

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELC NO E036 OF 2025

BEATRICE WAIRIMU MUGO.....PLAINTIFF

VERSUS

ROSEMARAY WANJIKU & 2

OTHERS.....DEFENDANTS

RULING:

The Plaintiff filed this suit vide a Plaint dated 2/12/2025 seeking for an Order of specific performance compelling the Defendants to transfer Title No. NYANDARUA/OL-ARAGWA/326 to herself and in the alternative, a declaration that the 1st and 2nd Defendants hold the suit property as constructive trustees for the Plaintiff, a temporary injunction restraining the Defendants from transferring, charging, leasing or otherwise dealing with the suit. She also prayed for an order directing the 3rd Defendant to uphold and preserve the existing caution registered by the Plaintiff over the suit property and direct that the said caution shall remain in force pending the hearing and determination of the suit and finally an order restraining the 3rd Defendant from registering any dealings, transfers or encumbrances relating to the suit property unless with leave of the Court. Costs of the suit were also sought in the Plaint. Contemporaneously, a Motion was also filed seeking the Court to issue a temporary injunction restraining the

Defendants from transferring, disposing of, charging, leasing out, alienating, entering upon, trespassing onto, interfering with and/or in any manner whatsoever dealing with the parcel of land known as Title No. NYANDARUA/OL-ARAGWA/326, or any portion thereof.

On 7/12/2025 when the matter came to me under certificate of urgency I certified the matter urgent and ordered that the parties do appear before me for directions on 16/12/2025. I further ordered that the existing caution against the above parcel of land do remain in place until further orders of the Court and in addition that there should be no leasing, no transfer or encroachment onto Title No. NYANDARUA/OL-ARAGWA/326 until further orders of the Court.

On 16/12/2026 Counsel for the Plaintiff told the Court that the Defendants had not been served. No reasons for failure to serve were given and the Court set aside the earlier orders. This necessitated the current Application dated 14/1/2026 for the reinstating of the orders of 8/12/2025 (sic). The same were issued on 9/12/2025.

The grounds upon which I am told to reinstate the orders are that the Plaintiff's Advocate was unable to extract and serve the orders due to illness and unsuccessful attempts to have another Advocate hold brief for her and therefore failure to serve the orders was not deliberate, contumacious or negligent and that a real and imminent risk of alienation or interference remains, threatening the substratum of the suit and the reinstatement of

these orders is necessary to preserve the status quo following the hearing and determination of the suit. The relief is purely preservative and that any procedural lapse by Counsel should not prejudice the Plaintiff who faces irreparable harm.

The Application was not opposed. First Counsel does not substantiate her illness on 8/12/2025 and what her health had to do with this case since there was nothing happening on that day. The orders that were granted were so issued a day after, on 9/12/2025. Failure of the portal to indicate precise orders or Directions and lack of success in the follow-up with the Court registry should not have been the last resort.

The orders in the Court file were quite clear. How did Counsel find out that the matter was coming up next on the 16/12/2025? If the orders were unclear, why couldn't she first serve the Mention Notice? No good reasons are advanced to warrant the orders sought herein. Fortunately, or unfortunately, I graciously reinstated the orders on 22/1/2026. I hope this time there was clarity in the Court e-filing portal and that the same was served. Having re-instated the orders on 22/1/2026 it is not in my hands any more to undo what I graciously did. The Application dated 2/12/2025 should now be served for hearing.

Ruling read and delivered at Nyandarua this 23rd Day of April 2026.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Samson.

Plaintiff's Counsel: Ms. Muhaya.

Defendant's Counsel: N/A.