

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCA NO E009 OF 2025

JUDITH NGUHI NJENGA - **APPELLANT /APPLICANT**
VS
PENNINAH NJERI NDOBI - **RESPONDENT**

RULING

**[In respect of the Applicant's application dated 12/9/2025 and the
Respondent's Preliminary Objection dated 15/10/25]**

The Applicant's application dated 12/9/2025

1. Vide the Notice of Motion dated the 12/9/2025 the Applicant moved the Court and sought the following orders;
 - a. The Court to restrain the Respondent from excising from LR No Kangemi/Dagoretti/1012 and any portion of it and making it a part of NBI/BLOCK 64 1011 [originally LR No Kangemi/Dagoretti/1011] [suit land].
 - b. The Court to restrain the Respondent from evicting the Appellant and her tenants from the subject matter of appeal L R NBI/BLOCK 64/1011 [originally LR No Kangemi/Dagoretti/1011] until further orders of this Court.
 - c. The Court be pleased to restrain the Respondent from evicting the Appellant and her tenants from the suit land pending the hearing and determination of the appeal.

- d. Costs of the application be provided for
2. The application is based on the grounds annexed thereto and the supporting affidavit of Judith Nguhi Njenga sworn on the same date and 26/11/2025. She outlined the grounds, namely that she and the Respondent are sisters, with her being the eldest. They inherited their parents' properties.
 3. In 2013, she transferred the suit land to the Respondent through an exchange of L R NO Kangemi/Dagoretti/1012 [held by the Respondent]. Under that exchange, the Appellant and her tenants were to remain in possession until the temporary residential and commercial premises were replaced by permanent structures. She is still in possession of the suit land to date, and the Respondent is currently damaging the foundation of the premises by digging a trench between the properties, which, if left unchecked, will weaken the integrity of the property.
 4. The deponent further stated that the Respondent procured the exchange by way of fraud in 2013 since her land is bigger than that of the Respondent.
 5. That on 8/9/2025, she was informed by her caretaker that the Respondent had ordered the tenants to vacate the premises abruptly, claiming that she is the owner of plot No 1011, despite breaching her undertaking contained in the consent order. On 11/9/25, she reported the disturbance and threats of eviction to the Kangemi Police Station. She derives her livelihood from the rental income from the property and

urged the Court to issue a temporary injunction restraining the Respondent from interfering with the suit property and her tenants therein.

6. The application is opposed by the replying affidavit sworn by the Respondent on 15/10/25. She deposed that she approached the Applicant to exchange the properties because her property was situated between her two plots, which she aimed to consolidate for economic benefit. This proposal was readily accepted by the Applicant, resulting in the exchange agreement between the two sisters dated 26/11/2013. Subsequently, the transfer of land was executed on 7/2/2014.
7. Thereafter, problems arose between them. The Applicant refused to cooperate in appointing a joint valuer to reconcile the difference in sizes of [0.12 ha] of the two plots, being 1011 and 1012; meanwhile, the Appellant insisted on relying on a valuation from 2023, nine years later after the completion of the transfer, instead of as at 2014, after the exchange and transfer of the titles. Furthermore, she refused to agree on a neutral valuer, further demonstrating her lack of candour. The application is brought with the aim of preventing her from enjoying her right to her property.
8. She added that following the consent entered on 5/2/2020, she continued to accommodate the Applicant and her tenants who remain in situ to date as she developed another property. She averred that the application for injunction is unmerited, as the Applicant has failed to demonstrate a

prima facie case with a probability of success, as her claim to the property was long extinguished by transfer, as she is no longer the registered owner of the suit land. She added that she stands to suffer no irreparable harm, as her claim, if any, is capable of financial quantification in terms of rental income. The balance of convenience favours her as the registered owner of the property.

9. The Respondent filed the preliminary objection dated 15/10/2025 on the following grounds;
 - a. The Court lacks jurisdiction to entertain the Notice of Motion and the appeal pursuant to section 79G of the Civil Procedure Act since the same was filed out of time without the leave of the Court.
 - b. The Appellant violated the mandatory provisions of Order 42 Rule 12 of the Civil Procedure Rules, having failed to serve the memorandum of appeal within 7 days of notification of admission of the appeal by the Registrar [if at all], thereby rendering the appeal liable to automatic dismissal for want of proper and lawful service.
 - c. That the memorandum of appeal filed on 20/1/1025 is fatally defective and incompetent and nullity ab initio.
10. On 16/6/25, parties elected to canvass the application by way of written submissions. The Applicants' submissions are dated 26/11/25, while the Respondent's submissions are dated 16/10/25 and 1/12/2025. I have considered all the submission in the said Ruling.

Analysis and determination

11. Having considered the application, the responses, the Preliminary objection and all submissions placed before the Court, the Court is of the view that the following issues commend themselves for determination;

- a. Whether there is a competent appeal before the Court
- b. Whether status quo orders ought to be issued
- c. Who meets the costs of the application and the Preliminary objection.

Whether there is a competent appeal before the Court

12. Section 79G of the Civil Procedure Act provides that an Appeal should be filed within a period of 30 days from the date of the judgment. However, the proviso to the said Section provides that the Court may grant leave or extension of time to file an appeal out of time, but the delay must be explained. The above section states as follows:

“79G. Time for filing appeals from subordinate Courts

Every appeal from a subordinate Court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower Court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the Appellant satisfies the Court that he had good and sufficient cause for not filing the appeal in time.”

13. Section 16A of the Environment and Land Court Act mirrors Section 79G of the Civil Procedure Act which sets out the statutory timeline of 30 days upon which an aggrieved party can file an appeal to the Environment and Land Court.

14. In this case, the Court's ruling was issued on 6/12/24, and the current appeal was filed on 20/1/2025. Considering that the official Court holidays run from 20 December to 13th January of the following year, I find that the appeal was filed in time.

15. On the second limb of the objection, which is that the Applicant failed to serve the memorandum of appeal within 7 days of the Registrar’s notification of admission of the appeal, the Court finds that there is no evidence that the current appeal has been admitted; hence, this objection also fails. The fact that the Court scrutinises The Court of Appeal decision in the case of **Kenya Power & Lightig Company Limited vs Fleetwood Enterprises Limited [2007] eKLR** affirmed inter alia that where trespass is proven the affected party need not prove that it suffered damages or loss as a result of the trespass so as to be awarded damages because once the trespass is proved, the Court is bound to assess and award damages on a case to case basis. Additionally, the case of **Duncan Nderitu Ndegwa vs. KP& LC Limited & Another**

(2013) eKLR for the holding, inter alia, that once a trespass to land is established it is actionable per se and indeed no proof of damage is necessary for the Court to award damages. the record to determine whether the appeal has been admitted, in itself, disqualifies the objection from being purely a question of law.

16. The third limb of the objection is that the memorandum of appeal filed on 20/1/2025 is fatally defective, incompetent, and a nullity. I have already determined that the appeal is competent, and therefore this objection is unmerited.

Whether status quo orders ought to be issued

17. The purpose of a temporary injunction as stated in Order 40 Rule 1 of the Civil Procedure Rules, 2010 is to stay and prevent the wasting, damaging, alienation, the sale, removal or disposition of the suit property. The Order provides that;

“1. 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 b) That the Respondents threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Respondents in the suit,

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 principles that guide the Court in determining an application of such nature are found in the celebrated case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358 as follows: -

- a. First the Applicant must show a prima facie case with a probability of success.
- b. Secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
- c. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.

19. Has the Applicant established a prima facie case with a probability of success? A prima facie case was defined by the Court of Appeal in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* (2003) eKLR as follows: -

“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.”

20. In this case, it is not in dispute that the parties entered a consent judgment, which is the main issue of the appeal before the Court. It is also not in contention that the Applicant and the Respondent entered into the said consent and exchanged agreements voluntarily to establish their claims to the land inherited from their deceased parents. It is also not disputed that both parties are in possession of the suit lands and, specifically, although the Respondent has title, she admitted that the Applicant is still in possession of the disputed land and is collecting rent from her tenants.

21. That being the case, the Court finds that to preserve the substratum of the suit, the prudent order is to maintain the status quo until the hearing and determination of the appeal. The status quo will mean that the Applicant and her tenants remain in possession. The Respondent, who holds the title, shall not transfer, charge, or lease the property pending the hearing and determination of the appeal. Neither party shall construct or alter the character of the land until the appeal is heard and determined.

22. Final order for disposal

a. The Preliminary objection is unmerited. It is dismissed.

b. The Notice of Motion dated the 12/9/25 be and is hereby allowed in terms of the status quo set out in para 21 above

c. Both parties are sisters, I make no order for costs.

23. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF APRIL 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

1. Mr. Kamau Kuria S.C for the Appellant
2. Mr Alekeen for the Respondent
3. CA- Mr Duncan Muusya

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