



Sheobo v Harshiv Autospares Hardware & Suppliers Limited & 2 others; Chief Registrar Ministry of Lands & another (Interested Parties) (Environment & Land Case E192 of 2022) [2025] KEELC 3060 (KLR) (1 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3060 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E192 OF 2022
CA OCHIENG, J
APRIL 1, 2025**

BETWEEN

BADI ALI SHEOBO PLAINTIFF

AND

**HARSHIV AUTOSPARES HARDWARE & SUPPLIERS LIMITED 1ST
DEFENDANT**

COUNTY GOVERNMENT OF NAIROBI 2ND DEFENDANT

KENYA NATIONAL HIGHWAYS AUTHORITY 3RD DEFENDANT

AND

CHIEF REGISTRAR MINISTRY OF LANDS INTERESTED PARTY

NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. What is before Court for determination is the 3rd Defendant’s Notice of Motion application dated the September 19, 2024 where it seeks the following Orders:
 - a. Spent
 - b. That the Honourable court do issue an order of inhibition stopping further dealings, registration and transactions over LR No. 209/14478.
 - c. That the Honourable court be pleased to issue an order of status quo preserving the suit property, LR No. 209/14478 pending the hearing of this application inter partes and main suit.



- d. That costs of this application be in the cause.
2. The application is premised on grounds on its face and the supporting affidavit of Milcah Mwendo, the 3rd Defendant's Assistant Director-Mapping. She avers that LR No. 209/14478 abuts the Nairobi Southern Bypass road. She claims that there exists a transport corridor of minimum 120m width abutting the suit property as reserved through the Nairobi Structure Plan No. 42-28-85-9 of 5th June, 1985 for the development of the Trans African Highway (Nairobi Southern Bypass Road) and the Embakasi to Kibera Railway line.
 3. She contends that the designation of the suit property as a transport corridor rendered the same a public utility and thus it stood alienated and it is on that account that the 3rd Defendant filed a Counterclaim in the suit seeking revocation of the Plaintiff's title. Further, that there has been interference with the suit property whilst the matter is pending in court. She argues that since the 3rd Defendant is in possession of the suit property, there is need for the court to preserve it from further interference.
 4. The application is opposed by the Plaintiff vide his replying affidavit sworn on 24th October 2024. He avers that the prayers in the 3rd Defendant's instant application are identical in nature to the prayers sought in the application dated the 31st May 2022, in which the Court already pronounced itself on 8th December 2022 regarding the issues of interlocutory reliefs pending hearing and determination of the main suit. Further, that the same court cannot be moved afresh as doing so would amount to res judicata. He insists that Order 40 Rule 7 of the Civil Procedure Rules provides that an order for injunction can only be discharged, varied or set aside.
 5. He avers that the Nairobi Southern Bypass road was constructed, commissioned and has been in use for over a decade, without any interference from the suit property thus the 3rd Defendant cannot be heard claiming that it is in possession thereon. Further, that he is the registered proprietor of the suit property, is in possession thereon and has utilized part of it as a vehicle yard while leased out a portion thereof to a third-party MS. Mondial Group Limited, who have obtained authority to erect an artificial turf pitch thereon.
 6. He argues that the suit property is not a standalone parcel in the middle of nowhere, as it is contiguous with other privately-owned parcels, which are not on a road reserve. He points out that his parcel emanated from a survey conducted in August 2001 as contained in survey plan FR No. 307/66, which generated a total of eleven (11) parcels of land being LR No. 209/14478 to LR No. 209/1448 owned by other private persons. Further, that one of the parcels was subject in ELC Case No. 963 of 2012 where the court held that the parcel did not lie on any road.
 7. He explains that the 1st Defendant had illegally erected a commercial recreational facility but failed to obtain the necessary approvals from the 3rd Defendant that had been restrained from interfering with the suit property on 8th December 2022.
 8. He contends that the 3rd Defendant is at liberty to challenge the validity of his Certificate of Title, which can only be conclusively determined after hearing, thus if the instant orders as sought are granted they will be prejudicial to his constitutional right to property.
 9. The application is supported by the 1st Defendant vide a replying affidavit sworn by its director HARJI KERALI. He argues that the instant application is distinct from the Plaintiff's application for injunction on the basis that the present application seeks an order of inhibition pursuant to the provisions of Section 68 of the *Land Registration Act* including Sections 1, 1B, 3A and 63 of the *Civil Procedure Act*.



10. He insists that the 1st Defendant obtained all necessary approvals from the 2nd Defendant before proceeding to undertake any works on the suit property, the same being public land. Further, that any work undertaken by the 1st Defendant was meant to improve the aesthetic value of the area, by deterring illegal structures and preventing illegal dumping.
11. He contends that since the Plaintiff has proceeded to lease the suit property, it is only fair that that the Court restrains all parties from any further interference. Further, that the Plaintiff's calculated actions are meant to materially change the nature of the suit property and is an affront to the authority of the court.
12. The 2nd Defendant and the Interested Parties did not oppose the instant application.
13. The application was canvassed by way of written submissions.

Submissions

14. The 3rd Defendant submits that the instant application is distinct from the applications already determined by the Court since it seeks an order of inhibition under Section 68 of the [Land registration Act](#). Further, that this is similar to an order of prohibitory injunction which bars the registered owner of the property under dispute from registering any transaction over the said property until the subject matter is dealt with.
15. It argues that since the suit property is vacant, an order of inhibition is meant to preserve the parcel and restrict further dealings and the order will not prejudice any party in occupation. It reiterates that the prayer seeking orders of status quo is impacted by paragraph 32 of Practice Directions on proceedings in the Environment and Land courts, and on proceedings relating to the environment and the use and occupation of, and title to land and proceedings in other courts (Gazette Notice No. 5178 of 2014).
16. To buttress its case, the 3rd Defendant relied on the case of Joel Mugambi Mukira & 2 Others (for and on behalf of Kimathi Tenants Welfare group) v County Government of Nyeri [2019] eKLR.
17. On his part, the Plaintiff relies on section 7 of the [Civil Procedure Act](#) and the case of Uhuru Highway Development Limited v Central Bank of Kenya & 2 Others [1996] eKLR to submit that the doctrine of res judicata explicitly prevents the practice of filing numerous applications over the same issue, which is what the 3rd Defendant has done as the instant application seeks prayers identical to those sought in the earlier application dated the 31st May 2022.
18. The Plaintiff submits that if the instant application is allowed, both the Plaintiff and the 3rd Defendant would claim possession of the suit property under conflicting orders issued by the same court on different dates, which would undermine judicial consistency and create confusion.
19. The Plaintiff further submits that the supposed Nairobi Structure Plan No. 42-28-85-9 of 5th June 1985 cannot be the basis of claiming interlocutory orders as he has a title which is protected. Further, that no evidence was presented to show that the suit property is at risk of being wasted or alienated so as to justify the orders sought. He pointed out that the photographs annexed to the supporting affidavit to the instant Notice of Motion, depict a fenced off parcel of land that in no way impacts the utility of the Southern Bypass.
20. He contends that the 3rd Defendant has failed to meet the sound principles set in *Giella v Cassman Brown* (1973) EA 358 page 360 to warrant the orders sought as it failed to establish a prima facie case. To buttress his averments, the Plaintiff relied on various decisions including; *Lali Swaleh Lali & Others v Stephen Mathenge Wachira & Others*, Civil Application No. Nai 257 of 1994, *Musa Angira*



Analysis and Determination

21. Upon consideration of the instant Notice of Motion application including the respective affidavits and rival submissions, the following are the issues for determination: Whether an order of inhibition stopping further dealings, registration and transactions over LR No. 209/14478 should issue. Whether an order of status quo should issue preserving the suit property, LR No. 209/14478 pending the hearing of the main suit.

22. As to whether an order of inhibition stopping further dealings, registration and transactions over LR No. 209/14478 should issue.

The 3rd Defendant seeks for the registration of an inhibition order over the suit property, which is registered in the name of the Plaintiff. It seeks to bar the Plaintiff from transacting on the suit land until this suit is determined. Its main reason is that it has sought for cancellation of the Plaintiff's title, in its Counterclaim, claiming it is public land.

23. On registration of an inhibition, Section 68 of the *Land Registration Act* provides that:

“(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.”

24. I note this Court vide its Ruling delivered on the 8th December, 2022 restrained the Defendants from interfering with the suit land pending the outcome of the suit. It is further not disputed that the Plaintiff holds a Certificate of Title in respect to the suit land.

25. In the case of Dorcas Muthoni & 2 Others v Michael Ireri Ngari [2016] KEHC 6213 (KLR), Justice Olao held that:

“An order of inhibition issued under Section 68 of the *Land Registration Act* is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit in which the said property is a subject is disposed off. 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 trial.”

26. Based on the facts before me while relying on the legal provisions cited as well as associating myself with the decision quoted, I find that the 3rd Defendant has not tendered plausible reasons to enable this court inhibit the Plaintiff who is the registered proprietor of the suit property from dealing with his property. In the circumstances, I will decline to register an inhibition against the Plaintiff's title.

27. As to whether an order of status quo should issue preserving the suit property, LR No. 209/14478 pending the hearing of the main suit.



I note this Court already granted orders of injunction restraining the Defendants from interfering with the suit land. The principles of granting status quo arises where the Court does not intend to grant injunctive reliefs but preserve the fulcrum of the dispute.

28. In *Mugah v Kunga* [1988] KECA 28 (KLR) the Court while dealing with the issue of status quo in land matters observed that:

“The practice of this court, in the case of land, which is a sensitive issue is that the parties should be allowed to come to this court to have the issues involved in their dispute, determined by the court of last resort, *John Kuria v Kalen Wahito Civil Appeal NAI 19/83* (unreported).

For the parties to come to this court, the court is to consider whether the status quo should be maintained pending the hearing of the appeal failing which the appeal if successful will be rendered nugatory. This approach was laid down in *Butt v Rent Restriction Tribunal, Civil Appeal NAI 6 of 1979*, which practice has been followed ever since. The courts’ view is that status quo should be maintained until the appeal is heard and determined.”

29. While in *Joel Mugambi Mukira & 2 others (for and on behalf of Kimathi tenants welfare group) v County Government of Nyeri* [2019] eKLR, the Court held that:

“As was held by the Court of Appeal in the case of *Mugah -v- Kunga* [1988] KLR 748, in land matters status quo orders should always be issued for purposes of preserving the subject matter. The court’s practice directions vide Gazette Notice No. 5178/2014 Practice direction No. 28(k) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case.”

30. In the foregoing, while associating myself with the decisions cited, noting that there are already injunctive orders subsisting restraining the Defendants from interfering with the suit land, pending the outcome of this suit, which the 3rd Defendant never sought to review or set aside, I opine that this is not a ripe case for granting of orders of status quo. I will hence decline to grant the orders as sought.

31. In the circumstances, I find the Notice of Motion application dated the 19th September 2024 unmerited and will dismiss it with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1st DAY OF APRIL 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Ms. Ochieng holding brief for Onyon for 1st Defendant

Kamau for Plaintiff/Defendant

Maruti for 3rd Defendant

Ms Obuya for 2nd Defendant

Court Assistant: Joan

