



**Murithi v Muketha & another (Environment and Land Appeal
E068 of 2022) [2023] KEELC 16955 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16955 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E068 OF 2022**

CK NZILI, J

APRIL 19, 2023

BETWEEN

PHYLIS NGETA MURITHI APPLICANT

AND

ELIZABETH KARAMBU MUKETHA 1ST RESPONDENT

MARIA KATHURE JOSEPH 2ND RESPONDENT

RULING

1. The court is asked through an application dated January 16, 2023 to grant inhibition orders against LR No's Timau/Timau/Block 7/1282, 1283, 1284 & 1285, the resultant subdivisions of LR No. Timau/Timau Block 7/621 (Nkando), pending the hearing and determination of this appeal. The grounds for the application are set out on its face and in the supporting affidavit of Phylis Ngeta Murithi sworn on January 16, 2023. The applicant contends that she is a joint owner of the said parcels of land alongside the 3rd respondent. That the 1st & 2nd respondents filed a suit in the primary court and obtained ex parte orders on August 8, 2019, which she only became aware of in January 2022 when strangers visited the land to execute the decree. That she applied for the setting aside but the trial court vide a ruling dated October 27, 2022 dismissed the application paving way for the execution by way of subdivisions of the initial land into four portions, which the respondents are likely to dispose off. That unless the orders sought are granted, the appeal would be rendered nugatory. The applicant has attached copies of the green card and the amended map as annexures marked PM "1" and "2".
2. The application is opposed through a replying affidavit sworn by Maria Kathure Joseph, the 2nd respondent for and on behalf of the 1st respondent. She averred that the 1st respondent is their mother as well as the 3rd respondent. That a decree was issued on August 8, 2019 to the effect that the respondents hold the mother title in trust. The court also directed the subdivision of the initial land in equal shares which were done on November 30, 2021 and transfers effected to the beneficiaries as per a title deed attached as MKJ "2". That they have no intention of disposing of the portions which are of sentimental



- value to them since they form part of their inheritance. That the applicant was all aware of the suit land as found by the trial court yet she wants to prejudice them in stopping the execution of the decree which in any event is already executed. They urged the court to find the application without merits.
3. Section 68 of the [Land Registration Act](#) grants the court powers to issue an inhibition order against a title for a particular period pending the occurrence of a defined event. An inhibition has been said to be like a prohibitory injunction. In the case of [Grace Kinoru Mark vs Mark Muriungi Mark & 2 others \(2022\) eKLR](#) the court cited with approval [Charters Hours Bank Ltd vs Central Bank of Kenya & others \(2017\) eKLR](#) in which the Court of Appeal held that the purpose of granting an injunction pending appeal was to preserve the status quo and to prevent the appeal, if successful from being rendered nugatory. Further, the court cited with approval [Bilha Mideva Buluku vs Evelyne Kanyere \(2016\) eKLR](#), where it was held that in considering whether or not to grant an injunction pending appeal, the court would be trying to ascertain if the appeal was arguable or raised serious questions for the court's determination vis a vis the impugned decision without delving into the merits of the appeal.
 4. So then, if an inhibition is like an injunction, it means an applicant has to satisfy the ingredients of [Giella vs Cassman Brown \(1973\) E.A 358](#). In [Mrao Ltd vs First American Bank Ltd and 2 others \(2003\) eKLR](#), a prima facie case was said to be established if, on the material placed before the court, there is evidence of a right which has been infringed to call the opposite party to explain.
 5. In [Selina Mecca Wekesa vs Kennedy Ellam Wekesa & others \(2014\) eKLR](#), the court held that there was a real danger and fear on the part of the respondents to be tempted to dispose of the suit property to third parties by the time the appeal was heard and determined such that the subject property would be out of reach of the applicant. The court proceeded to issue restraining and inhibition orders against the titles.
 6. Applying the foregoing principles to the instant application, it is admitted by the respondents that the lower court declared rights over the suit land in favor of all the parties and directed that the subdivision of the same to be effected, which was done. The applicant while admitting all these changes to the initial title, claims that she was condemned unheard contrary to the rules of natural justice.
 7. Further, she says that efforts to set aside the lower court judgment were unsuccessful, hence why she has preferred an appeal to this court. On the other hand, the respondents averred that the decree is already executed and title deeds issued in favor of all the parties. The respondents have stated that they do not intend to dispose of the parcels of land out of the sentimental value they hold them.
 8. Looking at the foregoing, I think the applicant has established a prima facie case. Why do I say so? Because land rights, fair hearing, and access to justice are the cornerstones of our Constitution and the rule of law. Every party whose land rights are under threat has to be accorded a fair hearing. In my view, the appeal before the court is not frivolous, or hopeless.
 9. Since the respondents have admitted that they are not in a hurry to dispose of the suit land, I see no harm if prohibition orders are issued.
 10. Consequently, I grant inhibition orders against the titles to the suit parcels, which shall last for a period of one year only. The lower court file is to be availed and parties are hereby directed to fast-track the appeal. Similarly, the applicant shall deposit Kshs.50,000/= as security for costs within 14 days from the date hereof, in default the inhibition orders to stand vacated.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 19TH DAY OF APRIL, 2023.



In presence of:

C/A: John Paul

Muthomi Njeru for respondent

Miriti for Kaumbi for applicant

HON. C.K. NZILI

ELC JUDGE

