



**Ngatia v Mwaniki (Environment & Land Case 2081 of 2007)  
[2025] KEELC 4522 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 4522 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 2081 OF 2007**

**JG KEMEI, J**

**APRIL 8, 2025**

**BETWEEN**

**LINA NYOKABI NGATIA ..... PLAINTIFF**

**AND**

**CHARLES MWANIKI ..... DEFENDANT**

*(In respect of the Defendant's application dated 7/2/2025)*

**RULING**

1. The subject of this Ruling is the Defendant's application dated 7/2/2025. The application is anchored on the provisions of Section 70 and 78 of the [Land Registration Act](#), Section 1A, 1B and 3A of the [Civil Procedure Act](#), Order 40 Rule 1 and 4, Order 51 Rule 1 of the Civil Procedure Rules, 2010. The Applicant seeks the following orders:
  - a. That this Honorable Court be pleased to issue orders directing the Chief Registrar to cancel, lift and/or remove the inhibition which was registered in the title for the suit property known as LR.No.12151/2 on 3/10/2008.
  - b. That costs of this application be provided for.
2. The application inter alia is based on the grounds set out on the body of the application and the affidavit sworn in support of the application by Charles John Mwaniki Njoka sworn on 7/2/2025. The Applicant avers that the Original Plaintiff (now deceased), sought orders for half share of the suit property known as LR. No.12151/2, in which she claimed to have purchased with the Defendant/Applicant, during the subsistence of their marriage.
3. He deposes that during the pendency of the suit, this Honourable Court issued orders on 16/9/2008 restraining the Defendant or his agents from interfering with the suit property pending the



- determination of the suit. That the said orders were registered against the title on 3/10/2008. However, upon delivery of Judgment on 22/12/ 2023, the said orders stood vacated.
4. The deponent avers that the Plaintiff later moved this Court vide the application dated 1/3/2024 seeking status quo orders to allow Smart Homes Limited to continue managing and collecting rent from the suit property and share it equally between Plaintiff and the Defendant, until the transfer and registration of equal title in the suit property has been completed. The application was however dismissed vide the Ruling delivered on 14/5/2024. That the Learned Judge held that the interim orders of 16/9/2008 automatically lapsed with the delivery of the Judgment.
  5. The Applicant avers that in a Letter dated 5/6/2024, he wrote to the Chief Land Registrar, Nairobi, informing him/her that the suit had been determined vide the Judgment dated 22/12/2023. That despite serving the Chief Land Registrar with the Decree dated 22/12/2023 and issued on 11/01/2024 as well as the Ruling delivered on 14/05/2024, the Registrar is adamant that he will not cancel, lift or remove the inhibition unless there are express orders from this Honourable Court directing the Chief Land Registrar to remove the inhibition registered on 3/10/2008 against the title for the suit property. That he conducted a Search on the title for the suit property on 3/10/2024 and found that the title still had the inhibition registered against it.
  6. He contends that having successfully defended the suit against the Plaintiff, he ought to enjoy the fruits of the Judgment. It is on that basis that he prays for the grant of the orders sought herein in the interest of justice.
  7. The Plaintiff/Respondent opposed the application vide the Replying Affidavit of Nancy Waithira Mwaniki, the Administrator of the Estate of the Plaintiff dated 26/2/2025. The Administrator argues that the application is an abuse of the court process. She avers that the applicant is not the sole registered proprietor of the suit property having been granted half share in the suit property in Succession Cause No. 460B of 2010 vide the Certificate of Confirmation of Grant dated 3/12/2018.
  8. The deponent avers that the Defendant intends to fraudulently disinherit her by registering the suit property in his name. That in any event, the orders sought to be set aside were made by consent of the parties and can only be vacated by consent of the parties.
  9. She further contends that the Court is functus officio having delivered its Judgment on 22/12/2023. That any orders sought in respect of the suit property can only be made in Succession Cause No. 460B of 2010. That the inhibition registered on the title is legally and lawfully placed to protect her interest as a beneficial owner. She argues that the Defendant is attempting to vacate orders issued by a Court of equal jurisdiction. That the application seeks to nullify the orders made in Succession Cause No. 460B of 2010 which is still pending.
  10. The Court directed that the application be canvassed by way of written submissions 11/3/2025. Both parties complied. The Court has had occasion to read through the said submissions and duly considered them. In any event, the submissions now form part of the record of the Court.
  11. The court is of the view that the issues for determination are; -
    - a. Whether the inhibition registered on the suit property is still valid
    - b. Who should bear the costs of the application.
  12. The Defendant/Applicant avers that an inhibition was registered against the suit property on 3/10/2008 pursuant to interim orders of 16/9/2008. He argues that the said interim orders having automatically lapsed after the delivery of the Judgment on 22/12/2023. Further, that the Court in its Ruling delivered on 14/5/2024 confirmed that in deed the said interim orders had lapsed. He therefore



argues that having successfully defended the suit, the inhibition registered against the suit property be cancelled and/or removed by the Chief Land Registrar.

13. The Respondent on the other hand argues that this court is functus officio having delivered its Judgment. That the inhibition sought to be lifted by the Applicant was issued by the Succession Court and therefore, it is the said Succession Court that can lift the said orders. The Plaintiff/Respondent's contention is that this Court cannot vary the orders issued by a Court of equal jurisdiction.

14. Section 68(1) of the [Land Registration Act](#) provides that: -

“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, generally until a further order, the registration of any land lease or charge.”

15. The Court issuing such an order must be satisfied that the Applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending the trial.

16. Section 70 of the [Land Registration Act](#) further provides that: -

The registration of an inhibition shall not be cancelled except in the following cases-

- a. On the expiration of the time stated in the inhibition;
- b. On proof to the satisfaction of the Registrar of the occurrence of an event stated in the inhibition;
- c. ....
- d. By a consequent order of the court.

1. It is not disputed that an inhibition was registered against the title of the suit property pursuant to the orders issued on 16/9/ 2008. The Plaintiff/ Respondent has not challenged the registration of the said inhibition.

2. It is trite that Court orders are not issued in vacuum. The inhibition was issued pending the determination of the suit. The suit has since been determined by the Judgment delivered by Justice M.D. Mwangi on 22/12/2023. For as long as the Judgment has not been successfully impugned by a relevant party it remains binding on the parties.

19. As duly held by Justice M.D. Mwangi in his Ruling 14/5/2024, the interim orders of 16/9/2008 automatically lapsed with the delivery of the Judgment. Consequently, and in view of the provisions of Section 70 of the [Land Registration Act](#), the inhibition orders registered on the suit title equally lapsed by virtue of the determination of the suit. Therefore, at the moment, the inhibition registered against the suit property has lapsed and is no longer enforceable.

20. In the result, I find that there is no valid inhibition currently registered against the suit property. The inhibition registered on 3/10/2008 has since lapsed by virtue of the Judgment delivered on 22/12/2023. The Court therefore has no basis in granting the orders sought.

21. The application is therefore dismissed.



22. Each party to bear its own costs of the application.

23. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 8<sup>TH</sup> DAY OF APRIL 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI JUDGE**

Delivered Online in the presence of:

1. Maranga for the Applicants
2. NA for the Defendant
3. Ms Mochoge HB Ms Wanjiro for the 1<sup>st</sup> Interested Party
4. Ms Mwanyika for the 2<sup>nd</sup> Interested Party
5. CA- Ms Yvette

