



REPUBLIC OF KENYA



KENYA LAW
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**Ocharo v Ocharo & another (Environment & Land Case
E042 of 2024) [2025] KEELC 2912 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2912 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E042 OF 2024**

**NA MATHEKA, J
MARCH 26, 2025**

BETWEEN

MOSES KERANDI OCHARO PLAINTIFF

AND

MARGARET BOSIBORI OCHARO 1ST DEFENDANT

THOMAS MWANGI KING'ANG'AI 2ND DEFENDANT

RULING

1. The application is dated 4th October 2024 and is brought under Section 1A, 1B and 3A of the [Civil Procedure Act](#), Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders;
 1. That the Honourable Court be pleased to order that the rental income from the Flat erected on Plot No. 309 Mlolongo Gwata Phase 1(2) be deposited in a joint earning account to be opened within fourteen (14) days by the Plaintiff/Applicant's and the Defendants/Respondents' Advocates pending the hearing and determination of the suit.
 2. That an order be and is hereby issued directing the tenants in occupation of the Flat erected on Plot No. 309 Mlolongo Gwata Phase 1(2) to deposit all monthly rent payments in the joint account to be opened by Plaintiff/Applicant's and the Defendant/Respondents' Advocates pending the hearing and determination of the suit.
 3. That the costs of this Application be awarded to the Applicant.
2. It is based on the following grounds that the Plaintiff/Applicant's claim against the Defendants/Respondents is for conversion of two properties (Plot No. 2468 and Plot No. 309 situated in Mlolongo) which the Plaintiff/Applicant purchased, developed and entrusted in the custody of the Defendants/Respondents since the Plaintiff/Applicant was abroad. The suit properties were both developed with residential flats by funds solely sent by the Plaintiff/Applicant in addition to



income from the Plaintiff/Applicant's other businesses. Initially all rental collections from the suit properties were either remitted to the Plaintiff/Applicant or applied towards the development of the suit properties. Sometime around 2020 the Defendants/Respondents begun withholding rental collections after the Plaintiff/Applicant demanded they handover documentation relating to the suit properties. The Defendants/Respondents are denying the Plaintiff/Applicant the rental income from Plot No. 309 while they are continuing to collect and appropriate it to themselves with impunity. The Plaintiff/Applicant shall suffer irredeemable loss if the Defendants/Respondents continue to exclusively collect rental proceeds from Plot No. 309 since they are misusing the funds for their own enrichment. The Defendants/Respondents don't have any assets, known source of income or financial means to issue any refund or pay damages/costs to the Plaintiff/Applicant, in the event they are awarded by the court. That the Plaintiff/Applicant has put forward credible and persuasive grounds of facts and law together with evidence demonstrating that he solely contributed towards the purchase and development of the property; the Respondents have no plausible defense to the Applicant's claim. That the nature of this case therefore justifies the reliefs sought pending hearing and determination of the suit. The orders sought are in the interests of justice and will not prejudice any party.

3. The Defendants/Respondents stated that the two properties (Plot No. 2468 and Plot No. 309 situated in Mlolongo) belonged to them and that the Plaintiff/Applicant had no part in their purchase. That they are the registered owners of the suit properties. That whatever money sent by the applicant was applied for its intended purpose like buying Isuzu Bus KBA 856T for Kshs. 4,700,000/=. The purchase of other four parcels of land for the Applicant, tractors and so on. That there is a pending suit at the Chief Magistrates Court Mavoko CM ELC No. E032 of 2021 where there is an injunctive order restraining the Applicant from interfering with the suit property.
4. This court has considered the application and the submissions therein. The Applicable law is Sections 63(e) of the *Civil Procedure Act* which provide respectively as follows:
 - 3A Saving inherent powers of court;

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.
 - 63 Supplemental Proceedings;

In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed-(e) make such other interlocutory orders as may appear to the court to be just and convenient.”
5. In applying the facts to the law in the instant Application, it is important to bear in mind that the purpose of an interlocutory order is to address a specific issue which is to be determined in the interest of both parties. It is neither to punish nor disadvantage either party but to balance the interests of both contestants and arrive at a determination that justice demands. In the same manner as a status quo order preserves the subject matter, as was stated Nairobi Civil Appeal No. 33 of 2012 Shimmers Plaza Limited v National Bank of Kenya Limited (2015) eKLR;

“the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events”.
6. However, the difference between the instant application and one where a status quo is granted is that the instant one is to preserve substratum of the suit in a futuristic or ongoing manner while the status quo basically freezes any activities contrary to what has been ongoing at the point such an order is issued.



7. The Defendants/Respondents stated that the two properties (Plot No. 2468 and Plot No. 309 situated in Mlolongo) belonged to them and that the Plaintiff/Applicant had no part in their purchase. The 1st Respondent argues that she is the registered owner of the suit land, Plot No. 309 Mlolongo Gwata Phase 1(2) and that her title is genuine and she pays land rates for it to the exclusion of the Plaintiff
8. The Plaintiff argues that he is the true owner of the suit properties. That the Plaintiff/Applicant purchased, developed and entrusted in the custody of the Defendants/Respondents since the Plaintiff/Applicant was abroad. The suit properties were both developed with residential flats by funds solely sent by the Plaintiff/Applicant in addition to income from the Plaintiff/Applicant's other businesses. Sometime around 2020 the Defendants/Respondents began withholding rental collections after the Plaintiff/Applicant demanded they handover documentation relating to the suit properties.
9. Be that as it may, the *Land Registration Act* is very clear on issues of ownership of land and Section 24(a) of the *Land Registration Act* provides as follows:

Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
10. Section 26 (1) of the *Land Registration Act* states as follows:

"The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –

 - a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
11. The upshot is that having carefully analyzed the opposite clashing positions of the Applicant and the Respondent herein I find that since the Respondent holds title to the suit land, which title has not been cancelled as at the present time, the instant Application cannot succeed. I find that this application is not merited and is dismissed. Costs to be in the cause. Parties are advised to comply with order 11 and fix the matter for hearing.
12. It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 26TH DAY OF MARCH 2025.

N.A. MATHEKA

JUDGE

