



**Kagunda v Stanley Kagunda Njogo & 2 others (Environment and Land Case Civil Suit E038 of 2021) [2022] KEELC 3482 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3482 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND CASE CIVIL SUIT E038 OF 2021  
LN GACHERU, J  
MAY 19, 2022**

**BETWEEN**

**PRISCILA NYAKIEGA KAGUNDA ..... APPLICANT**

**AND**

**STANLEY KAGUNDA NJOGO ..... 1<sup>ST</sup> RESPONDENT**

**ELIUD MAINA KAGUNDA ..... 2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR MURANG'A ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By Notice of Motion Application dated 9<sup>th</sup> November 2021, filed on 11<sup>th</sup> November 2021, the Plaintiff/Applicant sought the following orders:-
  1. That pending the hearing and determination of this suit, this Honorable Court be pleased to issue an order of Inhibition over Land Parcel No's  
Loc.19/gacharageini/414, Loc.19/Gacharageini/4664, Loc.19/gacharageini/4665 Loc.19/gacharageini/4666, Loc.19/gacharageini/252, Loc19./gacharageini/1440. And Loc.19/Gacharageini/1440.
  2. That pending the hearing and determination of this suit the Honorable Court be pleased to grant an order of interim injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants by themselves, their agents and/ or personal assigns from interfering with any of the properties Loc.19/gacharageini/414, loc.19/gacharageini/4664, Loc.19/gacharageini/4665, loc.19/gacharageini/4666, Loc19.gacharageini/252 and loc.19/gacharageini/1440
  3. That costs of this application be provided for



2. The application is grounded on the Supporting Affidavit of the Plaintiff/Applicant sworn on 9th November 2021, and the Grounds stated on the face of the application. It is the Applicant's contention that she was married to the 1<sup>st</sup> Defendant/Respondent under Kikuyu customary laws in 1960, and was blessed with five issues including the 2<sup>nd</sup> Defendant/Respondent. That they have always lived on land parcel no Loc.19/gacharageini/1440, which property the 1<sup>st</sup> Defendant/Respondent inherited from his father and holds it in trust for his family. She avers that during the subsistence of their marriage, they bought other properties which she has listed in paragraph 4 of the Supporting Affidavit.
3. It is her averments that the 1<sup>st</sup> Defendant/Respondent transferred one of the properties being Loc.19/gacharageini/414, to the 2<sup>nd</sup> Defendant/Respondent, without her consent. Further that the 1<sup>st</sup> Defendant/Respondent sub-divided one of the properties being Loc.19/gacharageini/ 1284, into three parcels. The Applicant makes averments on the existence of family feuds and avers that she is apprehensive that the 1<sup>st</sup> Defendant/Respondent will continue to use and/ or dispose off the suit properties by and including taking loan facilities for his own interest to her prejudice. That it is in the interest of justice and fairness that Orders of Inhibition and Interim Injunction be issued to preserve the subject properties.
4. In response to the Application the 1<sup>st</sup> & 2<sup>nd</sup> Defendants/Respondents, filed a joint Replying Affidavit sworn 20<sup>th</sup> January, 2022. It is their disposition that this Court is bereft of jurisdiction to entertain the matter as the pleadings are grounded on matrimonial properties which ought to be filed in the High Court. They further contend that Plaintiff/Applicant has neither met the threshold for grant of injunction as established in *Giella vs Casman Brown*(1973) E.A 358. That the Plaintiff/Applicant did not demonstrate that the parcels of land are family land subject to customary trust. They further averred that the Applicant has not shown that there was any trust registered on the suit property or demonstrate any prejudice that she will suffer.
5. The Applicant filed a Further Affidavit sworn on the 22<sup>nd</sup> February 2022, and averred that the suit is properly filed and this Court has the requisite jurisdiction to entertain it. She makes averments that the suit properties are matrimonial properties which she has interest on and that this Court ought to protect them. Further that the suit is not statutory barred as the alienation of the suit property was recently done and also that the Defendants/Respondents moved the Land Control Board for sub-division of land parcel 414.
6. The 3<sup>rd</sup> Defendant/Respondent did not respond to the application.
7. The Application was canvassed way of written submissions. The Applicant filed her submissions on the 23<sup>rd</sup> February, 2022 and raised five issues for determination by this Court. On the legality of the pleadings, the Applicant submitted that there is no procedure under the *Matrimonial Property Act* – MPA, that provides for the procedure of instituting proceedings. She relied on the case of *Milcab Municah Munoko vs Lawrence Ochokolo Oduma*(2016)eKLR. Additionally, that Article 27(1), of the *Constitution* guarantees her right to equal protection.
8. On jurisdiction of this Court to hear matrimonial Causes, the Applicant submitted that this Court is clothed with jurisdiction as provided for under Section 17(1) of *Matrimonial Property Act*, and invited the this Court to the reasoning of the Court in *N.C.K vs G.V.K*{2015}eKLR, where the trial Court looked at the England *Matrimonial Cause Act* and opined that a party to a marriage by application of Section 17 can move Court for determination of beneficial interest during the subsistence of marriage.
9. On whether the 1<sup>st</sup> Defendants/Respondent holds the properties in trust for the Applicant, she submitted that the properties were acquired during the subsistence of the marriage and registered in the name of the 1<sup>st</sup> Defendant/Respondent to hold it in trust for the family. That this Court should



take in her contribution towards the acquisition of the suit property and should be guided on what amounts to contribution as was found in *Njoroge vs Ngari*{1985}KLR, 480. She further submitted that an order of inhibition and injunction ought to be issued to prevent the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from disposing and/ or interfering with the suit property. Further that she has established the principles set out in the *Giella vs Cassman Brown*(1973) E.A 358, and the provisions of Order 40 Rule 1(a) of the *Civil Procedure Rules*. Further that her suit raises a cause of action against the Respondents and this Court should exercise its discretion in her favor by not striking out the suit. Reliance was placed on the case of *DT Dobie & Co(K) Ltd vs Muchina*{1982}KLR, that defines what constitutes a cause of action and pointed out that Courts ought to act cautiously, carefully, and consider all facts of a case without embarking on a trial before dismissing a case for not disclosing a reasonable cause of action.

10. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents filed their submissions on the 25<sup>th</sup> April, 2022. It is their submissions that the application herein is bad in law and an abuse of the Court process. That the Applicant has not established a *prima facie* case as the pleadings she has filed should have been filed at the High Court, under the *Matrimonial Property Act*. Further that this Court lacks jurisdiction to entertain the instant suit and the suit should be struck out. They further submitted that the Plaintiff/Applicant has not met the requirements for grant of an injunction as was stated in the *Giella Case, supra*. That the Plaintiff/Applicant has not demonstrated that the suit lands are family land subject to customary trust. In conclusion, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents submitted that the suit upon which the instant application is founded is incompetent and is statutory barred. They urged the Court to dismiss the Application and the suit with costs.
11. It is uncontroverted that the Plaintiff/Applicant and the 1<sup>st</sup> Respondent are husband and wife and that the 2<sup>nd</sup> Defendant/Respondent is an issue emanating from their marriage. It is also not in dispute that the suit properties are registered in the name of the 1<sup>st</sup> Defendant/Respondent save for parcel no. Loc.19/gacharageini/414, which is registered in the name of the 2<sup>nd</sup> Defendant/Respondent.
12. Having carefully analyzed the instant Application, the responses and the rival submissions, the issues for determination are;
  - i. Whether this Court has jurisdiction to entertain the instant suit
  - ii. Whether the Applicant has met the principles to warrant grant of an interim injunction
  - iii. Whether an order of Inhibition can issue
    - i. Whether this Court has jurisdiction to entertain the instant suit
13. Jurisdiction is the power conferred on a Court to hear and determine issues and give orders. The jurisdiction of this Court is founded under Article 162(2)(b) of the Constitution and the Court draws its power from Section 13 of the *Environment and Land Court Act*, which provides:

In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes——

  - a) Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - b) Relating to compulsory acquisition of land;
  - c) Relating to land administration and management;
  - d) Relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and



- e) Any other dispute relating to environment and land.
14. Jurisdiction is the cornerstone of determination of any suit without which a Court cannot entertain any matter before it. It is trite that issues of jurisdiction should be determined at the first instance. In the case of *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] eKLR, the Court held; -
- “Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself.
15. Further the case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* . [1989] the trial Court held
- “Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”
16. While the pleadings revolve around land ownership which this Court has the jurisdiction, the Plaintiff/Applicant has largely submitted on matrimonial properties. The *Matrimonial Property Act* was enacted “to provide for the rights and responsibilities of spouses in relation to matrimonial property and for connected purposes”
17. Section 6 of *Matrimonial Property Act* makes provisions on what constitutes matrimonial property and it is not limited to moveable and immoveable property, land being an immoveable property. Section 17 of the said *Act* empowers a party to move Court for declaration of rights. What constitutes a Court within the meaning of the *Act* has however not been defined.
18. The 1<sup>st</sup> & 2<sup>nd</sup> Defendants/Respondents in opposing the application averred that the Plaintiff/Applicant ought to have moved the High Court for the proper determination of this suit as it is brought within the provisions of *Matrimonial Property Act*. The Applicant contends that by application of Section 17 of *Matrimonial Property Act*, this Court retains the jurisdiction to hear the suit. The Court in Eldoret ELC No. 317 of 2014 *Jane Wambui Ngeru v Timothy Mwangi Ngeru* [2015] eKLR held:
- “No particular Court is identified by the Act, and can therefore be any Court that has been given jurisdiction to hear matrimonial disputes. The High Court is in this regard granted original and unlimited jurisdiction in civil matters by the *Constitution* under Article 165(3). The *Marriage Act* of 2014 in addition provides that the courts that will hear matrimonial causes arising under the Act are resident magistrate’s courts and within the limits provided under the law as to their jurisdiction.
- It is thus the current legal position that concurrent jurisdiction is given to various courts to hear disputes relating to matrimonial property rights including this Court. The only limitation applicable to this Court is that it can only hear such disputes if they involve or relate to land”.



19. Similarly, the Court in Murang'a ELC No. 379 of 2017 *BWM v JMC* [2018] eKLR held;

“For avoidance of doubt, the Court notes that the *Matrimonial Property Act* does not define the Court that disputes relating to the Matrimonial property disputes should be referred for determination. It is thus the current legal position that concurrent jurisdiction is given to various Courts to hear disputes relating to matrimonial property rights including this Court. The only limitation applicable to this Court is that it can only hear such disputes if they involve or relate to occupation use and title to land. I find nothing to oust the jurisdiction of this Court and I proceed to determine the Preliminary objection”

20. The instant suit revolves around the title, use and occupation of the suit properties. Therefore, subject to the foregoing provisions and guided by the precedents cited above, this Court finds and holds that it is clothed with the requisite jurisdiction to entertain the issues raised herein.

21. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents averred that the suit is statutory barred as the cause of action referenced to occurred in 2006, a position the Applicant opposes. The Applicant contends under paragraph 6 of her Supporting Affidavit that sometime in 2019, she discovered that Loc.19/gacharageini/414, had been secretly transferred to the 2<sup>nd</sup> Defendant/Respondent. In respect of the other suit properties, the Applicant avers that the properties were acquired during the existence of their marriage and even though the same are registered in the name of the 1<sup>st</sup> Defendant/Respondent, he was to hold in trust for the Plaintiff/Applicant and their family.

22. The law on Limitation of actions under Section 7 of the *Limitations of Actions Act* in respect to land matters is that a claim in land ought to be brought to Court before or at the expiry of 12 years, since the cause of action arose.

However, Section 20 of the said *Act* states; -

- (1) None of the periods of limitation prescribed by this Act apply to an action by a beneficiary under a trust, which is an action— (a) in respect of a fraud or fraudulent breach of trust to which the trustee was a party or privy; or (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use.
- (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust (not being an action for which a period of limitation is prescribed by any other provision of this Act) may not be brought after the end of six years from the date on which the right of action accrued:

23. The Applicant's claim is that the 1<sup>st</sup> Defendant/Respondent held the suit lands in trust for her. A reading of the above section of the law is instructive of the fact that Limitation of actions do not apply in cases where there is breach of trust. The question of trust cannot be determined at the preliminary stage, but at the full hearing. The Applicant's claim lies on the first limb of the above section and it means therefore that limitation of action does not apply.

24. The Court of Appeal in *Stephens & 6 others v Stephens & another* [1987] eKLR, when allowing an Appeal found that no period of limitation of actions applies in cases of trust. This was also the finding of the Court in *Ndiwa Chesebe v John Chesebe Sikuku* [2022] eKLR.



## ii. Whether the Applicant has met the principles to warrant grant of an interim injunction

25. Order 40 of the [Civil Procedure Rules](#) makes provisions on the grant of temporary injunctions and interlocutory orders. Rule 1 of the said Order provides for cases in which temporary injunctions can be granted;
26. This provision of law states that the Court has discretion to grant injunction when the suit property is in danger of being wasted, damage or alienated, by any party to the suit.
27. The principles for grant of injunctions are well settled in case of *Giella v Cassman Brown Co. Ltd* 1973 E.A. 358 to wit;
  - i. The Applicant has to make out the existence of a prima facie case with a probability of success
  - ii. The Applicant must demonstrate that he/she will suffer substantial loss which may not be remedied with an award of damages
  - iii. Balance of convenience
28. Further in the case [Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others](#) [2016] eKLR which captured the principles in *Giella vs Cassman Brown* as follows:
  - i) Is there a serious issue to be tried?;
  - ii) Will the Applicant suffer irreparable harm if the injunction is not granted?
  - iii) Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "balance of convenience")
29. The test for granting of an interlocutory injunction was considered in the *American Cyanamid Co. vs Ethicom Limited (1975) A AER 504* where three elements were noted to be of great importance namely:
  - i. There must be a serious/fair issue to be tried,
  - ii. Damages are not an adequate remedy,
  - iii. The balance of convenience lies in favour of granting or refusing the application.
30. The circumstances for consideration before granting a temporary injunction under Order 40 Rule 1 requires proof that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property. The court in such situation is enjoined to grant a temporary injunction to restrain such acts.
31. Therefore, in granting interlocutory injunction, the Court has to satisfy itself that the Applicant has a *prima facie* case with a probability of success and that the Applicant if not granted the orders sought will suffer irreparable damage which cannot be compensated by way of damages.
32. A *prima facie* case was defined in [\\*Mrao Ltd vs First American Bank of Kenya and 2 others](#), (2003) KLR 125 which was cited with approval in [Moses C. Mubia Njoroge & 2 others vs Jane W Lesaloi and 5 others](#), (2014) eKLR, where the Court of Appeal defined a *prima facie* case as:

“A *prima facie* case in a civil application includes but not confined to a genuine and 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”

33. The Applicant alleges that she is a wife to the 1<sup>st</sup> Defendant/Respondent, an issue that the 1<sup>st</sup> Respondent has not objected to. She alleges further that together with the 1<sup>st</sup> Defendant/Respondent, they acquired the suit properties and as such she has a legal and beneficial right over the same. The 1<sup>st</sup> Respondent in response to the averments of the Applicant claims that the Applicant has not demonstrated that the suit properties are family land and that she has failed to establish the vital principles for grant of a temporary injunction.
34. It is not in dispute that the Applicant and the 1<sup>st</sup> Respondent are husband and wife. Section 14 of *Matrimonial Property Act* provides as follows;
- “Presumptions as to property acquired during marriage Where matrimonial property is acquired during marriage—
- (a) in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and
- (b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.
35. Based on the above provision of law, it is clear a property acquired during subsistence of marriage by one spouse is held in trust for the other spouse unless the presumption is rebutted. The 1<sup>st</sup> Respondent has not in the instant application rebutted that the properties were acquired during the subsistence of their marriage. Therefore, it follows that the Applicant has established a right over the suit properties that this Court should protect.
36. Having established that the Applicant has a right worthy of protection, this Court will now determines based on the evidence placed before it, whether this right has been or is at a risk of being infringed.
37. The Applicant alleges that the 1<sup>st</sup> Respondent has already transferred parcel No. Loc.19/Gacharageini/414, to the 2<sup>nd</sup> Respondent, their son as evidenced by a copy of an official search attached to the Affidavit in support of this Motion marked “PNK2”. She further alleges that the 1<sup>st</sup> Respondent has sub-divided one of properties being Loc.19/Gacharageini/1284, into portions and she is apprehensive that he might sell off the said sub-divisions. A look at a copy of a green card for the said land marked “PNK4” indicates that the said sub-division was done in September, 2020. It is her further allegation that the 1<sup>st</sup> Respondent intends to take a loan and charge Loc.19/Gacharageini/252, where she and one of her children undertake farming. In respect to Loc.19/Gacharageini/plot No.154, she alleges that the 1<sup>st</sup> Respondent sold it off in 2015 or thereabout.
38. It is trite that he who alleges must proof and which burden in the instant application lies squarely with the Applicant. The Applicant has only produced before this Court evidence to show that land parcel No. Loc.19/Gacharageini/414, has been transferred to the 2<sup>nd</sup> Respondent who is her son and a grant of temporary injunction in favor of the Applicant with respect to the foregoing parcel of land has already been overtaken by events. In respect to Loc.19/ /Gacharageini/1284, while it is not in dispute that the land has been sub-divided and which sub-division was done in 2020, the Applicant has not attached any evidence to support her apprehension that the same is at a risk of being sold off by the 1<sup>st</sup> Respondent. In respect to Loc.19/Gacharageini/252, and Loc.19/Gacharageini /plot No.154, there is no evidence tabled before this Court by the Applicant to support her allegations.



39. Based on the foregoing, the Applicant has not substantiated and/or demonstrated her apprehension. The Court of Appeal in Nairobi Civil Appeal No. 77 of 2012; [Nguruman Limited v Jan Bonde Nielsen & 2 others](#) [2014] eKLR held;

“Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages”.

40. To this end, this Court finds and holds that the Applicant has failed on a balance of probability to establish a prima facie case to warrant grant of an interim injunction.

41. On the issue of irreparable harm and/ or substantial loss, the Court in the case of [Pius Kipchirchir Kogo versus Frank Kimeli Tenai](#) (2018)eKLR, defined irreparable injury as;

irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

42. Irreparable damage was also defined in [Banis Africa Ventures Limited v National Land Commission](#) [2021] eKLR where the Court quoted with approval Halsbury’s Laws of England [[Halsbury’s Laws of England, Third Edition, Volume 21](#), paragraph 739, page 352.] as follows:-

43. In order to show irreparable harm, the moving party must demonstrate that it is a harm that cannot be quantified in monetary terms or which cannot be cured. But what exactly is “irreparable harm”? Robert Sharpe, in “Injunctions and Specific Performance,” [ [Robert Sharpe, Injunctions and Specific Performance, looseleaf](#), (Aura, On: Cananda Law Book, 1992), P 2-27] states that “irreparable harm has not been given a definition of universal application: its meaning takes shape in the context of each particular case.”

44. The Applicant submitted that she will suffer irreparable injury if the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are not restrained. She alleges that she and some of her children will be rendered homeless an allegation that has not been well placed before this Court in the form of evidence. What flows from the pleadings is that the Applicant and the 1<sup>st</sup> Respondent are married and what is not clear is whether they live together or separately and whether their marriage has broken down. This Court is not well guided on the use, occupation and possession of the suit lands and the damage if any that the Plaintiff/Applicant will suffer if an injunction is not granted. Having found that the Applicant has not established a *prima facie* case or established substantive loss the balance of convenience tilts in favor of not granting an injunction.

45. The upshot of the foregoing is that the Plaintiff/Applicant has failed on a balance of probability to establish the principles for grant of an interim injunction.

### **(iii) Whether an order of Inhibition can issue\_**

46. The law of inhibition is founded under Section 68 of the [Land Registration Act](#) of 2012 which provides:



- (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.
  - (2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.
  - (3) An inhibition shall not bind or affect the land, lease or charge until it has been registered. when there is good reason to preserve, or stay the registration of dealings, with respect to a particular parcel of land for a temporary period.
47. These provisions give court discretion to issue orders which are in the nature of an injunction restraining dealings on land pending further orders by the court. The Section is meant to preserve the property from acts that would otherwise render a court order incapable of being executed and or to give an opportunity to hear and decide the matter. It is therefore necessary to preserve the status quo pending the hearing and determination of the issue before court.
48. In *Japhet Kaimenyi M'ndatbo v M'ndatbo M'mbwiria* [2012] eKLR, the Court enumerated the conditions for grant of an order of inhibition to wit;
- a. That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the Applicant unless Preservatory orders of inhibition are issued.
  - b. That the refusal to grant orders of inhibition would render the Applicant's suit nugatory.
  - c. That the Applicant has arguable case.”
49. In *Bashir Yusuf & another v Talalei Kiptenai* [2020] eKLR the Court cited with approval the case of *Films Rover International & Others Vs Cannon Films Sales Ltd* 1986 3 ALL E.R 772 where it was held that:
- “it is my view that the injustice that would be caused to the defendant/respondent if the Plaintiff/Applicants were granted the prayer of inhibition and later failed at the trial outweighs the injustice that would be caused to the Plaintiff/Applicants if the prayer for inhibition was dismissed and they succeed in proving their case. Balancing the two competing interests, the cause of justice will best be served if the order of inhibition is granted.”
50. This Court has hereinabove found that the Applicant has a right to the suit lands worthy of protection. As to whether the suit lands are matrimonial properties or properties held in trust by the 1<sup>st</sup> Respondent is a fact to be determined at the hearing of substantive suit. To protect and preserve the substratum of the suit properties, it is only fair and just that this Court issues an order of inhibition.
51. Guided by the above precedents and the provisions of Section 68 of the *Land Registration Act*, this Court proceeds to grant an inhibition order on the suit properties pending the hearing and determination of the suit.
52. Having carefully considered the instant \*Notice of Motion Application dated 9th November, 2021, the Court finds that it is fair and just to allow prayer No. 4 of the said application on grant of inhibition order.



53 However, the Court finds that the Plaintiff/Applicant is not deserving of prayer No.5 for Interim Injunction. The said prayer is disallowed. Further the Court finds and holds that costs of this Application shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 19TH DAY OF MAY, 2022.**

**L. GACHERU**

**JUDGE**

In the presence of; -

Alex Mugo - Court Assistant

M/s Mungai HB for M/s Gachango for the Plaintiff/Applicant

No Appearance for the 1<sup>st</sup> Defendant/Respondent

No Appearance for the 2<sup>nd</sup> Defendant/Respondent

No Appearance for the 3<sup>rd</sup> Defendant/Respondent

**L. GACHERU**

**JUDGE**

