



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 300 OF 2017**

**FRANCIS M KIMANI & ANOTHER.....PLAINTIFFS**

**VERSUS**

**NANCY W MUNYUA & 2 OTHERS.....DEFENDANTS**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 20<sup>th</sup> July 2017. It is brought by the first defendant/applicant who seeks that rental income from structures erected on **LR No Nairobi Block 82/1342** by the Plaintiffs /Respondents be deposited in a joint interest earning account to be opened in the names of the Advocates for the first Defendant/Applicant and the Plaintiffs/Respondents.

2. The applicant contends that the respondents have erected structures on her property from where they are getting rent of over kshs.300,000/. The applicant contends that it will be unfair for the respondents to benefit from rent from her property to her exclusion. That it will be fair if the rental income is deposited in a joint interest earning account in the name of the advocates for the parties.

3. The Respondents have opposed the applicant's application based on a replying affidavit sworn on 21<sup>st</sup> September 2017. The Respondents state that the order for deposit of rent will adversely affect them because that is where they get money to pay for utilities such as electricity. That the rental income is not even Kshs.50,000/= and that the applicant cannot be given the orders when she has not even proved that she is entitled to the suit property.

4. I have given due consideration to the applicant's application as well as the opposition thereto by the respondents. In considering whether to grant the orders being sought, I have to consider what each of the parties herein have put forth in support of their claims. Both the applicant and the respondents are claiming to be owners of the suit property. I have already analyzed the strengths of each party's case herein. I am not expected to determine ownership at the moment. However from the materials presented before me, it would be unfair to let the respondents enjoy rental income from a property whose ownership is yet to be determined.

5. The ownership of the suit property having not been resolved, it will be fair that the rental income be put in an interest earning account as the dispute is being sorted. The upshot of this is that I find that the applicant's application is well founded. I allow it with the result that all rental income from the structures on the suit premises shall be deposited in a joint interest earning account in the names of the advocated for the parties. The joint account shall be opened in a reputable bank within a period of 30 days from the date herein. Costs of the application shall be paid by the Plaintiffs/Respondents.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 21<sup>st</sup> day of February 2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of :

Mr Tebino for Mr Kibanya for 1<sup>st</sup> Defendant

Court Assistant: Kevin

**E.O.OBAGA**

**JUDGE**