



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELCLC CASE NO E210 OF 2025

MOTIBEN KESHAVJI VRAJPAL SHAH.....
PLAINTIFF/APPLICANT

-VERSUS-

JYOSTSNA MAHENDRA SHAH.....1ST
DEFENDANT/RESPONDENT

UDAY MAHENDRA SHAH.....2ND
DEFENDANT/RESPONDENT

RULING

Introduction

1. The matter is in relation to apartment no D6 in Shaligram Apartment situate on NAIROBI/BLOCK5/26 in lower Kabete herein referred to as the suit property. In the Notice of Motion application dated 12th May 2025 the Applicant seeks the following orders:

a. Spent

b. THAT this honourable court do issue a temporary injunction restraining the 1st and 2nd defendants/respondents by themselves, their servants, agents or assigns from selling. Disposing of or transferring, charging, leasing or in any

manner interfering with the apartment No D6 in Shaligram Apartment situate on NAIROBI/BLOCK5/26 in lower Kabete pending the hearing and determination of the Application

c. THAT this honourable court do issue a temporary injunction restraining the 1st and 2nd defendants/respondents by themselves, their servants, agents or assigns from selling. Disposing of or transferring, charging, leasing or in any manner interfering with the apartment No D6 in Shaligram Apartment situate on NAIROBI/BLOCK5/26 in lower Kabete pending the hearing and determination of the main suit

d. Costs of this application

2. The Application is grounded on facts as in the supporting affidavit of SHAH MOTIBEN K.V on grounds that she had entered into a sale agreement over the suit property. That she paid for the purchase price solely and with no help of the respondents. She further deponed that at no particular point was it her intention to transfer the same into the names of the respondents. She deponed on misrepresentation of facts, threats and coercion the respondents made her sign the sale agreement that caused their names to appear as the co -owners of the suit property.

3. The applicant avers that on the basis of the fraudulent sale agreement dated 10th September 2024 the respondents intend to

take possession of the suit property which will interfere with her possession as there is eminent danger of her being dispossessed hence this application to stop any dealings on the suit property and safeguard her interests in the suit property pending the determination of the sui.

Respondent's case

4. The 1st respondent via a replying affidavit dated 11th July 2025 responded to the application. He deponed he was the applicant's son and the 2nd respondent was the applicant's grandson

That the signing of the sale agreement was done in full knowledge of the applicant without any coercion. It was the intention of the parties at the signing to be co-owners in the suit property. He further deponed that the 2nd defendant had largely contributed to the purchase of the suit property.

He averred that the present application having been made 5 months after the execution of it indicated that it was made in bad faith due to pressure from external sources that had not been part of the agreement and not on substantial facts.

He stated that at no particular point have the respondents wanted to evict the applicant and her allegations are based on fear with no prove as she continues to peacefully occupy the suit property.

In response the applicant put in a further affidavit sworn on the 4th August 2025.

She denied the averment in the replying affidavit and insisted that she had expressly instructed the 1st defendant to purchase the suit property in her name. That the respondents had taken advantage of her old age and coerced her into signing the agreement without allowing any legal representation in the transaction. She averred that she trusted the 1st respondent being her own son but he took advantage of the said trust and added the respondents as purchasers in the sale agreement.

The applicant indicated that she had reported the matter to the directorate of criminal investigations and after carrying out investigation concluded that some documents had been fraudulently executed having found the applicant's signature to be a forgery.

The application was canvassed by way of written submissions

Applicant's submissions

The applicant submitted on two issues

- i. Whether the applicant is entitled to the order sought
- ii. Who should bear the costs.

She submitted that she had met the conditions for issuance of injunctive orders as in the case of **Giella Vs Cassman Brown & Co Ltd 1973 E.A 358**

He submitted that the sale agreement of 10th September 2024 gave her the rights to the suit property which rights are worth of being protected hence proof of a prima facie case relying on what the court defined a prima facie case to be in **Mrao Ltd Vs First American Bank of Kenya Ltd & 2 others s(2003)KLR.**

On the issue of irreparable harm counsel submitted that the actions of the respondents had caused the applicant to live in fear which had affected her peace of mind despite her advanced age. That she has been forced to vacate the suit premises due to the constant threats by the respondents which threats include disposing off the suit property.

Lastly counsel submitted that the balance of convenience tilted on her side being that she might lose her proprietary rights if the respondents are allowed to dispose off the suit property. That no loss will be occasioned to the respondents if she is allowed to continue being in quiet possession of the property pending the determination of the suit. She relied in the case of **Pius Kipchirchir Kogo Vs Frank Kimeli Tenai (2018) eKLR**

The court granted leave to the respondents on the 11th December 2025 to file submissions out of time but as the time of filing this submission, the respondents had not filed any submissions

Analysis and Determination.

5. The issue for determination is whether the Plaintiff/Applicant has satisfied the conditions for the grant of a temporary injunction pending the hearing and determination of this suit. The principles for the grant of a temporary injunction are well set out in the case of **Giella vs. Cassman Brown & Co. Ltd (1973) EA 358.**

It is trite law and procedure that a claimant seeking orders of injunction orders must establish that he/she has a prima facie case with a probability of success, must show that he/she will suffer irreparable loss which would not be adequately compensated by an award of damages, if the order is not granted and if the court is in doubt it will decide the application on a balance of convenience.

It is the Applicants' case that the defendants/respondents coerced her into signing the sale agreement which purportedly listed the respondents as co purchasers. The applicant avers that that she trusted the respondents to safeguard her interests being that were her relatives, but the respondents had taken advantage of her advanced age and her failing health to include themselves in a sale agreement where they did not contribute in the purchase price

The respondents in rebuttal indicate that the applicant participated in the execution of the sale agreement in full understanding of the same and that the contents of the agreement had been made known to her by her advocates. That the applicant was okay with the respondents being listed as co-purchasers having contributed to the purchase price of the suit property.

The Sale Agreement dated 10th September 2024 is the basis for ownership by the applicant. The said agreement contains the requisite tenements of a good contract in the sense that it contains the names of the contracting parties; it clearly sets out the terms and conditions and the same is dully executed. As well, it contains the agreed consideration for the purchase. It is therefore not disputed that the applicant was a purchaser in the agreement a fact that has also not been controverted by the respondents. The point of departure is in the inclusion of the respondents as purchasers in the agreement the applicant pleading fraud on the part of the respondents. whether this is true or not is not clear to this Court, but as far as evidence is concerned, she has attached a copy of the sale agreement that gives her the rights and it would be easy to say that she has established prima facie case owing to her proprietary interests over the suit property worth of this court's protection. In **Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others**

[2003] eKLR a prima facie case was stated as “A *prima facie* case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

Going by the above definition the applicant has established a prima facie case having shown she is connected to the suit property.

In the case of “**Mbuthia - Versus - Jimba credit Corporation Ltd 988 KLR 1**”, the court held that; “In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the party’s cases.”

The second test is as to whether the applicant stands to suffer irreparable harm that cannot be compensated in damages. The applicant has indicated that she has vacated the premises due to constant threats from the respondents which include the fact that they are going to sell the suit property. The respondents on the other hand state that the allegations are merely speculative as they are not intending to dispose of the suit property and have not interfered with the quiet possession of the applicant. I hold the view that should the suit be disposed off to third parties, it will occasion

loss to the applicant should she be successful in her suit. Considering the she is an elderly woman disposing her and denying her proprietary rights will occasion loss to her that will not only be financial but also mental which can deeply affect her health which is loss that damages cannot meet as a form of compensation

In this regard I adopt the sentiments in **Nguruman Limited vs. Jan Bonde Nielsen & 2 Others 2014) eKLR**

“ An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy”

On the third limb, the balance of convenience tilts in favour of granting the injunctions than rather not as the applicant is the one likely to suffer more. The respondents have indicated that they have not tried to evict the applicant and that she is in quiet possession of the same and that they have not interfered with her occupancy on the property. Granting of the injunctions in this case will be for the benefit of both the applicant and respondents as it will be protecting the substratum of the suit pending final determination. The respondents will not be prejudiced in any way.

Final disposition

I find that the applicant has met the threshold for the orders of temporary injunction to be issued

The upshot of the foregoing is that that I grant the following orders;

1. **THAT** an order of temporary injunction is hereby issued restraining the 1st and 2nd defendants/respondents by themselves, their servants, agents or assigns from selling. Disposing of or transferring, charging, leasing or in any manner interfering with the apartment No. D6 in Shaligram Apartment situate on NAIROBI/BLOCK5/26 in lower Kabete pending the hearing and determination of the Application
2. **THAT** an order of temporary injunction is hereby issued restraining the 1st and 2nd defendants/respondents by themselves, their servants, agents or assigns from selling. Disposing of or transferring, charging, leasing or in any manner interfering with the apartment No. D6 in Shaligram Apartment situate on NAIROBI/BLOCK5/26 in lower Kabete pending the hearing and determination of the main suit
3. Each party to bear their own costs.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **16TH** day of

FEBRUARY 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Kimani..... for the Applicant

No appearance..... for the Defendants/Respondents

Philomena W...... Court Assistant

Original File Copy