



**Nchabira v Miiru (Environment and Land Appeal E127 of 2021)
[2022] KEELC 14946 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14946 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E127 OF 2021**

CK YANO, J

NOVEMBER 23, 2022

BETWEEN

ANN NCHABIRA APPLICANT

AND

CHARLES MUGAMBI MIIRU RESPONDENT

RULING

1. The application for determination is the Notice of Motion dated 19th May 2022 by the appellant/applicant. It is brought under section 3A, 63(c) and (e) of the Civil Procedure Act, Order 42 Rules 3(1) and (2) of the Civil Procedure Rules, Sections 68, 69 and 70 of the Land Registration Act and seeks the following orders;
 1. Spent
 2. That this Honourable court be pleased to issue an order and allow the appellant to amend the memorandum of appeal out of time as per draft amended memorandum of appeal annexed hereto.
 3. That this Honourable court be pleased to issue an order of inhibition and the same be registered against L.r No. Abothuguchi/kariene/6041 pending the inter partes hearing of this application.
 4. That upon the issuance of the order issued in prayer 3 above the same be served upon the Land Registrar Meru Central for registration in the appropriate register.
 5. That this Honourable court be pleased to issue the order of inhibition and the same be registered against L.r No. Abothuguchi/kariene/6041 pending the hearing and determination of this appeal.



6. That this Honourable court be pleased to issue any or better orders as it may deem fit and just to meet the ends of justice.
7. That the costs of this application be provided for.
2. The application is premised on the grounds on the face of the motion and the supporting affidavit of Ann Nchabira the applicant herein sworn on 19th May 2022. The main grounds are that the subject matter herein Lr. No. Abothuguchi/kariene/5616 which was registered in the name of the respondent has since been subdivided and part of the land sold to third parties, that the appellant has established that while the appeal is pending for hearing, the respondent is interfering with the land to defeat the ends of justice and that it is necessary to preserve the status quo of the remaining land by inhibition pending the hearing and determination of the appeal, and that it is also necessary to amend the memorandum of appeal. The applicant avers that if the orders sought herein are not granted, the respondent may sell the remaining land and the applicant will lose the land and the sum of kshs. 1,390,000/= and the appeal will be rendered nugatory. The applicant has exhibited the certificates of official search for L.r No. Abothuguchi/kariene/5616, and the subdivisions therefrom Lr. No. Abothuguchi/kariene/6039, Abothuguchi/kariene/ 6040 And Abothuguchi/kariene/6041 as well as the draft amended memorandum of appeal.
3. The respondent's advocates, Ms Munene Kirimi & Co. advocates were served with the application on 31st May 2022 and on 14th June 2022 requested for time to file their response which was granted by the court. However, no response was filed within the time given or at all and therefore the application is not opposed.
4. The application was canvassed by way of written submissions. In her submissions filed on 25th July 2022, the applicant submits that she has come to court with clean hands seeking orders that will allow the parties herein to fully litigate on the main appeal without further interference with the suit parcel. The applicant submits that the court has absolute discretionary power to allow an amendment at any stage of the proceedings and cited the case of *Makueni County Government vs Grace Mwelu David* [2020] eKLR which echoed the sentiments in *George Gikubu Mbuthia vs Consolidated Bank of Kenya Ltd & another* [2016] eKLR where the court of appeal expressed itself as follows;

“As regards the law, the High Court readily accepted that the court has unfettered discretion to allow amendment of pleadings, which discretion must be exercised judiciously. It is accepted too as a general position that parties to a suit have the right to amend their pleadings at any stage of the proceedings before judgment and that court should liberally allow such amendments. However, he also noted situations which the court will refuse to exercise its discretion to allow amendments. Such cases include where a new or inconsistent cause of action is introduced, where vested interests or accrued legal rights will be adversely affected, where prejudice or injustice which cannot be properly compensated in costs is occasioned to the other”
5. The applicants submits that the prayers sought will not prejudice the respondent who has taken advantage of lack of inhibition orders to sell and transfer the suit land to third parties with the aim of depriving the applicant a fair hearing. The applicant submits that she has brought the application within a reasonable time and cited the case of *Kyalo Vs Bayusuf Brothers Ltd* Civil appeal No. 38 of 1983 and Halsbury's laws of England, 4th Ed. Vol 36 (1) at paragraph 76.



6. It is also the applicant's submissions that this court has powers to issue inhibition orders against a registered owner of the land pending the occurrence of a certain event and for a given period of time and cited the case of *Charterhouse Bank Ltd Vs Central Bank of Kenya & others* [2007] eKLR.
7. I have considered the application, the affidavit in support together with the annexures thereto and the submissions filed. It is my considered view that the issues for determination are whether leave to amend the memorandum of appeal should be granted and whether the order of inhibition should issue.
8. I have looked at the record and noted that in the plaint dated 4th December, 2019, the applicant herein sought inter alia an order of specific performance compelling the respondent to transfer a quarter of an acre in respect of parcel Lr. No. Abothuguchi/kariene/ 5616 to the applicant and in the alternative, a refund of part payment of the purchase price plus interest from 30th September, 2019. The proposed amended memorandum of appeal seeks to add the said prayer save that the parcel of land stated is LR. No. Abothuguchi/kariene/6041 and the refund amount of kshs. 1,390,000/= . The applicant's case is that during the pendency of appeal, the respondent subdivided the original suit land LR. NO. Abothuguchi/kariene/5616 and transferred part of the land to third parties leaving one of the subdivisions Lr. No. Abothuguchi/kariene 6041 in the respondent's name. The applicant has exhibited the certificate of official search to support his case. The court has further noted that the averments made by the applicant have not been controverted by the respondent. In my view, the intended amendment is not introducing any new matter to the suit since the resultant subdivision came from the original suit land and therefore the amendment will not be prejudicial to the administration of justice and to the respondent. The application has also been brought within reasonable time.
9. Further in my view, the issue of inhibition orders over the remaining parcel of land will allow the preservation of the status quo and to prevent the appeal if successful from being rendered nugatory.
10. The upshot is that the application has merit and the same is allowed in terms of prayers 2, 3, 4 and 5.
11. The amended memorandum of appeal to be filed and served within 7 days from the date of this ruling.
12. Considering that the application was not opposed, I make no orders as to costs.
13. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 23RD DAY OF NOVEMBER, 2022

In the presence of

C.A Mwenda

No appearance for Kiogora Ariithi for applicant but applicant present

No appearance for respondent.

C.K YANO

ELC JUDGE

