

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC APPEAL NO. E003 OF 2021

ROSE WANGARU
APPELLANT

=VERSUS=

LINET MORAA NYAMONGO
.....**RESPONDENT**

*(Being an appeal from the Ruling and Orders issued by
Hon. P. Muholi (SRM) on 11th December 2020 in Milimani
MCELC 8527 of 2020)*

JUDGMENT

Introduction

1. This is an appeal against the Ruling and Orders of the learned Senior Resident Magistrate, **P. Muholi**, delivered on **11th December 2020 in Nairobi CMELC No. 8527 of 2019**. By that Ruling, the learned Magistrate declined to grant an injunction sought by the Appellant vide her application dated **19th November 2019** and dismissed the said application with costs.
2. The Appellant, aggrieved by the said Ruling, filed the Memorandum of Appeal dated **16th December 2020** containing eight (8) grounds.

3. Pursuant to directions of this Court, the appeal was canvassed by way of written submissions filed by the Appellant on 27th February 2026 and by the Respondent on 22nd March 2026.

Background

4. The dispute concerns House No. 42, Block E2, Kibera Soweto East Zone “A”, Nairobi, developed under the Kenya Slum Upgrading Programme (KENSUP), a joint initiative of the Government of Kenya and UN-Habitat aimed at realizing the right to adequate housing under **Article 43(1)(b) of the Constitution of Kenya, 2010.**

5. The Respondent, **Linet Moraa Nyamongo**, was an enumerated resident of Soweto East Zone “A” and a member of Soweto East “A” Housing Co-operative Society Limited (the Society) under Membership No. 14/7/14. She received an Enumeration Card and a letter of offer from the Ministry of Lands, Housing and Urban Development for the said house. The letter of offer expressly prohibited transfer of the allocation.

6. The Appellant, **Rose Wangaru**, widow of the late **Ezekiel Gitihia Nderitu** (deceased), claims that on or about 5th March 2014 the Respondent transferred all her shares, savings and interest in the Society to the Appellant's late husband, formalized by a Nomination Form dated 10th March 2014 and stamped by the Society. The Appellant further avers that her late husband and subsequently herself continued making payments and that the allocation to the Respondent in 2016 was an administrative error. She occupied the house and paid sums totaling KShs. 300,000/= which she claims were towards acquisition, not rent.
7. The Respondent counters that no sale or transfer of the house or shares occurred. The relationship was purely that of landlady and tenant. The Appellant occupied the house as a tenant at a monthly rent of KShs. 16,000/ from August 2016 until the KShs. 200,000/= advanced was exhausted as rent after about 1½ years. A further KShs. 100,000/= was paid to extend the tenancy. Upon expiry, the Appellant refused to vacate. An agreement dated 8th June 2019 (marked LM4 in the lower court) recorded that

the Appellant had utilized her rent payments in full and agreed to vacate upon reimbursement of KShs. 61,000/= for grills and a security door, which was paid. The Appellant nonetheless refused to vacate and filed suit. The Respondent asserts the Nomination Form was never signed by her and was fraudulent.

8. The learned Magistrate, after considering the affidavits, annexures and submissions, found that the Appellant had not established a prima facie case warranting an injunction, that the balance of convenience favoured the Respondent, and dismissed the application with costs.

Grounds of appeal

9. The Appellant's Memorandum of Appeal dated 16th December 2020 contains eight grounds which, in summary, fault the learned Magistrate for failing to appreciate the legality and validity of the transfer of shares and savings from the Respondent to the Appellant's late husband, for disregarding the intention of the parties as evidenced by the duly executed and stamped Nomination Form, for conflating the transfer of

shares within the Cooperative Society with the non-transferability clause in the Ministry's letter of offer, and for failing to find that the Appellant had established a prima facie case with the balance of convenience tilting in her favour. The Appellant contends that the orders of the lower court have occasioned grave injustice and prays that the appeal be allowed, the Ruling be varied or set aside, and appropriate relief be granted.

10. The Appellant prays that the appeal be allowed, the Ruling set aside and appropriate orders granted.

The Appellant's submissions

11. The Appellant framed four issues: (i) legality of the transfer of shares; (ii) whether the late husband acquired enforceable rights and legitimate expectation to House No. 42 Block E2; (iii) whether allocation to the Respondent was due to administrative failure; and (iv) whether the Magistrate erred.

12. She relied on **Sections 20 and 32 of the Co-operative Societies Act, 1997 (Cap. 490) and Rules 10 and 11 of the Co-operative Societies Rules, 2004**, arguing these permit transfer of shares and nomination of

beneficiaries, which was acknowledged by the Society. The Nomination Form (Annexure B) was duly executed, witnessed and stamped on 10th March 2014. **Section 32(5)** required acknowledgment, which occurred.

13. Reliance was placed on the Supreme Court in **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] KESC 53 (KLR) (29 September 2014)** for giving effect to parties' intention and legitimate expectation. The Court of Appeal in **Wreck Motors Enterprises v The Commissioner of Lands & 3 others [1997] eKLR** was cited to the effect that acquired rights cannot be defeated by administrative failure.

14. Further reliance was placed on **Section 3(3) of the Law of Contract Act (Cap. 23) (distinguishing shares from land)**, **Willy Kimutai Kitilit v Michael Kibet [2018] eKLR (Court of Appeal Civil Appeal No. 51 of 2015)** on constructive trust and proprietary estoppel, and **Kenya Revenue Authority v Export Trading Company Limited [2022] KESC 31 (KLR) (17 June 2022)** on unjust enrichment. Equity principles were

invoked: equity looks to the intent rather than the form; equity will not allow one to reap where one has not sown.

Respondent's submissions

15. The Respondent framed two issues: (a) whether there existed a valid contract for sale of the house; and (b) whether the trial court had jurisdiction over cooperative society share transfers.

16. She emphasized that the project was for enumerated genuine residents only. Shares were non-transferable per the letter of offer. The relationship was landlord-tenant; payments were rent. The alleged Nomination Form **(LM2)** was not signed by her and was fraudulent. No response from the Ministry was produced to the purported letter **(LM3)**. The 8th June 2019 Agreement confirmed rent exhaustion and agreement to vacate.

17. On jurisdiction, **Section 76 of the Co-operative Societies Act** ousts court jurisdiction over disputes concerning the business of a co-operative society; such matters go to the Co-operative Tribunal, with appeal only to the High Court under **Section 81**. The appeal lacks merit and should be dismissed with costs.

Issues for determination

18. Arising from the grounds, submissions and record, the issues are:

- i) Whether the Magistrate's Court had jurisdiction to entertain the dispute.**
- ii) Whether the transfer/nomination of shares and savings was lawful and valid, and whether it conferred enforceable rights or legitimate expectation on the Appellant's late husband or the Appellant.**
- iii) Whether the learned Magistrate erred in law and fact in dismissing the Appellant's application dated 19th November 2019.**
- iv) What orders should issue?**

Analysis and determination

Issue 1: Jurisdiction.

19. **Section 76(1) of the Co-operative Societies Act**, provides that any dispute concerning the business of a co-operative society arising between members, past

members, or between a member and the society shall be referred to the Co-operative Tribunal. The core of the Appellant's claim is the alleged transfer of shares and interest in the Society, which directly concerns the business of the Society.

20. While the suit was filed in the Chief Magistrate's Environment and Land Court (CMELC) and touches on possession of immovable property (falling within the Environment and Land Court's mandate under **Article 162(2)(b) of the Constitution**), the foundational dispute is the validity of the share transfer/nomination. Courts have consistently held that such disputes must first be referred to the Tribunal.

21. The learned Magistrate could not have properly determined the share transfer issue without encroaching on the Tribunal's exclusive jurisdiction. This alone provides a sufficient basis to uphold the dismissal, though the court also considered the merits.

22. This position was recently reaffirmed by the Court of Appeal in **Thuranira v Mutai & another (Civil Appeal CE621 of 2021) [2025] KEHC**, where the court

emphasised that **Section 76** encompasses claims by or against members, past members or nominees in respect of debts, demands or interests in the society's business, including share-related matters. The Tribunal remains the primary forum for resolution of such disputes.

Issue 2: Validity of the Transfer/Nomination and Enforceable Rights

23. The Appellant's claim rests on a document described interchangeably as a "transfer" and "Nomination Form". **Section 20 of the Co-operative Societies Act and Rule 10 of the Co-operative Societies Rules, 2004** govern inter vivos transfers of shares. Such transfers require committee approval, must be recorded in the Society's register, and are invalid if the member is indebted. No evidence was placed before the lower court (or this Court) of committee approval or registration of a live transfer of membership.

24. The document relied upon is a Nomination Form under **Section 32 and Rule 32 of the Co-operative Societies Rules, 2004**, read with **Section 39 of the Act**. Nomination operates only upon the death of the

member to transfer shares to the nominee. It does not effect an immediate transfer of membership or interest during the nominator's lifetime.

25. Critically, the Respondent denies ever signing the form and alleges fraud, claiming the deceased falsely represented himself as her father-in-law. No independent corroboration or Society minutes confirming a genuine transfer were produced. In the context of a government slum-upgrading project under KENSUP, allocations were strictly to enumerated genuine residents. Letters of offer expressly prohibited transfer to prevent speculation and ensure communal tenure through the cooperative.

26. Even assuming arguendo a written agreement existed, **Section 3(3) of the Law of Contract Act (Cap. 23)** requires any contract for the disposition of an interest in land to be in writing, signed by all parties and witnessed.

27. The Appellant concedes the subject was "shares and savings not land per se", yet the shares entitled the holder to the housing unit. However, there was no evidence presented of a formal application for transfer of shares or the mandatory approval by the Society's committee as

required under Section 20 of the Co-operative Societies Act.

28.No legitimate expectation arose. The doctrine, as articulated by the Supreme Court in **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] KESC 53 (KLR) (29 September 2014)**, requires a clear, unambiguous representation by a public body upon which the claimant reasonably relies to her detriment. Here, the Society's stamping of a nomination form (if genuine) did not constitute a representation overriding the Ministry's allocation to the enumerated resident or the non-transferability clause. Administrative records reflecting the Respondent as member were not "error" but consistent with her status as the rightful beneficiary. The Court of Appeal in **Wreck Motors Enterprises v The Commissioner of Lands & 3 others [1997] eKLR** does not assist; administrative failure cannot create rights where none existed ab initio.

29.Recent jurisprudence reinforces this. In **Mburu v Kariuki & another [2026] KECA 529 (KLR)**, the Court of Appeal

held that administrative reallocation of land without notice, hearing or lawful procedure violates natural justice and cannot override an existing valid interest. Similarly, in **Nanasi Housing Cooperative Society Limited & another v Njore (Civil Appeal 22 of 2020) [2023] KEHC 2257 (KLR) (2 March 2023)**, the court affirmed that housing cooperative allocations under statutory schemes are strictly regulated and cannot be altered by informal share arrangements that bypass official processes.

30. Equitable doctrines fare no better. **Willy Kimutai Kitilit v Michael Kibet [2018] eKLR (Court of Appeal)** applied constructive trust and proprietary estoppel where full performance occurred and parties' conduct created an expectation. Here, no valid underlying transaction existed, and the Appellant's occupation was as tenant. The maxim "equity looks to the intent rather than the form" cannot override statute or public policy in slum upgrading. The Appellant's claim of unjust enrichment is misplaced: it is the Appellant who has occupied the house for years without ongoing rent or title, while the Respondent, the

rightful beneficiary, has been displaced. Equity will not assist one who comes with unclean hands or seeks to profit from an alleged fraudulent nomination.

31. Recent authority on constructive trusts to prevent unjust enrichment includes, **In re Estate of Titus Duta Ngwili (Deceased) (Succession Cause No. E012 of 2025)**, where the court imposed such a trust to restore property to the rightful beneficiary.

Issue 3: Whether the learned Magistrate erred in law and fact in dismissing the Appellant's application dated 19th November 2019

32. An interlocutory injunction requires the applicant to demonstrate a prima facie case with a probability of success on the merits, that she would suffer irreparable injury not adequately compensable by damages, and that the balance of convenience tilts in her favour in line with the principles set out in **Giella v Cassman Brown & Co Ltd [1973] EA 358.**

33. The Appellant failed to meet any of these thresholds. She did not establish any enforceable legal or equitable right to House No. 42 Block E2. The evidence on record clearly

pointed to a landlord-tenant relationship rather than a valid transfer of shares or ownership. Any alleged harm arising from loss of occupation is compensable by an award of damages. The balance of convenience favoured the Respondent, who holds the official letter of offer as the enumerated genuine beneficiary of the KENSUP project.

34. The learned Magistrate properly evaluated the affidavits, annexures and submissions before him. He correctly applied the principles governing interlocutory injunctions and reached a decision that is amply supported by both the facts and the law. No error in law or fact has been demonstrated. The grounds of appeal lack merit and constitute no more than an impermissible attempt to re-litigate issues already determined by the trial court. This application of the Giella principles has been consistently reaffirmed in recent Environment and Land Court decisions. In **Ntauti & another v Samuel & 2 others (Land Case E047 of 2025) [2025] KEELC**, the court emphasised that the three limbs must be considered sequentially and that failure on the prima facie case limb is fatal.

35. Similarly, in **QFG v AP (Matrimonial Case E002 of 2024) [2024] KEHC,** it was reiterated that a prima facie case requires demonstration of a serious triable issue backed by evidence, not mere assertion. The Magistrate's dismissal aligns squarely with these authorities.

Issue 4: What orders should issue?

36. Having carefully considered all the issues raised in this appeal, the evidence on record, the applicable law, and the submissions of both parties, this court is satisfied that the appeal is devoid of merit. The Appellant has failed to demonstrate any error in law or fact on the part of the learned Magistrate. The Respondent remains the rightful beneficiary of House No. 42, Block E2 under the KENSUP programme, having been duly enumerated and issued with the letter of offer. The Appellant's occupation of the suit premises was based on a tenancy arrangement which has since expired, and no enforceable proprietary interest was established.

37. In the circumstances, the appropriate orders are those that uphold the decision of the lower court.

38. On the question of costs, although the Respondent is the successful party, this Court, having regard to the peculiar circumstances of this case including the fact that it arises from a public slum-upgrading programme, involves vulnerable parties.

Final orders

39. For the reasons alluded to, the final orders that commend themselves to the court are as hereunder:

a) The appeal is dismissed in its entirety.

b) Each party shall bear own costs of this appeal.

c) The lower court file be returned forthwith to the Chief Magistrate's Court (Environment and Land Division), Milimani, Nairobi.

Dated, Signed and Delivered virtually this 16th day of April, 2026.

**E. K. WABWOTO
JUDGE**

In the presence of:-

Mr. George Odour for the Appellant.

Mr. Sikuta for the Respondent.

Court Assistant: Mary Ngoira and David Ngoosa.

ORIGINAL