Application to Restrain Sale and Eviction from a Charged Mombasa Family Apartment

Educational sample 246 | Mombasa

Educational reconstruction from a reported Kenyan decision. Newly drafted wording, not an original court filing or a matter handled by our team. Specimen identities are bracketed. Adapt to genuine facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT AND LAND PETITION NO [reference]

[CLAIMANT] v [RESPONDENT]

NOTICE OF MOTION

1. The Petitioner applies in the existing Environment and Land Petition [number] for interim protection under the applicable petition and injunction procedure. The apartment is identified in the confidential filing as [complete title and unit], while this public specimen redacts identifying title and family details.

2. The Petitioner seeks an order restraining [specified respondents], their servants and agents from selling, advertising for sale, offering the apartment as security or evicting the Petitioner and the children pending determination of the petition, or such limited order as the Court considers appropriate.

3. The grounds are the pleaded challenge to spousal consent, the alleged removal of a caution without notice and the threatened loss of the home before those issues are heard. The actual register entries, charge, consent document, notice and supporting affidavit are [references]. Fraud remains an allegation requiring proof.

4. The Petitioner discloses the Kadhi proceedings, resulting matrimonial allocation, the pending family appeal and the prior eviction application. Their authenticated orders and current status are [references]. This motion does not ask the ELC to determine a family appeal assigned to another competent court.

5. The imminent act and date are [genuine sale advertisement or eviction notice]. The risk to the Petitioner and two minor children is explained from actual occupation and circumstances. The Petitioner addresses the lender security and proposes [appropriate undertaking or preservation arrangement, if justified], without denying the existence of the loan by assumption.

6. The Petitioner asks for service directions, an inter partes hearing, preservation pending the substantive petition and an appropriate costs order. Any request for interim ex parte relief must disclose all material adverse facts and existing orders. The final charge validity and beneficial ownership are reserved for determination.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected person and address].

Use and evidence notes

Use the actual existing cause, applicable power and precise interim or substantive prayers with genuine supporting evidence. Disclose adverse facts, earlier applications, current orders and delay. Complete affidavit, exhibits, urgency certificate only where justified, fee and service under current directions. A proposed corrected motion does not establish that the missing facts or procedural permission exist. Adapt the motion to the actual substantive petition and governing constitutional procedure, including rule 23 where applicable. Do not start a stand-alone miscellaneous eviction dispute or seek final ownership merely through interim prayers.

Supporting material: [date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach genuine records only. This public specimen contains no exhibits, signatures, personal identifiers or sworn declaration.

Source and procedural limits

A former spouse living with two minor children challenged a charge, alleged forged spousal consent and removal of a caution without notice. The lender relied on a KSh 5.7 million loan, asserted consent and challenged the signature-comparison material. It referred to a KSh 700,000 matrimonial award from the Kadhi Court. Related family appeal and earlier eviction proceedings existed. Ownership was registered to the former husband, not finally awarded to the petitioner in this ruling.

The ELC granted a temporary injunction restraining sale, advertising, offering as security and eviction pending determination of the petition, with application costs to follow that outcome. It found a prima facie issue concerning matrimonial interests and fair administrative action, and risk of irreparable harm affecting the children. It did not finally decide forgery, invalidate the loan or charge, reverse the Kadhi judgment or confer sole ownership.

Keep land-register action, loan enforcement and matrimonial allocation distinct. Identify the actual charge, consent, caution, notice, forensic report and related orders. A disputed expert report does not automatically establish criminal fraud. The ruling contains a submissions-date inconsistency; the actual filings control chronology. Interim protection remains subject to the Court conditions and later orders, not an indefinite right to ignore loan obligations.

[2025] KEELC 1319 (KLR) - 19 March 2025. Source decision: https://new.kenyalaw.org/akn/ke/judgment/keelc/2025/1319/eng%402025-03-19

Reproduced primary text checked: https://sheriahub.com/cases/ke/caselaw/meli-v-land-registrar-mombasa-land-registry-4-others-2025-keelc-1319-klr.pdf

The original decision may identify participants. The specimen brackets identifying details. A source judgment does not prove this reconstruction was filed, an allegation succeeded, a later order remains unchanged or the same result will follow in another case.