



**Muganda v Halwenge & another (Environment & Land Case
126 of 2015) [2023] KEELC 21592 (KLR) (15 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21592 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 126 OF 2015
DO OHUNGO, J
NOVEMBER 15, 2023**

BETWEEN

DORINE MURONJI MUGANDA PLAINTIFF

AND

EDWARD OMWALO HALWENGE 1ST DEFENDANT

NANCY WANJIRU GITAU 2ND DEFENDANT

RULING

1. The plaintiff filed this suit seeking an eviction order against the defendants. The plaintiff also prayed that the title given to the defendants on 23rd December 2014 be cancelled and that the plaintiff be reinstated as the owner of land parcel number Butso/12940 (suit property). The matter went to trial and judgment was delivered on 21st November 2018 by N A Matheka, J The court found that the plaintiff had failed to establish her case and consequently dismissed it with costs.
2. Prior to commencement of the trial, the parties recorded a consent on 6th May 2015 granting an inhibition order against any transactions relating to the suit property “until further orders of the court.” The inhibition was registered on 3rd June 2015.
3. Later, the defendants filed Notice of Motion dated 14th April 2022 seeking lifting of the inhibition. The application is supported by an affidavit sworn by the first defendant. The plaintiff opposed it through a replying affidavit which she swore on 11th May 2022. The application was canvassed through written submissions which both sides duly filed.
4. I have considered the application, the affidavits, and the submissions. The applicants contend that the inhibition should be removed since the suit has since been heard and determined. In response, the plaintiff contends that she was dissatisfied with the judgment and filed an appeal against it in the Court of Appeal, being Civil Appeal Number 14 of 2019. That since the appeal is pending, the inhibition should not be removed.



5. I have perused the record and I note that indeed the plaintiff filed Notice of Appeal against the judgment on 21st November 2018. The defendants have not denied existence of the appeal. Their response to its effect on the inhibition is that it does not amount to stay of execution.
6. The very purpose of the inhibition was to preserve the suit property pending determination of the suit and by extension the dispute. In view of the existence of the appeal, the suit is still live, and its outcome can go either way. Mere absence of an order of stay of execution does not bring the life of the inhibition to an end.
7. I find no merit in Notice of Motion dated 14th April 2022 and I therefore dismiss it with costs to the plaintiff.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 15TH DAY OF NOVEMBER 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the Plaintiff

Mr Nyikuli holding brief for Ms Muleshe for the Defendants

Court Assistant: E. Juma

