



Kibuku v Kibuku (Sued as the administrator of the Estate of Daniel Kibuku Kamonye alias Daniel Kifuku Kamonye alias Kifuku alias Kifuku Kamonye) (Environment & Land Case E060 of 2024) [2025] KEELC 4879 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4879 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E060 OF 2024**

MAO ODENY, J

JUNE 30, 2025

BETWEEN

JOSEPH KAMAU KIBUKU PLAINTIFF

AND

JACINTAH WAIRIMU KIBUKU DEFENDANT

**SUED AS THE ADMINISTRATOR OF THE ESTATE OF DANIEL KIBUKU
KAMONYE ALIAS DANIEL KIFUKU KAMONYE ALIAS KIFUKU ALIAS
KIFUKU KAMONYE**

RULING

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 6th February, 2025 which seeks the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit the court be pleased to restrain the Respondent by herself, her agents and or servants from developing, leasing, charging, selling, collecting rent and or dealing with Nakuru Municipality Block 10/29 without the Applicant's consent, knowledge and or approval.
 - d. That pending the hearing and determination of this suit the Respondent be restrained by herself, her agents and or servants from interfering with the Applicant's right of access the suit property.



- e. That pending the hearing and determination of this suit the Respondent be ordered by the court to release to the Applicant half share of the rental income collected from the property by the Respondent.
 - f. That the costs of this application be provided for.
2. The application was supported by the annexed affidavit of Joseph Kamau Kibuku, the Plaintiff/Applicant who deponed that the late Daniel Kibuku Kamonye was his father and the Respondent is his sister. He further stated that he is a co-registered owner of Nakuru Municipality Block 10/29 and that the confirmed grant of the deceased was revoked by the court on 31st May, 2021 hence reverting the property to himself and his late father.
 3. It was the Plaintiff/Applicant's deposition that the Respondent has refused to acknowledge his ownership of the property and has interfered with his proprietorship rights by denying him access to the property. He also stated that the Respondent is carrying out repair works and collecting huge sums of rental income from the property without accounting to him or giving him his share. He urged the court to allow the application as prayed.
 4. The Defendant/Respondent filed a Replying Affidavit sworn on 25th February, 2025 and deponed that the subject property Nakuru Municipality Block 10/29 forms part of the estate of the deceased. She further deponed that the Plaintiff/Applicant cannot seek orders to preclude the estate's administrators from undertaking their responsibilities of preservation, protection and management of the deceased's properties. The Applicant averred that the proceeds from the property of the estate of the deceased is remitted to the Estate Account.
 5. The Defendant/Respondent deponed that the Plaintiff/Applicant has failed to meet the threshold for the grant of the orders sought in the subject application and urged the court to dismiss the application, as it is the estate of the deceased that stands to suffer irreparable harm and loss if the orders sought by the Plaintiff/Applicant are granted.

Plaintiff's Submissions

6. Counsel for the Plaintiff/Applicant filed submissions dated 19th May, 2025 and submitted that the Plaintiff/Applicant has established a prima facie case as the title deed attached at entry number five defined the interests of the parties and each proprietor enjoys equal shares in the said property. Counsel further submitted that the mere fact that the property was the subject of the Succession Cause does not mean that the rights of the Plaintiff to the property have been extinguished and not protected by law.
7. Counsel submitted that the portion that is available for distribution to the estate of the deceased is half of the suit property and as such the Defendant's interest can only be limited to half of the suit property. Counsel relied on the cases of *Giella vs Cassman Brown & Co Ltd* 1973 E.A 358 and *Mrao vs First American Bank of Kenya Limited & 2 others* (2003) KLR 125.
8. On the issue of whether the Applicant will suffer irreparable harm that cannot be compensated by way of damages, counsel submitted that the Plaintiff has not been able to access the suit property and the Defendant has developed the suit property in disregard of the rights of the Plaintiff.
9. Counsel submitted that the Defendant has continued to deny the Plaintiff rental income that he is entitled to and cited the case of *Nguruman Ltd vs Jan Bonde Nielsen* [*CA No 77 of 2012*](#). Counsel submitted that the balance of convenience favors the Plaintiff and there will be no prejudice to the Defendant if the Plaintiff is allowed to utilize and manage his portion of the suit property and the Defendant can continue managing the other portion on behalf of the estate.



Defendant's Submissions

10. Counsel for the Defendant filed submissions dated 2nd April 2025 and identified the issue for determination as: whether or not the application for a temporary injunction is merited.
11. Counsel submitted that the Plaintiff/Applicant has demonstrated a prima facie case as no evidence has been presented before this Court to warrant the Respondent to come and explain anything as to infringement of the Applicant's right. Counsel relied on the cases of *Giella vs Cassman Brown* (1973) EA 358, *Hezron Kamau Gichuru vs Kianjoya Enterprises Ltd & Another* [2022] eKLR, *Mrao Ltd vs First American Bank of Kenya Ltd* (2003) eKLR, Court of Appeal Case No 16 of 2012 Nairobi (Civil Application) and *Joshua Ngatu vs Jane Mpinda & 3 others* [2019] eKLR.
12. It was counsel's submission that the Applicant has not demonstrated how he stands to suffer irreparably if the injunction is not granted and further that the Applicant is not in occupation of the suit parcel and has no direct link with the said property.
13. According to counsel, the Plaintiff/Applicant admits that the same is under the custody and/or management of the Respondent and it is the Respondent who collects rent from the said property on behalf of the beneficiaries of the Estate of the Deceased. Counsel cited the cases of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* (2018) eKLR and *JM vs SMK & 4 others* [2022] eKLR.
14. Counsel submitted that the Respondent will suffer more inconvenience than the Applicant will if the injunction is granted as the suit property is managed on behalf of the beneficiaries of the estate of the deceased and relied on the case of *Amir Suleiman vs Amboseli Resort Limited* [2004] eKLR.

Analysis and Determination

15. The issue for determination is whether the Plaintiff/Applicant is entitled to an injunctive order against the defendant/respondent. The principles that govern the grant of temporary injunctions are well settled as was enunciated in the case of *Giella vs. Cassman Brown* [1973] EA 358, where the court stated the conditions for grant of interlocutory injunctions as follows:

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”
16. If an Applicant meets the three ingredients for grant of a temporary injunction then the court will grant the orders. An Applicant must establish a prima facie case as was defined in the case of *Mrao Limited vs. First American Bank of Kenya & 2 Others* [2003] e KLR which stated as follows:

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”
17. From the Applicant's Supporting Affidavit, the Plaintiff averred that the confirmed grant of the deceased was revoked by the court on 31st May, 2021 hence the property reverted in his name and that



of his late father and that the Respondent has refused to acknowledge his ownership of the property and has interfered with his proprietorship rights by denying him access to the property.

18. It follows that the confirmed grant having been revoked, the property reverted to the Applicant and the deceased's name, hence the issue of succession and distribution has not been finalized.
19. The attached documents, like the extract of the title and the white card indicate that the property was held in common in equal shares. This is what is known as tenancy in common which does not include the right of survivorship. Each owner has an individual, undivided interest that can be transferred or bequeathed.
20. In common proprietorship in equal shares like the arrangement that the Plaintiff had with the deceased, upon the death of the deceased, the share became part of the estate which is to be distributed according to a will or, in this case where there was no will, vide filing of a Succession Cause. The share does not automatically go to the surviving co-owner as would be the case of a joint tenancy.
21. In the case of Isabel Chelangat Vs. Samwel Tiro Rotich & 5 Others [2012] eKLR the court discussed the nature and effect of joint tenancies and tenants in common as follows:

“At this juncture, I must distinguish between joint ownership of land and land held in common. These are two different types of tenancies by which two or more people are entitled to simultaneous enjoyment of land. To expound on this point, I have borrowed heavily from two texts. Megary & Ward, *The Law of Real Property* and Cheshire & Burn's, *Modern Law of Real Property*. According to Burn, “... a joint tenancy arises whenever land is conveyed or devised to two or more persons without any words to show that they are to take distinct and separate shares Joint tenancy carries with it the right of survivorship and “four unities”. The right of survivorship (just accrescendi) means that when one joint owner dies, his interest in the land passes on to the surviving joint tenant. A joint tenancy cannot pass under will or intestacy of a joint tenant so long as there is a surviving joint tenant as the right of survivorship takes precedence.

.....Tenancy in common on the other hand is different from joint tenancy. In a tenancy in common, the two or more holders hold the property in equal undivided shares. Each tenant has a distinct share in the property, which has not yet been divided among the co-tenants. In other words, they have separate interests only that it remains undivided and they hold the interest together. The largest factor that distinguishes a joint tenancy from a tenancy in common is the absence of the doctrine of survivorship in the latter. The share of one tenant is not affected by the death of one of the co-owners. The share of the deceased, devolves not to the other co-owner, but to the estate of the deceased co-owner...”

22. The Applicant therefore has to get a grant of letters of Administration in order to determine the distribution. I therefore find that the application lacks merit and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF JUNE 2025.

M. A. ODENY

JUDGE

