

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA

ELC CASE NO. E051 OF 2025

ANGELA VALENTINE SIMOES PLAINTIFF/APPLICANT

VERSUS

CELESTINO VALENTINE FERNANDES DEFENDANT/RESPONDENT

RULING

1. By a Notice of Motion dated 22nd April, 2025, Angela Valentine Simoes (the Plaintiff/Applicant) prays for the following orders:

a) Spent;

b) The Defendant/Respondent does immediately grant the Plaintiff access to see their mother Olinda Fernandes who is in his custody or in the alternative;

c) Spent;

d) The Honourable Court do issue an order of injunction restraining the Defendant/Respondent his agents, assignees, employees and/or servants from trespassing, staying thereon, leasing or in any

way dealing or interfering with the Plaintiff/Applicant's possession and quiet enjoyment of plot Nos. Mombasa/MS/Block III/6, Mombasa /MS/Block III/ 8 and XXI/200 pending hearing and determination of this suit;

e) Costs of this application be provided for; and

f) The Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.

2. The application is supported by two Affidavits sworn by the Plaintiff and is premised on the grounds inter alia, that:

a) The Defendant has refused to allow the Plaintiff access to their ailing mother who is under his custody;

b) The Plaintiff is due to return to England soon and would like to have access to her ailing mother which is the main reason she is in Kenya;

c) The Defendant has trespassed into the Plaintiff's School situated within the said parcels of land and intends to forcefully benefit therefrom unless restrained by the Court;

- d)The Defendant has threatened the Plaintiff with physical harm for demanding her rights;**
- e)The Defendant has fraudulently transferred the Plaintiff's shares in Valenitine Education Limited, a Company the Plaintiff, the Defendant and their other siblings took over from their mother;**
- f) The three plots belong to the Plaintiff having been given the same during the distribution which took place on the 24th day of June 2020; and**
- g)The Plaintiff had filed another suit in the Lower Court being ELC No. E313 of 2024 which was dismissed for want of jurisdiction.**

3. Celestino Valentine Fernandes (the Defendant/Respondent) is opposed to the application. In his Replying Affidavit sworn on 16th July 2025, the Defendant concedes that the Plaintiff is his sister and avers that both their father and mother are now deceased. The Defendant further concedes that the family members agreed to distribute their parents' properties fairly and equitably.
4. In regard to the properties distributed, the Defendant avers that he picked properties including Plot No. 318/Section II/MN

which had already been registered in the Plaintiff's name at their mother's request. The Defendant asserts that the Plaintiff failed, neglected or refused to comply with Clause 8, 9 and 10 of the Agreement for distribution of assets as she did not transfer the said parcel of land to the Defendant as expected. The said parcel of land was subsequently lost in a court case involving the Plaintiff and the Defendant then proceeded to take Plot No. Mombasa/Block III/6.

5. I have carefully perused and considered both the application and the response thereto. I have similarly perused and considered the submissions filed herein by the Learned Advocates representing the Plaintiff. The Defendant did not file any submissions.
6. By her application before the Court, the Plaintiff had sought two major prayers. The first prayer was for an order compelling the Defendant to grant her access to see their mother Olinda Fernandes who was said to be in the custody of the Defendant. That prayer was overtaken by events after the mother passed away. The second prayer was for an order of injunction restraining the Defendant from trespassing onto or interfering in any way with the suit

properties pending the hearing and determination of this suit.

7. In respect of temporary injunctions, Order 40 Rule 1 of the Civil Procedure Rules, 2010 provides as follows:

“(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 Defendant 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 Defendant 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.”

8. The conditions for the grant of an interlocutory injunction were set out in the celebrated case of ***Giella -vs- Cassman Brown (1973) EA 358*** where the Court stated as follows:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally 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.”

9. In the case of ***Mrao -vs- First American Bank of Kenya Limited & 2 Others (2003) KLR 125***, the Court of Appeal held that:

“....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.”

10. In the matter herein, it is the Plaintiff's case that the Defendant has trespassed into the Plaintiff's Dona Olinda Academy which is situated on Plot Nos. Mombasa/MS/Block III/6; Mombasa/MS/Block III/8 and XXI/200. The Plaintiff asserts that the said properties were allocated to her during the distribution of assets agreement conducted by the parties and their mother on 24th June 2020.
11. In support of that position, the Plaintiff has annexed extracts of the Minutes of a joint extra ordinary meeting held by the family's two companies named Valentine Education Limited and Goa Holdings Limited on the said 24th June 2024 via Zoom (Annexure "AVS 3 a and b"). Those minutes reveal that at the said meeting, the family properties were distributed into three "pots" and each of the three siblings were required to pick one of the pots. The Plaintiff herein picked "Pot 2" which contained among others, Plot Nos . Mombasa/MS/Block III/6, Block III/8 and XXI/200.

12. As it were, the Defendant does not deny that the Plaintiff was bequeathed the said properties in that manner. At Paragraph 12 of his Replying Affidavit, he avers as follows:

“12. That as the Applicant had declined and refused to give me a letter of authority or allow me to defend the case relating to Plot 318 Sec II/MN which was lost thereby breaching various clauses in the distribution of Assets agreement I proceeded to take over plot number MSA/Block III/6 which was one of her plots in return.”

13. I did not however think it was open for the Defendant to just unilaterally seize the Plaintiff's property on the basis of some grievance. To do so would amount to encouraging the law of the jungle. The Defendant has not pointed out any clause in the distribution of assets agreement which allowed him to seize the Plaintiff's property in the manner he did.

14. As it is, the Plaintiff is running a school named after her now deceased mother on the property seized by the Defendant and I am persuaded that unless an order of temporary injunction is issued herein the Plaintiff stands to suffer irreparable injury.

15. In the given circumstances herein, I am persuaded that there is need to preserve the subject properties pending the hearing and determination of this suit so as to prevent any dealings therewith that may defeat the outcome of the suit.
16. Accordingly, I find merit in the Motion dated 22nd April 2025 and I hereby allow the same in terms of prayer No. 'd' thereof.
17. The costs of the application shall be in the cause.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 23rd day of April, 2026.

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J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Mulei Advocate for the Plaintiff/Applicant
- c) Mr. Mkan Advocate for the Defendant/Respondent