyze the two issues sequentially in the above order
14. The relevant criteria was outlined by the Court of Appeal for East Africa in *Giella v Cassman Brown* [1973] EA 358. First the applicant is required to demonstrate a prima facie case with the probability of success. Secondly, he is required to demonstrate that if the interlocutory injunction is not granted, he will stand to suffer injury that may not be adequately indemnifiable through an award of damages. Thirdly, if the court has doubts on both or either of the above, the application for an interlocutory injunction should be decided on the basis of the balance of convenience.
15. Over the years, our superior courts have developed a forth limb of the criteria, to the effect that at the time of disposing the plea for an interlocutory injunction, the court should avoid making conclusive or definitive pronouncements on contested issues in the dispute. Conclusive and definitive pronouncements should be reserved to be made at the final disposal of the case.
16. Has the applicant satisfied the above criteria? The 1st defendant is the biological father to the minor. He has contested the locus standi of his step-mother, C Mwenda, and accuses her step-mother of initiating this suit to frustrate him. C Mwenda [the step-mother to the 1st defendant] has, at this point, not demonstrated that through the mechanisms in the Children's Act, she has been appointed the guardian ad litem of the child to warrant the initiation of the present suit against the father to the child who is the presumptive legitimate guardian of the child.



17. Secondly, the two suit properties are some of the subdivisions that recently devolved to different beneficiaries through succession. If there existed a trust, that trust should have been reflected at the time of transmission. C Mwenda was one of the administrators of the estate of the late S and a beneficiary of some of the subdivisions. At this point, she has not disclosed to the court the beneficiaries of the properties that devolved to her and to her biological sons. She has not told the court why she did not cause the trust to be reflected in the registrations during succession, if indeed the trusts existed. She has not told the court why the succession court has not been moved to reflect the trusts.
18. Thirdly, parcel number 9XXX is now owned by the 2nd defendant. To injunct a registered proprietor, there must be a clear prima facie case by the applicant.
19. From the interlocutory evidence presented at this stage, the locus standi of the alleged next friend has been challenged by the father of the minor. The alleged next friend is not a duly appointed guardian ad litem. Secondly, given the preceding court process [succession] through which the suit properties, together with the other assets of the late S, devolved to the respective beneficiaries absolutely, I do not think the alleged friend of the minor has made out a prima facie case to warrant grant of injunctive orders against registered proprietors of the suit properties.
20. In the absence of a clear demonstration that she has parental rights over the minor against the minor's father, I do not think the alleged next friend has made a case of likely irreparable damage.
21. The balance of convenience, in the circumstances, tilts in deferring to the rights conferred through land registration as spelt out in Sections 24 and 25 of the *Land Registration Act*.
22. Has a case been made to warrant the court's interference with the rental income from the suit properties? The defendants are registered proprietors of the suit properties. At this interlocutory stage, the 1st defendant is entitled to receive his income and cater for his family. In the absence of evidence of co-ownership or prima facie evidence of a trust, this court has no proper basis for interfering with the registered owners' rental income or rights over what they own. The rights are protected by Article 40 of *the Constitution* and Sections 24 and 25 of the *Land Registration Act*.
23. In light of the above findings, the application dated 2/7/2025 is rejected and dismissed for lack of merit. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 2ND DAY OF FEBRUARY, 2026

B M EBOSO [MR]

JUDGE

