



Ng'ang'a (Suing as administrator for and on behalf of the Estate of the Late Benson Ng'ang'a Ndirangu - Deceased) v Ng'ang'a (aka Frank Ndirangu) & another; Bennandira Limited (Interested Party) (Environment and Planning Civil Case E001 of 2024) [2025] KEELC 2958 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2958 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND PLANNING CIVIL CASE E001 OF 2024**

**BN OLAO, J
MARCH 28, 2025**

BETWEEN

MARGARET WANGOI NG'ANG'A (SUING AS ADMINISTRATOR FOR AND ON BEHALF OF THE ESTATE OF THE LATE BENSON NG'ANG'A NDIRANGU - DECEASED) PLAINTIFF

AND

**JAMES NDIRANGU NG'ANG'A (AKA FRANK NDIRANGU) . 1ST DEFENDANT
REGISTRAR OF LANDS, BUSIA COUNTY 2ND DEFENDANT**

AND

BENNANDIRA LIMITED INTERESTED PARTY

RULING

1. The Notice of Motion dated 31st October 2024 and which is among the three Motions which are the subject of this ruling is clearly a prelude of an epic battle, unfortunately, between a mother as the Plaintiff and her step-son the 1st Defendant, over land and money, the root of all evil. All that will obviously be the interesting but sad drama which will unfold during the plenary hearing of this suit. It is highly unlikely that I will be in the gallery following that drama as my diary is in September 2025 and my tour of duty in BUSIA ELC ends in October 2025. For now, however, I must only be content with the opening sequence as mother and her step son square up for this battle over property.
2. Notwithstanding the enormity of the dispute ahead of the parties herein, I would like to believe that hopefully when their emotions calm down, the Plaintiff and her step son will find it in their hearts to calm down, negotiate and settle this dispute to appease the soul of Benson Ng'ang'a Ndirangu, their husband and father respectively.



3. Margaret Wangoi Ng'ang'a (the Plaintiff herein and suing as the Administrator of the Estate of the late Benson Ng'ang'a Ndirangu now deceased) is the step-mother of James Ndirangu Ng'ang'a a.k.a Frank Ndirangu (the 1st Defendant). She filed this suit against the 1st Defendant and the Registrar of Land Busia(the 2nd Defendant) seeking the following remedies against them with respect to the land parcels No Busia/Municipality/532, 533 and 535 (the suit properties) on which is developed two rental properties popularly known as Benina Plaza and Equity Building:
 - a. An order of permanent injunction restraining the 1st Defendant, his agents, employees representatives or whoever else acting in cahoots with or acting under his instructions from selling, leasing out, charging, transferring, creating tenancy, and sub-leases and continuing with tenancies and sub-leases, trespassing and managing in any way and collecting rent from tenants of all the suit properties or interfering with the Plaintiff's duties in administering the Estate of the late Benson Ng'ang'a Ndirangu.
 - b. That the fraudulent transfer of leases of all those properties particularly known as Busia/ Municipality/532, Busia/ Municipality/533 and Busia/ Municipality/535 from the original registered owner the late Benson Ng'ang'a Ndirangu to Bennandira Ltdbe canceled and the 2nd Defendant be enjoined to re-issue new leases back in the name of the late Benson Ng'ang'a Ndirangu awaiting confirmation of Grant in the related succession suit HCFP&A E003 of 2024 Busia (in the Estate of Benson Ng'ang'a Ndirangu).
 - c. That the 1st Defendant does account to the Plaintiff and to this Honourable Court for all rental income collected and received from 1st January 2024 till the date of Judgment herein and Judgment be entered against the 1st Defendant herein in the sum equivalent to all the rent thus collected and received from 1st January 2024 to the date of the decree herein plus interest from 1st January 2024 till payment in full.
 - d. Costs.
4. The Plaintiff case in brief, is that she is the Administrator to the Estate of the deceased Benson Ng'ang'a Ndirangu who at all material time was the registered proprietor of the suit properties. That following the demise of the deceased on 1st January 2024, his family appointed the Plaintiff as the Administrator of his Estate but unknown to them, the 1st Defendant had fraudulently incorporated the Interested Party through which he used to siphon and convert to his own use all the rental income collected from the suit properties by passing himself as the owner thereof. Forensic evidence shows that the 1st Defendant forged the signatures of the Plaintiff and the deceased for which he is facing a criminal trial in R.V. James Ndirangu Ng'ang'a Criminal Case No E1943 of 2024 at Kakamega.
5. The Plaintiff has now approached this Court vide her Notice of Motion dated 7th November 2024 in which she seeks the following remedies:
 1. Spent
 2. Spent
 3. That a temporary injunction be issued restraining the 1st Defendant, his agents, employees, representatives or whoever else acting in cahoots with and or acting under his instructions from selling, leasing out, charging, transferring, creating tenancies and continuing with tenancies, reviewing tenancies and sub-leases, trespassing and managing in any way and collecting rents from tenants of all those properties particularly known as Busia/ Municipality/532, 533 and 535 or in any way howsoever from interfering with the Plaintiff's duties in administering the



estate of the late Benson Ng'ang'a Ndirangu pending the hearing and determination of this suit.

4. That the officers – in-charge of station OC Busia Police Station do supervise and effect order No 2 hereinabove.
6. The Motion is based on the grounds set out on the face thereof and supported by the Plaintiff's affidavit dated 31st October 2024.
7. The gravamen of the Motion is basically what I have already stated above while summarizing the plaint herein. But for purposes of completeness, the Plaintiff's case is that she is the Administratrix of the Estate of the deceased who was the owner of the suit properties. The 1st Defendant is her step son and following the demise of the deceased, a meeting was held and she was placed in charge of the assets of the Estate including that of the family company Bennandira Company and tenants in the rental properties were to pay rent in the Bank Account operated by her. She later discovered that the said company, and which has now applied to be enjoined in this suit, was incorporated using forged signatures of the deceased and herself and also forged minutes of a meeting and Memorandum of Association dated 22nd April 2020. A Forensic Report has confirmed the said forgeries and this is now a matter pending trial at Kakamega Chief Magistrates Court Criminal Case No E1943 where the 1st Defendant is facing eleven (11) counts of forgery and altering forged documents. That following the demise of the deceased on 1st January 2024, the 1st Respondent started withdrawing monies from the Bank Accounts and forced all the tenants to be paying rent to his account. He has prohibited her from managing the Estate account and reduced her to a beggar. In order to ensure that she discharges her duties and to preserve the Estate properties, the orders sought should be granted.
8. The following documents are annexed to the Motion:
 1. Certificate of birth for the deceased.
 2. Grant of Letters of Administration issued to the Plaintiff on 6th May 2024 in respect to the Estate of the deceased in BUSIA CMC Succession Cause No E99 of 2024.
 3. Minutes of Family meeting held on 6th February 2024.
 4. Certificates of lease for the land parcels No Busia/Municipality/532, 533 and 535 in the name of the deceased.
 5. Company registration Form.
 6. Memorandum of Association of Bennandira Ltd.
 7. Forensic Report dated 30th July 2024 from Smart Eye Technologies And Consultancy addressed to Gatundu & Company Advocates.
 8. Letter dated 29th July 2024 addressed to Smart Eye Technologies & Consultancy from the firm of Gatundu & Company Advocates of KRA payment slip.

When that Motion was placed before me, on 7th November 2024, I certified it as urgent and also granted prayer NO 2 which is an order of temporary injunction pending hearing inter-parte.

9. I also directed that the Motion be canvassed by way of submissions and that the matter be mentioned on 16th December 2024 to confirm that the 1st Defendant has filed his response to the same within 21 days from the date of service and that both parties have exchanged submissions.



10. However, the 1st Defendant did not file any response or submissions in response to the Plaintiff's Motion. What he did was to approach this Court with his own Motion dated 13th November 2024 and filed under certificate of urgency. By that Motion, the 1st Defendant sought the following orders:
- a. That pending the hearing and determination of this application inter-partes, the orders of 12th November 2024 be stayed or vacated (they were actually issued on 7th November 2024).
 - b. That pending the hearing and determination of this application, the Plaintiff has agents be ordered to vacate Benna Plaza and its management be left to the 1st Defendant.
 - c. That pending hearing and determination of this application, the Plaintiff and her agents be restrained from interfering with the tenancy of the tenants of Benna Plaza and its management be left to the 1st Defendant.
 - d. That the Honourable Court be pleased to revise and set aside and/or vacate the unlawful, irregular order and/or ruling interfering with the accounts of Bennandira Company.
 - e. That the Officer Commanding OCS Busia Police Station do enforce the orders.

The Motion is premised on the grounds set out therein and supported by the 1st Defendant's affidavit of even date.

11. The gravamen of the Motion is that the 1st Defendant has been served with substantive and final orders without being heard and following those orders which were obtained by misrepresenting to this Court that the suit properties form part of the Estate of the deceased, the Plaintiff has now threatened the tenants of Bennandira Company by replacing the locks with others. That all this is sponsored by the Plaintiff's advocate who is supposed to be an officer of this Court but has lowered his profession to family squabbles by misrepresenting Court orders in violation of *the Constitution* which protects right to property and privacy. The orders herein were issued without full disclosure and intended to defeat Busia High Court Misc Case No E065 of 2025 pending before the High Court Busia and also BUSIA High Court Succession Cause No E003 of 2024. It is in the interest of justice that the orders obtained by the Plaintiff be vacated.

12. The following documents are annexed to the Motion:

1. Certificates of lease for the land parcels No Busia/Municipality 532, 533 and 535.
2. Certificate of Incorporation of Bennandira Ltd.
3. Certificate of Search for the land parcels No Busia/Municipality 532, 533 and 535.
4. Police Abstract No 1022.

The 1st Defendant, by his further affidavit dated 25th November 2024, and this time describing himself as an Interested Party, confirmed that the Plaintiff is his step mother and Administratrix to the Estate of the deceased whose properties as per the Succession Cause NO 99 of 2024 include:

1. Bukhayo/Mundika/6236.
2. Bukhayo/Mundika/6249.
3. Busia/ Municipality/BM 42 (R61) and
4. Busia Municipality/BM 43 (R62).



That the Plaintiff is ill advised and aware that the suit properties belong to Bennandira Ltd and do not form part of the Estate of the deceased. The same have even been charged to Equity Bank. That the Plaintiff has refused to associate herself with the said company which was incorporated by himself and the deceased each having a share of 50%. In February 2022, the deceased donated some of his shares to the Plaintiff and his daughters Lillian Wanjiku Nganga, Pauline Wanjeri Nganga And Miriam Wacuka Nganga and the suit properties were transferred to the said company with the blessing of the Plaintiff. That the Court lacks jurisdiction to deal with some of his issues raised in paragraph 9 to 16 of the Plaintiff's supporting affidavit although he still wishes that the same can be determined by this Court.

13. That the Plaintiff's suit is predicated on the wrong premise that the company is a fraud or that the suit properties are part of the Estate of the deceased who left loans to the tune of Kshs.60,000,000 owed to Equity Bank to whom the suit properties are charged as well as to Juhudi Kilimo. That it is not possible that the deceased who was the Managing Director Of Bennandira Ltd would deal with Faulu Bank, Ncba Bank Stanbic Bank, Equity Bank, Elimu Sacco Ltd, Oasis Hospital, Office Of Dpp, Platinum Credits, Letshego Microfinance, Ck Kebati Llp Advocates and Odera & Company Advcoates as their Landlord yet the company becomes a fraud after his demise.
14. That this dispute is orchestrated by his siblings who were left out from the shareholding of the company as counselled by their lawyers and the Directorate of Criminal Investigation (DCI) and he doubts if the Plaintiff could have an issue with him running the company. That the Plaintiff has caused his arrest by the DCI to advance his interest and he has been charged in Kakamega and also outside this Court's jurisdiction on trumped up charges yet the prosecution has not given him any documents to support those charges. That the suit properties were transferred by the deceased between March and April 2022 with the consent of the Plaintiff and it is in the interest of justice that the interim orders issued herein be vacated and the 1st Defendant's application be allowed. As the Managing Director of Bennandira Ltd, he should be allowed to run it.
15. The Plaintiff filed a replying affidavit dated 13th December 2024 in response to the 1st Defendant's Motion dated 13th November 2024 in which she deposed, inter alia, that the full list of the Estate properties is as contained in her supplementary supporting affidavit filed in support of the petition in Busia HCFP&A No E003 of 2024 some of which had been left out by the 1st Defendant. That the only suit property charged to Equity Bank is parcel No Busia/ Municipality/535 as admitted by the 1st Defendant himself in paragraph 4 of his affidavit and that the transfer of the suit properties from the deceased's name to the company was fraudulent and done through forging of the deceased's signature as per the Forensic Report. That Report was compiled by examining signatures on:
 1. Transfer of shares to Bennandira Ltd.
 2. Notice of Special/ordinary resolution.
 3. Land registration general resolution.
 4. Minutes of a purported meeting of Bennandira Ltd held on 4th February 2022 which meeting never took place.
 5. Memorandum of Company.
 6. Transfer of lease from Benson Ng'ang'a Ndirangu to Bennandira Ltd.
 7. Certificate of verification.



8. Consent of Director of Bennandira Ltd containing a forged signature purported to be her signature.
9. Notice of change of Directors.

That it is not true that the deceased incorporated Bennandira Ltd together with the 1st Defendant. Rather, it was the deceased who gave them the documents which he had found in the 1st Defendant's drawers at Benna Plaza and which were forged as confirmed by the Document Examiner. That at no time did the deceased instruct JOSEPH NDURURI to assign any shares to Bennandira Ltd and if that was the case, she would have known. That the 1st Defendant's modus operandi would be to take documents and falsely claim that the same had been signed by the deceased. The Plaintiff has therefore established a prima facie case to warrant the orders sought.

16. The Plaintiff annexed the following documents to her replying affidavit:

1. Her supplementary affidavit filed in Busia High Court Succession Cause NoE003 of 2024.
2. Certificate of lease for the land parcels No Busia/Municipality 532, 533 and 535 registered in the names of the deceased on 30th December 2015, and 21st December 2015 respectively.

Bennandira Ltd the Interested Party approached this Court vide its Notice of Motion dated 18th November 2024 and sought the following orders:

1. Spent.
2. That this Honourable Court be pleased to add to this suit as an Interested Party the applicant herein namely Bennandira Ltd for the determination of the real matter in dispute.
3. That this Honourable Court be pleased to issue stay of execution of orders issued herein on 12th November 2024 and all consequential orders issued thereto pending the hearing and determination of this application.
4. That this Honourable Court be pleased to vacate the orders issued herein on 12th November 2024 and all consequential orders issued pursuant thereto pending the hearing and determination of this application and the suit herein.
5. That costs of this application be provided for.

17. The Motion is anchored on the provisions of Order 22 Rule 25, Order 1 Rule 10 and Order 40 Rule 1 of the Civil Procedure Rules and on the grounds set out on the face of the same. It is also supported by the affidavit of "bennadir Company Ltd" (sic). I think the Interested Party must have meant the supporting affidavit of its director James Ndirangu Ng'ang'a.

18. The gist of the application is that the suit properties belong to Bennandira Company Ltd which is a fully registered company in Kenya and that this suit is premised on misleading and false allegations that same belong to the deceased and were fraudulently transferred to the said Company which is far from the truth. That the Plaintiff has obtained adverse orders affecting the Company/Interested Party's operation in that it is not entitled to the income from the suit properties and that instead, it is the Plaintiff who is entitled to such income. That unless the orders sought are granted, the Interested Party is likely to lose its income and be evicted from the suit land thus suffering irreparable loss. It is prejudicial that the rental income will be paid to the Plaintiff. It is therefore fair that the Interested Party is enjoined in these proceedings and the stay orders are issued to enable it protect its interests in



the suit properties. That the Interested Party will endeavour to show how it acquired the suit properties and also assist the Court come up with an informed decision.

19. The following documents are annexed to the Motion:

1. Certificate of Incorporation of Bennandira Ltd.
2. Letter from Gatundu & Company Advocates dated 13th November 2024 and addressed to all tenants of Equity Building And Benna Plaza advising them to pay rent to the Plaintiff.
3. Copy of the order issued by this Court on 17th November 2024.
4. Certificate of Search for the suit properties.
5. Certificates of lease for the suit properties.
6. Resolutions of Bennandira Plaza appointing the firm of Omeri & Associates to act for the Interested Party.
7. Notices of Appointment of Advocate filed by Omeri & Associates Advocate to act for the Interested Party.
8. Notice of Appointment of Advocate filed by Masiga, Otieno And Associates Advocate to act for the 1st Defendant.

The Interested Party through the 1st Defendant filed the further affidavit dated 25th November 2024 afresh only that this time, the following documents were annexed thereto:

1. Supporting affidavit by the Plaintiff filed in Busia Chief Magistrate's Court Succession Cause NoE99 of 2024.
2. Form LRA 33 dated 20th April 2022 and issued under the [Land Registration Act](#).
3. Form LRA 34.
4. Letter of consent from the National Land Commission dated 12th August 2020.
5. Transfer of shares Form.
6. Charge by Bennadira Ltd to Equity Bank over title No Busia/ Municipality/535.

The Court directed that the three (3) Motions be canvassed by way of written submissions. These have been filed by Mr Gatundu Instructed By The Firm Of Gatundu & Company Advocates for the Plaintiff, Mr Otieno instructed by the firm of Masiga, Otieno & Associates Advocates for the 1st Defendant and by Mr Omeri instructed by the firm of Omeri & Associates Advocates for the Interested Party.

20. I have considered the Motions, the rival affidavits and annexures thereto and the submissions by counsel. This ruling is in respect of the three (3) Notices of Motions filed by the Plaintiff, the 1st Defendant and the Interested Party. The Land Registrar Busia sued as the 2nd Defendant did not file any responses to the three (3) Motions.

21. Before I interrogate the said Motions, it is important that I address an issue questioning this Court's jurisdiction over this dispute. Although not specifically pleaded by either the 1st Defendant or Interested Party, the 1st Defendant in his further affidavit dated 25th November 2024 and in which he describes himself as the Director of Bennandira Ltd has deposed thus in paragraph 14:



14: “That otherwise, I am advised by my advocate which advise I verily believe that this Court lacks jurisdiction to deal with some questions especially under paragraphs 9 to 16 of the supporting affidavit by the Plaintiff which forms the basis of this suit. Though, I wish that the said issues could be determined by this Honourable Court. Emphasis mine.

An issue of jurisdiction by the Court must be determined at the earliest opportunity even by the Court on its own motion. And as is now well settled, once the Court takes the view that it has no jurisdiction, it must down its tools – Owners Of The Motor Vessel “lillian S” v Caltex Oil Kenya Ltd 1989 KLR 1 [1989 eKLR].

22. The 1st Defendant, who is also the Director of the Interested Party, did not specifically state why he believes this Court has no jurisdiction to determine the suit herein. Instead, he has referred to paragraphs 9 to 16 of the Plaintiff’s supporting affidavit filed in support of her Motion again without pointing out which averments in those paragraphs support his contention that this Court lacks the requisite jurisdiction to determine this matter. I have carefully gone through paragraphs 9 to 16 of the Plaintiff’s supporting affidavit. They make reference to the Memorandum of Bennandira Company and how the Plaintiff believes that the signature of the deceased was forged in incorporating the same, the Notice of Change of Directors of the said Company and the claim that her purported Identity Card and email used in incorporating the said Company are not hers. I see nothing in those averments to take away this Court’s jurisdiction to determine this dispute. It must be remembered that at this state, neither of the Defendants nor the Interested Party have filed their defences or other pleadings in response to the Plaintiff’s plaint. In that plaint, the remedies sought by the Plaintiff and which I shall rehash again for purposes of clarity are:

1. An order of permanent injunction restraining the 1st Defendant, his gents, employees, representatives or whosoever else acting in cahoots with or acting under his instructions from selling, leasing out, charging, transferring, creating tenancies and sub-leases and continuing with tenancies, renewing tenancies and sub-leases, trespassing and managing in any way and collecting rents from tenants of all those properties particularly known as Busia/ Municipality/532, 533 and 535 or in any way howsoever from interfering with the Plaintiff’s duties in administering the estate of the late Benson Ng’ang’a Ndirangu.
2. That the fraudulent transfer of leases of all those properties particularly known as Busia/ Municipality/532, 533 and 535 from the rightful registered owner the late Benson Ng’ang’a Ndirangu to Bennandira Ltd be nullified and the said current leases in the name of new leases back in the name of the late Benson Ng’ang’a Ndirangu awaiting confirmation of Grant in the related succession suit HCFP&A/E003 of 2024 Busia (in the Estate of Benson Ng’ang’a Ndirangu).
3. That the 1st Defendant does account to the Plaintiff and to this Honourable Court for all the rental income collected and received from 1st January 2024 till the date of judgment herein and judgment be entered in favour of the Estate of the late Benson Ng’ang’a Ndirangu as against the 1st Defendant herein in the sum equivalent to all the rent thus collected and received from 1st January 2024 to the date of decree herein plus interest from 1st January 2024 till payment in full.
4. Costs.

There is no doubt that this Court has the jurisdiction to grant an order of permanent injunction restraining the Defendants and Interested Parties herein from interfering with the suit land. There is also no doubt that this Court can nullify a fraudulent transfer of lands



from the deceased to the 1st Defendant or Interested Party. Perhaps the 1st Defendant and who is also the Director of the Interested Party was referring to paragraph three (3) of the plaint when he raised the issue of jurisdiction where the prayer sought is for him to “account to the Plaintiff and to this Honourable Court for all the rental income collected and received from 1st January 2024 ...” and perhaps, the 1st Defendant had in mind the decision in the case of *Co-operative Bank Of Kenya Ltd v Patrick Kangethe Njuguna & Others C.A. Civil Appeal No 80 of 2016 [2017 eKLR]* wherein the Court said that a dispute relating to the taking of accounts over a charge is not within the jurisdiction of the Environment and Land Court. Rather, that is a matter for the High Court. That decision has since been followed by the same Court differently constituted in the case of *Joel Kyatha Mbaluka T/a Mbaluka & Associates Advocatess v Daniel Ochieng Ogola T/a Ogola Okello & Company Advocats C.A. Civil Appeal No 250 of 2017 [2019 eKLR]*. The dispute in this case has nothing to do with the validity of any charge or the taking of accounts or pursuant to that charge or the issuance of any statutory notices for the sale of charged property as was the position in the case of *Co-operative Bank Kenya Ltd v Patrick Kangethe Njuguna (supra)*. This case is solely about granting an order of permanent injunction, cancellation of a fraudulent transfer of land and taking accounts of rental income. That is a matter clearly within the jurisdiction of this Court as per Section 13(2) of the *Environment and Land Court Act*. The insinuation that the jurisdiction lies elsewhere was clearly not taken with any seriousness. That perhaps explains why in the said averment, the 1st Defendant has ended by stating thus in paragraph 14:

“ Though, I wish that the said issues could be determined by this Honourable Court.”

He is therefore approbating and reprobating at the same time. The issue of want of jurisdiction of this Court was obviously not raised with any conviction. This Court finds that it has the requisite jurisdiction to determine this dispute going by the pleadings already filed so far and the relevant precedents from the Superior Courts and which are binding on me.

23. Having put aside the issue of jurisdiction, I shall now delve into the merits or otherwise of the three (3) Motions before me for determination. These are:
1. The Plaintiffs Notice of Motion dated 31st October 2024.
 2. The 1st Defendant’s Notice of Motion dated 13th November 2024.
 3. The Interested Party’s Notice of Motion dated 18th November 2024.

I shall consider them in that sequence.

1. Plaintiffs Notice Of Motion Dated 31st October 2024.

24. I have at the commencement of this ruling captured the main remedy sought by the Plaintiff which is a temporary injunction pending trial and determination of this suit. This has to be considered in line with the principles set out in the case of *Giella v Cassman Brown & Company Ltd 1973 E.A. 358* which are:
- a. The Applicant must establish a prima facie case.
 - b. The Applicant must demonstrate that he stands to suffer irreparable loss which would not adequately be compensated by an award of damages.
 - c. If in doubt, the Court will determine the application on a balance of convenience.



A prima facie case, as was held in the case of *Mrao Ltd v First American Bank Of Kenya* 2003 KLR 125.

“ ... 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.”

And in the case of *Nguruman Ltd v Jan Bonde Nielsen & Others* C.A. Civil Appeal No77 of 2012, the Court of Appeal stated thus:

“We reiterate that in considering whether or not a prima facie case has been established, the Court does not hold a mini trial and must not examine the merits of the case closely. All that the Court is to see is that on the face of it, the person applying for an injunction has a right which has been or is threatened with violation. The applicant need not establish title. It is enough if he can show that he has a bona fide question to raise as to the existence of the right which he alleges.” Emphasis mine.

25. Finally, as was held in the English case of *Films Rover International v Cannon Film Sale Ltd* 1986 3 ALL ER 772, a Court considering such an application must take the course that appears to carry the lower risk of injustice.
26. Guided by the above principles among others, the Plaintiff's case is that having obtained Grant of Letters of administration in respect to the deceased's Estate in Busia CMC Succession Cause No E99 of 2024 the family of the deceased and of which she is the only surviving widow held a meeting in which the 1st Defendant was present and she was appointed the Administrator and placed in charge of the Estate properties which include the suit properties. The tenants would be paying rent into an account operated by her vide the Company Bennandira Ltd. However, unknown to her, the 1st Defendant had fraudulently forged minutes of family meeting as well as the signatures of the deceased and the Plaintiff and transferred some of the estate property. He is currently facing criminal charges in Kakamega Chief Magistrates Court Case No E1943 of 2024.
27. The 1st Defendant's response was to file a replying affidavit dated 25th November 2024 in which he admits that the Plaintiff is the Administratrix of the deceased's estate and that infact the deceased transferred the suit properties during his life time and with the blessings of the Plaintiff and it was also during that time that the deceased incorporated Bennandira Ltd. I Have looked at the annexed minutes of the family meeting held on 6th February 2024 which show that both the Plaintiff and the 1st Defendant were present. One of the minutes at page two (2) reads:

“The family of the late deceased Benson Ng'ang'a Ndirangu unanimously nominated the only surviving widow Mrs Margaret Wangoi Nganga ID No 6764658 to be the Administrator of the deceased Estates.

The shareholders and family members appointed another director Jane Wairimu Nganga 2459175 to assist the current Director who is James Ndirangu Ng'ang'a. Directors have been mandated to deal with all assets and liability of Bennandira Company to perform under the Administrator.

The cash paying tenants to pay directly to the Bank Account that would be directed by the Administrator who is Margaret Wangoi Ng'ang'a. Benson Ndirangu Nganghas been appointed a Consultant under Bennadira Company.” Emphasis mine.



It is clear that some three (3) months before the Plaintiff had been appointed as Administratrix of the deceased's Estate, the family members had not only agreed to nominate her in that position but further given her the power to direct how the cash paying tenants would be paying rent.

28. There is also the Plaintiff's claim that change of Directors of Bennandira Ltd were done behind her back by forging her signature and that of the deceased. In paragraph 10 of her supporting affidavit, she has annexed a Forensic Report by a document examiner which suggests that indeed the deceased's signature was forged. While the 1st Defendant seems to suggest in paragraph 22 of his further replying affidavit that his arraignment in Court on criminal charges is a plot orchestrated by his siblings, the DCI and the Plaintiff's advocates, no reason has been advanced as to why the said persons should gang up against him. Whether or not the Plaintiff will eventually establish her case against the Defendant is of course a matter for trial. However, all the above considered together lead to the irresistible conclusion that she "has a bona fide question to raise as to the existence of the right which she alleges." From the minutes of the family meeting, she was clearly to be involved in all decisions involving the suit properties. She alleges that the 1st Defendant made decisions behind her back which she claims were done fraudulently. I am persuaded that a prima facie case has been established.
29. On the ground of irreparable loss which cannot be compensated by an award of damages, I am satisfied that if the order sought is not granted, the suit properties could be put beyond the reach of the Plaintiff and other beneficiaries of the deceased's estate should that turn out to be the case. That would amount to irreparable loss that cannot adequately be compensated by an award of damages.
30. If I was in doubt, which I am not, the balance of convenience titles in favour of granting the orders sought.
31. With regard to the involvement of the Officer-In-Charge [OCS] Busia Police station in supervising order NO (2), that order is already spent. In any event, available jurisprudence suggests that the police should not be enlisted to secure compliance of injunctive orders – *Kamau Mucuha v Ripples Ltd* C.A.Civil Appeal No186 of 1992. Nonetheless, the Police have a duty under Section 24 of the *National Police Service Act* to assist the public when in need including maintenance of law and order. At this point, I see no need to grant prayer NO (4) of the Motion. However, should the need arise, nothing stops the Plaintiff from seeking such assistance from the Police.
32. Having considered all the above, I am persuaded to grant prayer NO (3) of the Plaintiff's Notice of Motion dated 31st October 2024.

2. The 1st Defendant's Notice Of Motion Dated 13th November 2024

33. By this Motion, the 1st Defendant basically seeks orders of this Court to restrain the Plaintiff from interfering with the tenants at Benna Plaza, to order the Plaintiff and her agents to vacate therefrom and leave the management to him and also vacate the orders issued herein in favour of the Plaintiff. Essentially therefore, what the 1st Defendant has done is file his own Motion challenging the ex-parte orders issued herein on 7th November 2024 in favour of the Plaintiff and which I have now confirmed pending the hearing of the suit. An ex-parte temporary order of injunction is not challenged by the party against whom it is issued filing his own application. It is challenged through a replying affidavit, a notice of Preliminary Objection or a Statement of grounds of opposition as provided under Order 51 Rule 14(1) of the Civil Procedure Rules.
34. And even if the 1st Defendant's Motion is to be determined on its own merits, this Court cannot at this interlocutory stage and in the circumstances of this case issue such final orders as directing the Plaintiff



and her agents to vacate the Benna Plaza or to revise my earlier orders. In ground No (1) of the Motion, the 1st Defendant has pleaded:

1: “That the Applicants has been served with substantive orders with finality without being heard.”

The Applicant being referred to above is of course the 1st Defendant whose Motion dated 13th November 2024 is under consideration. There is nothing to show that the orders already issued pursuant to the Plaintiff’s Motion are “substantive orders with finality” as alleged. What was issued by this Court on 7th November 2024 was an ex-parte order of temporary injunction pending inter-parte hearing. What has just been issued above is a temporary order of injunction pending the hearing and determination of the suit. None of those are “substantive orders with finality” and they cannot by any stretch of imagination be described as such. I also see no basis to revise, set aside or vacate the orders earlier issued herein on the basis that they are irregular or unlawful. They have been issued on the basis of the evidence before this Court. The only option available to the 1st Defendant is to appeal them.

35. The 1st Defendant’s Notice of Motion dated 13th November 2024 is devoid of merit. It is accordingly dismissed.

3. The Interested Party’s Notice Of Motion Dated 18th November 2024.

36. By this Motion the Interested Party Bennandira Ltd seeks the substantive orders that it be enjoined in these proceedings and that this Court do issue orders staying the execution of the orders earlier issued herein and vacate them. The gravamen of the application is that the Plaintiff moved to this Court with unclean hands and obtained orders irregularly. Further, that those orders mean that the Interested Party is not entitled to the rent accruing from the suit properties. The Plaintiff’s case, as I understand it, is that some of the suit properties have now been transferred to another outfit over which she has no control contrary to the agreement made at the family meeting. That outfit is now the subject of criminal proceedings in which the 1st Defendant has been charged. Whether or not the Interested Party is properly entitled to earn any income from the suit properties or indeed any properties from the Estate on the deceased is a matter which will be determined by the trial Court upon hearing all the evidence by the parties. For now, I see no reason to vacate the stay orders or review the ex-parte orders herein.

37. Nonetheless, on the face of it, the Interested Party’s application to be enjoined in these proceedings is merited. Whether or not the said Interested Party was incorporated through a criminal enterprise which involved forging the signatures of the Plaintiff and the deceased will be a matter for trial. That issue cannot adequately be ventilated without the involvement of the Interested Party. Such a Party is defined in Black’s Law Dictionary 10TH Edition as:

“A party who has a recognizable stake (and therefore standing) in a matter.”

In the case of *Trusted Society Of Human Rights Alliance V Mumo Matemo & 5 Others*, the Supreme Court in *Petition No 12 of 2013 [2015 eKLR]* defined an Interested Party at paragraph 18 as follows:

“Consequently, an Interested Party is one who has a stake in the proceedings though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the Court where it is made either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause.”

As matters stand now, the annexed certificates of lease show that the suit properties were registered in the name of the Interested Party in April on 20th April 2022. The Plaintiff’s case is that those registrations were procured fraudulently and are the basis of a criminal case facing the 1st Defendant



who is listed as a Director of the Interested Party. The validity or otherwise of those certificates of lease or whether the Company is a fraud cannot be determined without the involvement of the Interested Party.

38. In the circumstances, the Interested Party's Notice of Motion must be allowed in terms of prayer NO (2) only. The other prayers are declined.
39. Ultimately therefore and having considered the Notices of Motions herein, I issue the following disposal orders:
 1. The Plaintiff's Notice of Motion dated 31st October 2024 is allowed in terms of prayer NO (3) to wit, an order of temporary injunction is issued restraining the 1st Defendant, his agents, employees representatives or whosoever else acting in cahoots with and or acting under his instructions from selling, leasing out, charging, transferring, creating tenancies and continuing with tenancies, renewing tenancies and sub-leases, trespassing and managing in any way and cultivating rent from tenants of all those properties particularly known as Busia/ Municipality/532, 533 and 535 or in any way howsoever from interfering with the Plaintiff's duties in administering the Estate of the late Benson Ng'ang'a Ndirangu pending the hearing and determination of this suit.
 2. The 1st Defendant's Notice of Motion dated 13th November is dismissed.
 3. The Interested Party's Notice of Motion dated 18th November 2024 is allowed only to the extent that the said Interested Party shall be enjoined in these proceedings as such. The other prayers sought in the said Motion are declined.
 4. The Interested Party shall within 30 days of this ruling file and serve it's pleadings on the other parties who shall have 15 days from the date of service to file their responses to the Interested Partys' claim.
 5. The 1st Defendant is yet to file his defence to the Plaintiff's plaint. It is no clear if he has been served with the same. The Plaintiff shall within 7 days of this ruling serve the 1st Defendant with the plaint and fie an affidavit of service.
 6. The 1st Defendant shall have 15 days from the date of service file and serve his defence and all documents to be relied upon during the trial to the Plaintiff.
 7. Parties shall thereafter appear before the Deputy Registrar on 19th May 2025 for pre-trial and taking of a hearing date subject to confirmation of compliance with Order 11 Civil Procedure Rules.
 8. As the protagonists herein are family, there shall be no orders as to costs.

BOAZ N. OLAO

JUDGE

28TH MARCH 2025

Ruling dated, signed and delivered on this on this 28th day of March 2025 by way of electronic mail with notice to the parties.

BOAZ N. OLAO

JUDGE

28TH MARCH 2025

