



**Imbukwa v Magalasia (Environment & Land Case 99 of 2017)
[2022] KEELC 15236 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15236 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 99 OF 2017
DO OHUNGO, J
DECEMBER 7, 2022**

BETWEEN

NICHOLAS CHIMOMA IMBUKWA PLAINTIFF

AND

BEATRICE MBOGA MAGALASIA DEFENDANT

RULING

1. Judgment was delivered in this matter on November 5, 2019, by my sister N A Matheka, J. The plaintiff's suit was dismissed with no order on costs. There followed no activity in the matter until November 2, 2022, when the defendant filed notice of motion dated November 2, 2022, seeking the following orders:
 1. That the inhibition registered on land parcel No. Isukha/Mukulusu/1107 by the plaintiff through a court order issued on September 26, 2017 and registered at the Lands registry on September 27, 2017 be lifted and/or removed.
 2. That costs be provided.
2. The application is supported by an affidavit sworn by the defendant. She deposed that during the pendency of this suit, the plaintiff made an application dated March 15, 2017 seeking injunctive orders and that through a ruling delivered on September 26, 2017, the plaintiff was granted an injunction which order was registered at the land registry on September 27, 2017. She added that she is in the process of completing the succession proceedings in respect of the estate of her deceased husband who was the registered proprietor of parcel number Isukha/Mukulusu/1107 and that the inhibition registered pursuant to the said order is hindering her from completing the succession process. She annexed a copy of a certificate of official search in respect of the property as on November 3, 2022 and further stated that the judgment has not been stayed.



3. Although an affidavit of service of the application upon the plaintiff was filed, the plaintiff did not file any response. The application is thus unopposed. The applicant urged the court to grant the orders sought.
4. I have considered the application and the material on record. The record indeed confirms that through a ruling delivered on September 26, 2017, the plaintiff was granted an injunction restraining the defendant from among others, interfering with or alienating land parcel number Isukha/Mukulusu/1107, pending hearing and determination of the suit. As is confirmed from the certificate of official search which has been annexed, the order was registered as an encumbrance against the property on September 27, 2017. The suit having been determined through the judgment delivered on November 5, 2019, the said injunctive order stood spent as at the date of judgment. There is thus no valid reason why the encumbrance registered on September 27, 2017 pursuant to the order of September 26, 2017 should remain on the register.
5. In view of the foregoing, I find merit in notice of motion dated November 2, 2022. I therefore make the following orders:
 - a. The inhibition registered against land parcel number Isukha/Mukulusu/1107 on September 27, 2017 pursuant to an order issued by the court on September 26, 2017 be lifted and/or removed.
 - b. No order on costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 7TH DAY OF DECEMBER 2022.

D O OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the plaintiff

No appearance for the defendant

Court Assistant: E Juma

