

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC LC NO. E064 OF 2025

DR. KLAUS FRIEDRCH RUDOLF SHTOTER (Suing as the
administrator ad litem of the estate of **URSULA CHRITINE MARIE
SCHROTER**).....**PLAINTIFF**

VERSUS

JONATHAN KILUMO NZAI.....

DEFENDANT

RULING

1. By a notice of motion dated 11.06.2025 expressed to have been filed pursuant to *Articles 22, 23, 40 and 159 of the Constitution of Kenya, Sections 1A, 1B, and 3A of the Civil Procedure Act, Order 40 Rule 10 of the Civil Procedure Rules, Section 68 of the Land Registration Act, Sections 45 and 47 of the Law of Succession Act, and all enabling provisions of the law*, the applicant sought an interim injunction to restrain the respondent from, *inter alia*, entering upon, remaining on, intermeddling with, charging locks, leasing, charging, selling or alienating LR. No.

72/III/MN (*the suit property*) pending the hearing and determination of the suit. He also sought an order for the OCS Makupa Police Station to enforce orders which may be granted by the court.

2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the applicant on 10.06.2025. The applicant contended that he was the administrator of the estate of the late Ursula Christine Marie Schroter (*the deceased*) who was a co-owner of the suit property alongside the respondent. It was pleaded that since the demise of the deceased the respondent had made claims of survivorship rights and attempted to take over the suit property to the exclusion of the estate of the deceased.
3. The applicant contended that he was apprehensive that the respondent may unlawfully occupy, dispose of, or deal with the suit property to the detriment of the estate of the deceased thereby necessitating the instant application for the interim orders.
4. The respondent filed a replying affidavit sworn on 21.07.2025 in opposition to the application. He pleaded that during the lifetime of the deceased they were a joint owners of the suit property by

reason of jointly having contributed to its purchase and development. It was his response that as a joint owner, he was entitled to enjoy all the proprietorship rights which come with such ownership hence he could not be restrained by the applicant from accessing, remaining upon or utilizing the suit property.

5. It was the respondent's case that he had some workers on the suit property who were maintaining the property and that he was the one paying their wages even during the lifetime of the deceased. The respondent accused the applicant of attempting to extinguish his proprietary right over the suit property and prayed for dismissal of the application.
6. When the application was listed for directions it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the applicant's submissions were filed on 25.02.2025 whereas the respondent's were filed on 13.04.2025.
7. The court has considered the motion dated 11.06.2025, the replying affidavit in opposition thereto as well as the material on record. The court is of the view that the main question for

determination is whether or not the applicant has made out a case for the grant of the interim orders sought in the application.

8. The principles for the grant of an interim injunction pending the hearing of a suit were enunciated in the case of *Giella vs Cassman Brown & Co* [1973] EA 358 as follows;

a. First, an applicant must demonstrate a prima facie case with a probability of success at the trial.

b. Second, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which cannot be adequately compensated by an award of damages.

c. Third, in case the court is in doubt on the second principle it shall decide the application on a balance of convenience.

9. The material on record shows that the deceased and the respondent were registered as joint owners of the suit property on 16.12.2009. By the time the deceased died in 2025 the registration status was still the same. Although it is not clear if their co-ownership was in the nature of ownership in common or joint ownership, there is no indication on record to show that the deceased ever disputed that mode of registration. There is no

indication that the deceased had undertaken any legal proceedings to challenge the joint ownership.

10. The court is thus of the opinion that a co-proprietor of property should not, without compelling reasons, be restrained from entering, remaining upon, taking possession, or utilizing the property for his own purposes. The court is far from satisfied that the applicant has demonstrated a *prima facie* case with a probability of success at the trial within the meaning of the first principle laid down in the *Giella vs Cassman Brown Case*
11. The court is also not satisfied that the applicant has satisfied the second principle on the aspect of irreparable loss or injury. There is no credible material on record from which it may be concluded that the applicant or the estate of the deceased may suffer irreparable loss or injury which cannot be adequately met by an award of damages.
12. It was not contended that the suit property is incapable of a professional valuation. It was not demonstrated that the property has some sentimental value to the applicant or the estate of the deceased, or that it is of such unique character as to be virtually irreplaceable. There was no indication that the respondent is a person of such limited means that he would

unable to satisfy any award of damages which may ultimately be made against him. As a result, the court is not satisfied that the applicant has satisfied the second principle for the grant of an interim injunction.

13. Since the applicant has failed to satisfy the first two principles for the grant of an injunction there would be no need to consider the third principle on balance of convenience. The applicant's application is for dismissal for failing to meet the first two principles.
14. The upshot of the foregoing is that the court finds no merit in the applicant's application for interim orders. As a consequence, the notice of motion dated 11.06.2026 is hereby dismissed in its entirety. Costs of the application shall be in the cause since the main suit is pending hearing.

Orders accordingly

Ruling dated and **signed** at **Mombasa** and **delivered** virtually via Microsoft Teams on this **23rd day** of April 2026 in the presence of the parties as indicated below.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Ms. Awuondo for plaintiff

Ms. Susan Kai for defendant

Mr. Mutonyi for intended interested party

ORIGINAL