



**Mukabi (Suing on his own Behalf and on Behalf of members of  
Gekara Clan) v Mbugi & 26 others (Environment & Land Case  
24 of 2016) [2022] KEELC 15611 (KLR) (22 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15611 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE 24 OF 2016  
A KANIARU, J  
NOVEMBER 22, 2022**

**BETWEEN**

**JOSEPHAT NJERU NTHIGA MUKABI (SUING ON HIS OWN BEHALF AND  
ON BEHALF OF MEMBERS OF GEKARA CLAN) ..... PLAINTIFF**

**AND**

**JONATHAN NJERU MBUGI ..... 1<sup>ST</sup> DEFENDANT**

**MBEERE SOUTH DISTRICT LAND ADJUDICATION SECTION .... 2<sup>ND</sup>  
DEFENDANT**

**NYAGA NJAGI ..... 3<sup>RD</sup> DEFENDANT**

**DAVID GITONGA NDUNDU ..... 4<sup>TH</sup> DEFENDANT**

**JOHN NGARI SHAIRI ..... 5<sup>TH</sup> DEFENDANT**

**AGNES MUTURI NJERU ..... 6<sup>TH</sup> DEFENDANT**

**NGUNGI KINGE'THU ..... 7<sup>TH</sup> DEFENDANT**

**SAMUEL NJERU ITA ..... 8<sup>TH</sup> DEFENDANT**

**ANGELO NGARI NYAGA ..... 9<sup>TH</sup> DEFENDANT**

**SAMWEL NJERU NGUNGI ..... 10<sup>TH</sup> DEFENDANT**

**JANE MBANDI IRERI ..... 11<sup>TH</sup> DEFENDANT**

**MARY MUTHONI KAGIO ..... 12<sup>TH</sup> DEFENDANT**

**NJERU NJAGI MAKONGE ..... 13<sup>TH</sup> DEFENDANT**

**BENSON NJERU NYAGA ..... 14<sup>TH</sup> DEFENDANT**

**DANIEL NJOKI NYAGA ..... 15<sup>TH</sup> DEFENDANT**



KAMAU NAOMI NYAMBURA .....	16 <sup>TH</sup> DEFENDANT
JOSEPH NJERU MUTEMI .....	17 <sup>TH</sup> DEFENDANT
KENNEDY KINYUA NYAGA .....	18 <sup>TH</sup> DEFENDANT
SAMSON KARIRA MWANGI .....	19 <sup>TH</sup> DEFENDANT
ELIAS NJERU NJOKA .....	20 <sup>TH</sup> DEFENDANT
MICHAEL KIBUCHA KAMANGA .....	21 <sup>ST</sup> DEFENDANT
SAMUEL NYAGA NGIRIGACA .....	22 <sup>ND</sup> DEFENDANT
AMOS MWANIKI NYAGA .....	23 <sup>RD</sup> DEFENDANT
SIMON MURIUKI MURIA .....	24 <sup>TH</sup> DEFENDANT
JOSEPHAT NYAGA MUKEMBO .....	25 <sup>TH</sup> DEFENDANT
MBEERE SOUTH SUB COUNTY .....	26 <sup>TH</sup> DEFENDANT
THE ATTORNEY GENERAL .....	27 <sup>TH</sup> DEFENDANT

## RULING

1. I am called upon to determine a notice of motion dated April 27, 2021 and filed on May 7, 2021. The application is expressed to be brought under order 1 rule 10, order 8 rules 3 and 5 and order 5 rule 17 of the Civil Procedure Rules, section 3A of the Civil Procedure Act and section 68 of the Land Registration Act 2012.

### **Application**

2. The application is filed by the plaintiff/applicant who has sought six (6) prayers in his application. However the defendants/respondents were not opposed to prayers 1, 2, 3 and 5. They were only opposed to prayers 4 and 6, which are as follows:

Prayer 4: That the honourable court be pleased to inhibit dealings with parcels of land Mbeere/Mbita 5466, 5467, 5468, 5469, 5470, 5471, 5472, 5473, 5474, 5475, 5476, 5477, 5478, 5479, 5480, 5481, 5482, 5483, 5484, 5485, 5486, 5487, 5488 and all resultant subdivisions of parcel of land Mbeere/Mbita/2579 pending the hearing and determination of the suit herein.

Prayer 6: That costs of the application be provided for.

3. The application is anchored on grounds that the original parcel of land Mbeere/Mbita/2579 has since been subdivided into parcels numbers Mbeere/Mbita 5466 - 5488 and transferred to the defendants/respondents. It was said that it was necessary to inhibit any dealings on the parcels of land in issue to preserve the status quo pending the hearing and determination of this suit. In a supporting affidavit sworn by the plaintiff/applicant, it was deposed that the original parcel of land - Mbeere/Mbita/2579 – was the subject of Minister’s Appeal Case No 113 of 1999. It was stated that the said land was subdivided during the pendency of the suit and that the resultant subdivisions were transferred to the defendants/respondents. Basically the plaintiff/applicant sought to inhibit dealings on the resultant



subdivisions to avoid the suit from being rendered a nullity. The court was urged to grant the prayers sought in the application.

## Response

4. The 3<sup>rd</sup> to 25<sup>th</sup> defendants/respondents opposed the application by way of replying affidavit dated March 1, 2022 and filed on March 2, 2022. The affidavit is sworn by Josephat Nyaga Mukembo the 25<sup>th</sup> defendants/respondents, who averred to have authority to swear the affidavit on behalf of the 3<sup>rd</sup> to 24<sup>th</sup> respondents. He termed the application as incompetent, unmerited, vexatious and an abuse of the court process. He deposed that the prayers for inhibition against themselves were untenable as there was no direct cause of action against them by the plaintiff/applicant. He was of the view that the plaintiff/applicant was on a fishing expedition considering the manner in which service of the pleadings was effected on them. He further deposed that the applicant was seeking an appeal against the ruling in Minister's Appeal Case No 113 of 1999 which had been determined and finalised.
5. The defendants/respondents contended that the implementation of the minister's appeal case was effected and titles issued to themselves without any inhibition or objection from the plaintiff/applicant. He maintained that the plaintiff/applicant seeks to overturn the decision of the Minister's Appeal Case No 113 of 1999 and the defendants/respondents argued that the plaintiff/applicant had no cause of action against them. He was of the view that their occupation and registration of the land was done through a procedurally legal process which was not appealed against. To him, the application was a nullity in law for being incurably defective and for disclosing no cause of action. He deposed that in the circumstances, the application did not merit the issuance of orders of inhibition against themselves and urged the court to dismiss the application with costs.

## Submissions

6. The application was dispensed with by way of submissions. The plaintiff/applicant filed his submissions on August 23, 2022. He reiterated the grounds in the application and submitted that the resultant subdivisions of parcel of land Mbeere/Mbita/2579 was subject of Minister Appeal No 113 of 1999 which was alleged to have been registered in the name of Rugano Nthiga. Rugano was representing the 3<sup>rd</sup> to 25<sup>th</sup> respondents of Ikandi clan in the appeal. He is said to have passed away during the pendency of the appeal. The plaintiff/applicant on his part together with the others were said to have been members of the Gekara clan and had nominated the 1<sup>st</sup> respondent to represent them in the appeal before the minister. They submitted that their representative (the 1<sup>st</sup> defendant/respondent) withdrew the minister's appeal without their knowledge and/or consent. He further submitted that the 26<sup>th</sup> defendants/respondents had informed the members that he would reinstate the appeal for hearing on merit but he declined to do so and consequently the applicant was denied an opportunity to present their case.
7. The plaintiff/applicant submitted that in the circumstances he and the others had filed the present suit seeking to have the matter referred back to the minister for hearing. He submitted that the issues raised can only be determined at the time of hearing of the suit on merit. He reiterated that they were seeking to prevent any further dealings on the land to avoid the suit from being rendered nugatory in the event the land is alienated to third parties. He was of the view that the defendants/respondents will not suffer any prejudice in the event the orders sought are granted and urged the court to apply the doctrine of *lis pendens* to preserve the property until determination of the suit. In support of this they relied on the case *Naftali Ruthi Kinyua v Patrick Thuita Gachure & Another (2015) eKLR*. The matter was one which sought preservation of the suit properties pending hearing and determination of the suit.



8. The 1<sup>st</sup>, 3<sup>rd</sup> and 25<sup>th</sup> defendant/respondents jointly filed their submissions on October 17, 2022. They submitted that they were strangers to the claim by the plaintiff/applicant in respect of their registrations as owners of the current parcels of land. According to them, they were beneficiaries of the judgment in Minister's Appeal No 113 of 1999. They further submitted that the said appeal had been withdrawn on October 22, 2015 after which they commenced implementation and acquisition of title. They thereafter settled on their respective land parcels.
9. They contended that during the appeal to the minister, the applicant was represented by the 1<sup>st</sup> defendant/respondent whose conduct, they submitted could not be subject of a law suit in this court. They were of the opinion that incase his conduct was in question, the forum for redress would be under the *Land Disputes Tribunal Act* (1990) which establishes the appeals to the relevant Tribunal. They sought reliance on section 8 of the *Land Dispute Tribunal Act* which outlines the procedure to be followed in a dispute by a party aggrieved by the decision of the tribunal. It was therefore submitted that the remedies sought were time barred by virtue of the provisions of the *Land Dispute Tribunal Act*.
10. With regard to the appeal before the Minister, which was Minister Appeal No 113 of 1999, it was said that the applicant had no locus standi and still has none. The applicant/plaintiff and the others were termed as strangers to the 2<sup>nd</sup> to 23<sup>rd</sup> defendants/respondents. The plaintiff/applicant was accused of failing to pursue redress if any through the lawful avenues and this suit was said to be seeking untenable relief against persons in respect of whom was no cause of action.
11. The defendant/respondents further submitted that the plaintiff/applicant has no arguable case. They dismissed the plaintiff/applicant's allegation that the 1<sup>st</sup> defendant/respondent's act of withdrawing the appeal was unlawful and averred that there was no illegality as he had authority to do so. With regard to the cancellation of title, they submitted that there was no illegality regarding that either and that the titles had been issued as a result of the implementation of the land adjudication decisions. They also dismissed the prayer for reinstatement of the appeal and termed it as misplaced considering the appeal had been withdrawn. They reiterated that the plaintiff/applicant's only remedy was to proceed to the provincial appeal Committee as provided under section 8 of the Land Dispute Tribunal or to move to the high court for redress through judicial review, which ought to have been done within 60 days. To support their claim the respondents relied on the case of *Philip Mwangi Gitbinji v Grace Wakarima Gitbinji [2004] eKLR* and the case of *In re Estate of William Patrick Mugane (Deceased) [2022] eKLR*.

### **Analysis And Determination**

12. I have considered the application before me, the response by the defendants/respondents, the rival submissions by the parties, and the court record in general. I wish to comment on the issues raised by the defendants/respondents in their submissions. The defendants/respondents have largely challenged the manner in which the plaintiff/applicant has moved the court. They have also argued that the remedies sought are time barred. I note that the defendants/respondents did not raise the said issues in their response and they did not seek to file a preliminary objection or proper application to raise the said issues. I am of the view that the said issues can best be determined during the trial. I will therefore limit the ruling to the application before me.
13. From the evidence before the court, the genesis of the dispute over the suit parcel of land emanates from an appeal which had been filed by the plaintiff/applicant's clan (members of Gekara clan) through their representative, the 1<sup>st</sup> defendant/respondent, against members of Ikandi clan. The same was filed before the Minister as Minister's Appeal No 113 of 1999. The record shows that the 1<sup>st</sup> defendant/respondent withdrew the said appeal on November 24, 2015. The plaintiff/applicant then filed the



- present suit seeking among other orders a declaration that withdrawing of the appeal number 113 of 1999 was unlawful and also sought for cancellation of all dealings with regard to the resultant subdivisions over parcel of land Mbeere/Mbita/2579.
14. The application before the court seeks an order of inhibition against dealings on the suit parcel of land pending determination of the suit. The sole issue for determination therefore is whether the applicant's prayer for orders of inhibition has merits.
  15. The legal provision on inhibition is section 68 of the [Land Registration Act](#) of 2012 which provides as follows:
    - (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.
  16. The purpose of an order for inhibition is to preserve the suit property to prevent alienation of the property pending determination of a particular action. In this case, it would serve to enable the parties ventilate their case. The conditions to be considered before grant of an order of inhibition were stated in the case of [Rosemary Wanjiku Njigi v Nancy Munjiru Ngige \[2013\] eKLR](#), where LN Gacheru J cited with approval the decision of Makau J in [Japhet Kaimenyi M'ndatbo v M'ndatbo M'mbwiria \[2012\] eKLR](#) where it was stated as follows:-
    - a) That the suit property is at risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.
    - b) That the refusal to grant orders of inhibition would render the applicant's suit nugatory.
    - c) The applicant has an arguable case.
  17. The plaintiff/applicant herein has averred that the suit property belonged to Gekara Clan. He stated that there was a dispute over the land with the Ikandi clan and they filed an appeal *vide* Minister Appeal Number 113 of 1999 against the said Ikandi clan. The appeal had however been withdrawn by the plaintiff/applicant's representative without their consent or knowledge. The plaintiff/applicant's contention is that they are entitled to the suit parcel of land, which land is currently registered in the name of the defendants/respondents. The defendants/respondents have not denied being the registered owners of the land but are of the view that their registration was lawful as they are only enjoying the fruits of the outcome of the appeal before the minister. The suit property at the time of the appeal was land parcel Mbeere/Mbita/2579. It has now been subdivided into various portions which are registered in the name of the defendants/respondents. It is quite possible that the suit property is at the risk of being alienated further and disposed of to several other third parties before the present suit is determined. Only an order of inhibition can serve to preserve the property from being alienated further. Accordingly, I find that the first condition has been met.
  18. The second condition is whether refusal to grant the order of inhibition would render the suit nugatory. As already stated the suit property is already subdivided among the defendants/respondents and there is no guarantee that the said parties will not subdivide it further or dispose of it to third parties. If the court does not issue the orders for inhibition, this suit will be rendered nugatory as the



- subject matter will have been alienated further. I find that the plaintiff/applicant is deserving of the orders sought for preservation of the suit property pending the hearing and determination of the suit.
19. The other issue is whether the plaintiff/applicant has an arguable case. The applicant has brought a case on behalf of the Gekara clan which he alleges to have a proprietary interest over the suit parcels of land. He contends that the land belonged to them and from the evidence before the court they had indeed ventilated their issue previously at the tribunal level and had even gone further and filed the impugned Minister's appeal whose withdrawal they are now challenging. I find that the applicant has an arguable case and there is need to preserve the property to enable the clan members present their case on merit.
  20. The court also has a duty to consider the prejudice that will be occasioned to the defendants/respondents if orders for inhibition are granted and the prejudice to be occasioned to the plaintiff/applicant if the orders for inhibition are denied. The court, in determination of an application for inhibition, is called upon to take the lower risk of injustice as opposed to the greater risk of injustice. See the case of *Films Rover International & Others v Cannon Films Sales Ltd* 1986 3 All ER 772 as cited with approval in the case of *Dorcas Muthoni & 2 others v Michael Iveri Ngari [2016] eKLR*.
  21. The plaintiff/applicant is seeking to have the property preserved as he and the others pursue their case on their alleged proprietary interest in the land. As already stated, the land is currently registered in the name of the defendants/respondents and has been subdivided into various portions, hence at risk of being alienated further. I find that greater prejudice and expense will be occasioned to the plaintiff/applicant if an order for inhibition is not granted since the property is possibly at risk of further alienation to third parties. If the order is denied and the plaintiff/applicant and the others succeed in the suit there is a high likelihood that the suit property will have been alienated and the purpose of the suit defeated. This risk is greater compared to the risk that the defendants/respondents would suffer if such an order is granted. It is therefore in the interest of justice that the suit property be preserved as the parties ventilate the suit as this will best balance the interest between the plaintiff/applicant and the defendants/respondents. I therefore allow the application as sought and make orders that an inhibition be registered against the resultant subdivisions of suit parcel of land Mbeere/Mbita/2579 pending hearing and determination of the suit herein.
  22. On the issue of costs I am guided by the principle that costs follow the event. I therefore order that costs of this application be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2022.**

In the presence of Njeru Ngare for 2<sup>nd</sup> & 23<sup>rd</sup> defendant/respondents; Koome for 2<sup>nd</sup>, 26<sup>th</sup> and 27<sup>th</sup> defendant/respondents and in the absence of Rose Njeru for plaintiffs/applicants

Court assistant: Leadys

**A K KANIARU**

**JUDGE**

