

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**  
**ELCEP CASE NO. E019 OF 2025**

**EDITH**

**MUSSUKUYA.....PLAINTIFF**

**VERSUS**

**PAUL MUTUNGA MUSOI.....1<sup>st</sup>**

**DEFENDANT**

**THE NAIROBI COUNTY GOVERNMENT.....2<sup>nd</sup>**

**DEFENDANT**

**NATIONAL ENVIRONMENT**

**MANAGEMENT AUTHORITY.....3<sup>rd</sup>**

**DEFENDANT**

**NATIONAL CONSTRUCTION AUTHORITY.....4<sup>th</sup>**

**DEFENDANT**

**RULING**

1. Vide a Notice of Motion dated 18<sup>th</sup> November, 2025 brought pursuant to the provisions of **Articles 40 & 159** of the **Constitution of Kenya, 2010**, **Section 57, & 72** of the **Physical and Land Use Planning Act, 2019**, **Section 3 & 58** of the **Environment Management and Coordination Act (EMCA) 1999**, **Sections 1A, 1B, 3, 3A and 63** of the **Civil Procedure Act**, and **Order 40 Rule 1 and Order 51 Rule 1 & 3** of the **Civil Procedure Rules 2010**, the Plaintiff/Applicant seeks the following reliefs that:

- i. A mandatory order do issue compelling the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to assess and ensure the 1<sup>st</sup> Respondent's compliance with the relevant laws.***
- ii. That pending the hearing and determination of the main suit, a temporary injunction do issue restraining the 1<sup>st</sup> Respondent and/or his servants or agents from continuing with any construction and/or commercial activity on any part of L.R. No. 1/764, and/or placing any materials in the shared entrance and common area adjoining the Applicant's premises.***
- iii. That pending the hearing and determination of the main suit, a mandatory order do issue compelling the 1<sup>st</sup> Respondent and/or his servants or agents to remove all construction debris, commercial equipment, and business-related materials from the shared entrance and common area.***
- iv. That this Honourable Court be pleased to make any other or further orders as the circumstances and interests of justice herein may require.***

***v. That the costs of this application be provided for***

2. The Motion is premised on the grounds on the face thereof and supported by the affidavit of Elizabeth Nangila Kerre, the daughter of the Applicant herein, well versed with the facts of the application herein and competent to swear this Affidavit.
3. She deponed that the Applicant herein is the registered owner of Maisonette No. 4 situate on L.R. No. 1/764, otherwise known as No. 764, Kamburu Drive, Kilimani area, Nairobi; that the larger property comprises four similar Maisonettes and adjoining servant's quarters under separate ownership but all under one mother title and that the four residences are separated by a mesh and live fence, such that two adjoining premises share a common entrance.
4. She explained that their residence shares an entrance with Maisonette No. 3, currently owned by the 1<sup>st</sup> Respondent, Mr. Paul Mutunga Musoi; that his premises are adjacent to the road, while theirs are accessed via a small entrance and driveway that bypasses his and that they share a common gate and entrance.
5. According to Ms Kerre, the Applicant has a caretaker who resides in the servant quarter with his family; that she also resides at the premises and has personally witnessed the activities complained of herein.

6. Sometime in September 2025, she explained, the Respondent commenced construction works, including laying cabro tiles over the entire common entrance, without informing, consulting, or seeking their consent and that during and after the said construction, the 1<sup>st</sup> Respondent brought and placed assorted building materials and implements in the shared entrance area, again, without consulting them.
7. She explained that the 1<sup>st</sup> Respondent and/or his authorized agents or tenants are currently undertaking major construction or reconstruction of his premises and have simultaneously commenced a commercial enterprise to clean carpets and other stuff, being a business styled as "Infinite, the Home Clean Experts" on the said residential premises.
8. The aforesaid business activities have resulted in the placement of carpets, dirty materials, and equipment in the shared entrance area, creating an eyesore, obstructing access, and causing environmental pollution through dirty water runoff.
9. According to Elizabeth Nangila Kerre, the noise from construction and carpet cleaning machinery is excessive, often continuing throughout the day and late into the night,

causing a grave nuisance to them, the caretaker and his family and the surrounding neighbourhood.

- 10.** It is her case that the 1<sup>st</sup> Respondent has relocated the guard house from its original position at the gate to the shared driveway, effectively obstructing access to the parking area and forcing the Applicants and their visitors to park at or outside the entrance and that this repositioning has also compromised security, as the guard no longer has a clear view of persons entering or leaving the premises.
- 11.** Consequently, it was deposed, the Applicants' vehicles and other property have been left exposed, posing a significant security risk. This risk has been further exacerbated by the increased movement of unknown persons in and out of the premises.
- 12.** Further, that the 1<sup>st</sup> Respondent has unlawfully curved out and fenced off part of the common area using iron sheets, thereby denying them access to a portion of the shared space and that he has constructed over the manhole/maintenance chamber serving the premises without proper adjustments, thereby blocking the sewer lines and interfering with essential sanitation services.
- 13.** In addition, it was deposed that the waste water from the 1<sup>st</sup> Respondent's carpet cleaning business flows directly to the front of their house, creating dampness and not only forcing

them to hurdle over the water to access their house but also posing a health hazard to her family and visitors.

- 14.** It was urged that the Applicant is gravely aggrieved by the 1<sup>st</sup> Respondent's actions, which have disrupted the peaceful occupation and enjoyment of their residential premises and pose health and safety concerns. Despite raising these issues with the relevant authorities, being the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, no action and/or appropriate action has been taken to ensure that the situation is dealt with.
- 15.** It is the Applicant's case, through her daughter, that sometime in October 2025, the 4<sup>th</sup> Respondent issued a stop order in respect of the shared gate. However, the impugned activities have persisted to date, and no effective steps have been taken to enforce compliance. Consequently, it was urged that the Applicant's family and their visitors continue to bear the adverse effects of the 1<sup>st</sup> Respondent's unlawful conduct.
- 16.** In response to the Motion, the 1<sup>st</sup> Defendant/Respondent, Paul Mutunga Musoi, swore a replying affidavit dated 20<sup>th</sup> November, 2025. He denied all allegations of illegal activities, nuisance, and statutory violations as set out in the motion.
- 17.** He explained that whereas indeed they share an entrance and driveway with the Applicant, he has not converted the

same into a construction site and commercial zone; that the paving of the driveway with cabro tiles is an improvement undertaken at his sole cost to enhance its condition for the benefit of all users including the Applicant and that he operates a small home-based carpet and upholstery cleaning service known as "infinite, the Home Clean Experts."

- 18.** This, he explained, is not a large-scale commercial enterprise as portrayed by the Applicant and that it is a modest business that operates within the confines of his residential property, primarily by appointment, and uses equipment comparable to domestic appliances.
- 19.** As regards the fencing off of part of the common area, he asserted that any fencing was erected within his title boundaries for legitimate security and privacy purposes and does not unlawfully obstruct the Applicant's access and that he has been proactive in engaging with the relevant authorities to regularize any necessary approvals for his home based business.
- 20.** He noted that the Applicant's entire application is premised on alleged violations of the Physical and Land Use Planning Act, 2019; that this statute, under **Sections 86** and **87**, establishes a specific dispute resolution mechanism, the County Physical and Land Use Planning Liaison Committee

to hear appeals and complaints regarding development control and land use.

- 21.** It is the Respondent's case that the Applicant has not demonstrated that she has exhausted this statutory remedy; that she has not shown that she lodged a formal complaint to the 2<sup>nd</sup> Respondent and, upon dissatisfaction, pursued an appeal to the said Committee and that by filing this application directly in court, she has circumvented the primary forum designated by law for such disputes.
- 22.** He urged that the application is an overstatement of minor inconveniences, if any, which are typical in shared residential settings; that the drastic and far-reaching orders she seeks are aimed at shutting down his livelihood and restraining lawful improvements of his property and this will occasion him irreparable harm.
- 23.** Vide a further affidavit dated 24<sup>th</sup> February, 2026, the Applicant through her daughter Elizabeth Nangila Kerre reiterated the assertions as set out in her affidavit noting that even if the major construction undertaken by the 1<sup>st</sup> Respondent was for the benefit of all users, it would still be imperative that at the bare minimum the affected individuals are consulted before the same completely alter the face of the shared premises are undertaken.

24. As advised by counsel, she stated, the 1<sup>st</sup> Respondent has admitted to continuing commercial activities in a residential zone without any proper public participation and/or approvals from the relevant authorities and for this reason alone this court should grant the orders sought.
25. It was deposed that the carpet cleaning business is noisy and has rendered the Applicant's occupation of her lawfully owned premises inhabitable; that the fenced off area constitutes a common area where shared utilities (including their water meter), parking and guard house are situated and that it is therefore false and misleading for the 1<sup>st</sup> Respondent to allege that he has only fenced off his property.
26. As regards the preliminary objection on the issue of jurisdiction, she noted that the same is spent pursuant to the proceedings of 3<sup>rd</sup> December, 2025. She maintained that the issues raised herein are not mere inconveniences rather, grave violations and disruption of the Applicant's peaceful and quiet enjoyment of their property and a major threat to their health and safety.

### **Submissions**

27. The Applicant filed submissions on 24<sup>th</sup> February 2026. It was contended that the Applicant demonstrated ownership of Maisonette No. 4 adjoining the 1<sup>st</sup> Respondent's Maisonette No. 3, and that the 1<sup>st</sup> Respondent had admitted

to operating a carpet cleaning business within premises designated for residential use.

- 28.** Counsel argued that, notwithstanding the 1<sup>st</sup> Respondent's characterization of the activity as modest, the evidence presented shows substantial commercial operations; that the Respondent has undertaken unilateral alterations to shared areas, including paving the driveway and fencing portions of the property, thereby interfering with common property rights and that in the absence of any approval for change of user, the Respondent's activities are unlawful, constitute nuisance, and infringe on the Applicant's right to quiet enjoyment of her property.
- 29.** The 1<sup>st</sup> Respondent filed submissions on 11<sup>th</sup> March 2026. Counsel submitted that the Applicant has failed to establish a prima facie case. It was argued that the 1<sup>st</sup> Respondent has at all times remained within his premises as the lawful owner of Maisonette No. 3 on L.R. No. 1/764, and that the allegations of encroachment or unlawful activities are materially false and unsupported by evidence.
- 30.** It was submitted that the allegation regarding installation of cabro blocks on the common area is insufficient to found a cause of action; that that the same was undertaken at the 1<sup>st</sup> Respondent's own cost to improve the shared space and that it does not disclose any infringement of rights.

- 31.** Further, counsel maintained that the claim that the 1<sup>st</sup> Respondent has interfered with the Applicant's quiet enjoyment of her property is untruthful and merely intended to evoke sympathy. Reliance was placed on **Mrao Ltd vs First American Bank of Kenya & 2 Others [2003]KLR 125** for the definition of a prima facie case, with the submission that the Applicant has failed to demonstrate any right that has been infringed.
- 32.** On the second limb, counsel submitted that the Applicant will not suffer irreparable harm, as no right or freedom has been shown to have been violated. It was further contended that the 1<sup>st</sup> Respondent has remained within the boundaries of his property at all material times.
- 33.** In any event, it was submitted that the court has already issued directions requiring removal of debris from the shared premises and prohibiting activities in the common area, which directions, it was submitted, have been complied with. It was urged that these existing directions are sufficient to regulate the parties' conduct pending the hearing and determination of the suit.
- 34.** Turning to the prayer for a mandatory injunction, counsel submitted that courts ought to exercise great caution in granting such orders at an interlocutory stage, as they risk determining the dispute conclusively before a full hearing.

It was emphasized that a mandatory injunction will only issue in clear and exceptional circumstances. Reliance in this regard was placed on **Kenya Airports Authority vs Paul Njogu Mungai & 2 Others [1997] KECA 261 (KLR)** and **Gathinga v Registrar of Titles & 2 others [2025] KEELC 2911 (KLR)**.

**Analysis and determination**

35. Having considered the pleadings and submissions, the sole issues that arises for determination is whether the Plaintiff/Applicant has met the threshold to warrant the grant of a temporary injunction?
36. The grant of interlocutory injunctions is governed by **Order 40 Rule 1** of the **Civil Procedure Rules, 2010**. The provision empowers the court to issue a temporary injunction where it is demonstrated, by affidavit or otherwise, that the property in dispute is in danger of being wasted, damaged, or alienated, or where a defendant threatens to dispose of property in circumstances that may obstruct or delay the execution of any decree that may ultimately be issued.
37. In determining whether a plea for injunction is merited, the court must have regard to the well-settled principles enunciated in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, namely an applicant must establish a prima facie case with a probability of success, demonstrate that

irreparable injury would result if the injunction is not granted, and where the court is in doubt, the matter is to be determined on a balance of convenience.

- 38.** These requirements must be satisfied sequentially. As affirmed by the Court of Appeal in **Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR**, the establishment of a prima facie case, proof of irreparable harm, and the balance of convenience are distinct and logical hurdles, each of which must be satisfied before the court can grant interlocutory injunctive relief.
- 39.** It is trite and as has been noted above that whether or not a prima facie case has been established calls for interrogation on material properly placed before the court.
- 40.** In the present case, the Motion is supported by an affidavit sworn not by the Applicant, Edith Mussukuya, but by her daughter, Elizabeth Nangila Kerre. Notably, Ms. Kerre is not a co-Applicant in these proceedings. Although she purports to act on behalf of the Applicant, she has neither disclosed nor demonstrated the legal basis upon which such authority is founded.
- 41.** It is trite that where a person seeks to institute proceedings or depone on behalf of another, the authority to do so must be expressly disclosed and proved. In the case of an individual, such authority ordinarily takes the form of a power of attorney or other written mandate. A familial

relationship, without more, does not confer legal capacity to act on another's behalf.

42. This requirement is not a mere procedural technicality. It goes to the root of locus standi, that is, the legal right of a party to approach the court. Where such capacity is absent, the defect is not curable by form. It implicates the competence of the proceedings and, by extension, the court's jurisdiction to entertain the matter.
43. Indeed, as held by the Supreme Court in **Ibren vs Independent Electoral and Boundaries Commission & 2 others(Petition 19 of 2018)[2018] KESC 75 (KLR) (21 December 2018) (Judgment)**, issues of jurisdiction are fundamental and may be raised by the court *suo motu* at any stage. The question of capacity, being intrinsic to locus standi, must therefore be determined at the earliest opportunity, as it goes to the very validity of the proceedings.
44. In the circumstances, the failure to demonstrate the requisite authority renders the supporting affidavit incompetent. As the affidavit constitutes the evidentiary foundation of the Motion, its invalidity leaves the application unsupported by admissible evidence, and there is consequently no proper basis upon which the court can assess whether a prima facie case has been established not.

**45.** For those reasons, the court finds the Notice of Motion dated 18<sup>th</sup> November, 2025 to be incompetent. The Motion is struck out with costs.

**Dated, signed and delivered virtually in Nairobi this 14<sup>th</sup> day of May, 2026.**

**O. A. Angote**  
**Judge**

**In the presence of;**

Ms Wanyonyi for Applicant

Mr. Otieno for 2<sup>nd</sup> Respondent

Mr. Muthui for Munyenze for 1<sup>st</sup> Respondent

Court Assistant: Tracy