

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELCLC NO. E537 OF 2024
CONCELIA AOKO ONDIEK.....PLAINTIFF/APPLICANT
-VERSUS-
JOHN PAUL ONDIEK.....DEFENDANT/RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated 17th December, 2024 filed by the plaintiff/applicant, and it is expressed to be brought under **Article 40** of the **Constitution**, **Sections 1A,1B** and **3A** of the **Civil Procedure Act**, **Order 40** and **51** of the **Civil Procedure Rules** seeking the following orders:-

- 1) *Spent.*
- 2) *Spent.*
- 3) *That upon hearing interpartes, an order of injunction do issue restraining the defendant/respondent, his agents, employees, servants and/or anyone acting through him from collecting rent, selling, transferring, disposing off, trespassing and/or in any other dealing or interfering with the parcel of land to wit NAIROBI/BLOCK 72/2230 pending the hearing and determination of this suit.*
- 4) *That upon hearing interpartes, an order of injunction do issue directing the defendant to remit the sum of Kenya Shillings Seventeen Million Two Hundred and Eighty Thousand (Kshs.17,280,000.00) to the plaintiff/applicant.*

5) That the 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 even date. The plaintiff/applicant deposed that she is the bona fide registered owner of the parcel of land known as Nairobi/Block 72/2230, the suit property, and holds the same as a trustee for 2 minors. Further, that her husband, the late Arch. Bishop Stephen Alloys Ondiek Oluoch (deceased) acquired the suit parcel vide a transfer of lease dated 15th April, 2005. That her late husband transferred the suit property to Stephen Alois Ondiek Oluoch and herself to hold the same jointly in trust for their minor children, namely Pauline Ashley Ondiek and Stephen Omondi Ondiek. She deposed that the transfer forms were duly registered on 29th December, 2005 after obtaining rent and rates clearance certificates and consent from the office of the commissioner for lands.
3. The plaintiff/applicant deposed that sometime in the year 2012, succession proceedings were instituted in succession cause no. 44 of 2012, which proceedings are pending to date as no grant of probate has been issued. Further, that in the year, 2024, the

defendant/respondent and the deceased's beneficiaries filed an application in the aforesaid matter, claiming that the suit parcel of land herein forms part of the deceased's estate and had been allocated to Jane Atieno Ondiek, Margaret Nyakach Ondiek together with their children, vide the deceased's will dated 29th November, 2024 annexed to her affidavit.

4. The plaintiff/applicant further deposed that at the material time of instituting the said proceedings before the family division, the suit property had been legally, lawfully and procedurally transferred to her by the deceased during his lifetime and she had been issued with a valid title to the suit property. She accused the defendant/respondent of trespassing on the suit property and collecting rent from the houses erected on the suit property to a tune of approximately Kenya Shillings Seventeen Million Two Hundred and Eighty Thousand(Kshs.17,280,000.00) and to date they have failed, refused and/or neglected to remit the same to her.
5. As a result of the defendant/respondent's actions, she stands to suffer injustice and/or prejudice should this court decline to grant the orders sought.
6. The defendant/respondent did not file any response to this application. The application was canvassed through written

submissions. The plaintiff/applicant filed undated submissions. I have considered the application and the written submissions filed by the plaintiff/applicant. The issue for determination is *whether the plaintiff/applicant has met the conditions for grant of temporary orders of injunction.*

7. **Section 63 of the Civil Procedure Act** states as follows:-

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold.”

8. **Order 40 Rule 1 of the Civil Procedure Rules** provides as follows:-

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

9. Further, 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.”

10. On whether the plaintiff/applicant has established a prima facie case, the Court of Appeal in **Mrao Ltd V First American Bank Of Kenya Limited And 2 Others [2003] eKLR** that was cited by the Applicant as follows:-

“A case in 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 to call for an explanation or rebuttal from the latter.”

11. Similarly, in **Nguruman Limited vs. Jan Bonde Nielsen & 2**

Others [2014] eKLR the Court of Appeal stated that: =

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation.”

12. The plaintiff/applicant has established a prima facie case by exhibiting a copy of the certificate of title registered in her name on the 29th of December, 2005. Whether the suit property constitutes the estate of Arch Bishop S.A Ondiek Oluoch(Deceased) is yet to be determined, and as it is, the plaintiff/applicant has a prima facie right over the suit property as per **Section 26** of the **Land Registration Act Cap 300**, pending the full hearing and determination of the suit herein.
13. On whether the plaintiff/applicant will suffer irreparable harm that is incapable of being compensated in the form of damages,

the allegations of rent collection without remittance demonstrate loss and without evidence to the contrary, I am satisfied that there is need for the court's intervention at the interlocutory stage. In the event that the suit property is held to belong solely to the plaintiff/applicant and her minor children, the proceeds from the property will have gone into the hands of individuals without any rights to the same and recovery may be impossible.

- 14.** In the case of **Nguruman Limited v Jan Bonde Nielson** [Supra] it was observed that:

“The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. 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.”

- 15.** On the other hand, if the suit property is found to form part of the estate of Arch. Bishop S.A. Ondiek Oluoch (deceased), account must be made for purposes of administration the estate. As matters stand, the court declines to order a refund of the rental proceeds collected from the property. Instead, an order directing

deposits to be made in a joint interest account would suffice.

16. On a balance of convenience, the court is not in doubt as to the two requirements. It is my finding that the notice of motion dated 17th December, 2024 has merit, and I grant the following orders:-

i. An order of temporary injunction is hereby issued restraining the defendant/respondent, his agents, employees, servants and/or anyone acting through him from collecting rent, selling, transferring, disposing off, trespassing and/or in any other dealing or interfering with the parcel of land to wit NAIROBI/BLOCK 72/2230 pending the hearing and determination of this suit.

ii. The plaintiff/applicant and the defendant/respondent are hereby directed to open a joint account within 7 days from the date hereof for purposes of rent collection. This order remains in effect until the determination of the main suit.

iii. Costs shall be in the cause.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 23RD DAY OF APRIL, 2026.**

**HON. MBOGO C.G.
JUDGE
23/04/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant
Mr. Okech for the Plaintiff/Applicant
Mr. Osiemo for the Defendant/Respondent

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