



**Ndwiga & 7 others v Ndwiga & 4 others (Environment and Land  
Case 66 of 2014) [2025] KEELC 5907 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5907 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND CASE 66 OF 2014**

**AK BOR, J**

**JUNE 5, 2025**

**BETWEEN**

**DESIDERIO NJERU NDWIGA & 7 OTHERS & 7 OTHERS & 7 OTHERS & 7  
OTHERS & 7 OTHERS & 7 OTHERS ..... PLAINTIFF**

**AND**

**JOSEPH MUNENE S NDWIGA & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4  
OTHERS & 4 OTHERS & 4 OTHERS ..... DEFENDANT**

**RULING**

1. The Defendants filed the application dated 3/10/2022 seeking to have the orders of inhibition registered against parcel numbers Gaturi/Nembure/11453 to 11457 pursuant to the court orders issued on 23/3/2010 lifted, removed or cancelled from the registers for those parcels of land.
2. The application was made on the grounds that the Plaintiff's suit was dismissed for want of prosecution on 23/3/2021 and that an inhibition order was given on 23/3/2010 which was supposed to last for 14 days but was wrongly registered by the Land Registrar as subsisting until the determination of the suit. Despite attempts to have this error corrected, the inhibitions remained in the land registers for the parcels of land in question. It was urged that since the suit by the Plaintiffs had been dismissed for want of prosecution, it was only fair that the orders of inhibition registered against the Defendants' parcels of land should be cancelled and or lifted.
3. Salesius Ireri swore the affidavit in support of the application and attached copies of the order issued on 23/3/2021 dismissing this suit, the order issued on 23/3/2010 inhibiting the suit lands, searches for land parcel numbers 11453 to 11457, the letter to the land registrar dated 24/11/2011 and the order issued on 19/1/2012 dismissing the Plaintiff's application for restraining orders and an order of inhibition pending determination of the suit.



4. Salesius Muriithi Ndwiga, the 4<sup>th</sup> Plaintiff swore the replying affidavit in opposition to the application. He deponed that there was non-disclosure of material facts that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants and the 1<sup>st</sup> Plaintiff were dead and no substitution had been done to warrant filing of the current application. He averred that neither he nor his advocate were aware that the suit was dismissed for want of prosecution on 23/3/2021 as they were not notified of the intended dismissal. He added that he instructed his advocate to file an application for reinstatement of the suit and was emphatic that the orders sought should not be granted because the Defendants who are alleged purchasers of the suit land from the 1<sup>st</sup> Defendant who is dead, intend to alienate the parcels of land before the suit can be heard and determined on merit. He added that no prejudice would be suffered by the Defendants if the orders sought are not granted since they do not occupy or utilize the suit lands.
5. The court directed parties to file and exchange written submissions which it has considered. The Plaintiffs submitted that the orders of inhibition should remain in force since the suit land is of paramount importance to their wellbeing. They contended that they grew up on the land and did not have an alternative place to live, and that the suit land was their home and their eviction would cause them immense hardship. They accused the Defendants of acquiring the suit land fraudulently while aware of the long standing family dispute over the land at the time of purchase and that they could not therefore be said to be innocent purchasers for value without notice.
6. Further, that lifting the orders would effectively allow the Defendants to alienate the land despite the unresolved ownership dispute. They argued that they had not abandoned their claim but that they had simply encountered a procedural setback in the prosecution of their suit and as such, it would be premature to lift the orders. They added that they intend to file a new case involving the same subject matter and therefore the balance of convenience favoured the maintenance of the inhibition orders until the dispute over the land was resolved.
7. The Defendants submitted that Sections 68, 69, 70, 76, 77 and 78 of the [Land Registration Act](#) provide that inhibitions and restrictions shall be in place for a certain period of time or until the occurrence of some particular event. That in the present case, it was until the Plaintiff's application was heard and determined. The suit was dismissed for want of prosecution. They contended that the Plaintiffs had not proved that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants were dead and that the application was made by the 4<sup>th</sup> Defendant who is alive and a party to the suit. It was submitted that the Plaintiffs cannot claim that they were not aware of the intended dismissal of the suit since their advocate on record was notified of the dismissal. Further, that before dismissing the suit, the court was satisfied that all parties had been served.
8. It was submitted that orders of inhibitions and restrictions are not intended to remain on the registers indefinitely and that they were only meant to serve a specific purpose. They pointed out that the orders of inhibition were registered more than 11 years ago and it was apparent that the rights of the Defendants as proprietors of the suit land had been curtailed without any justification. They urged that the court had power under Sections 70 and 78 of the [Land Registration Act](#) to remove the inhibitions and restrictions registered against the suit land.
9. The issue for determination is whether the court should lift the orders of inhibition registered against the suit land. Section 68 of the [Land Registration Act](#) empowers the court to make an order of inhibition, inhibiting for a particular time or until the occurrence of a particular event or until a further order, the registration of any dealings with land.
10. Section 70 of the same [Act](#) provides for the cancellation of such inhibition orders in specific circumstances, including on the expiration of the time stated in the inhibition; on proof to the



satisfaction of the Registrar of the occurrence of an event stated in the inhibition; on the land, lease or charge being sold by a charge, unless such sale is itself inhibited; or by a consequent order of the court.

11. The order of inhibition was issued by this court on 23/3/2010. The orders were to remain in force pending the inter partes hearing and determination of an application dated 8/3/2010. The searches done over the suit land confirm that the orders were registered to last until the determination of this suit. The event, which is the determination of the suit already occurred. The suit was dismissed for want of prosecution on 23/3/2021 and efforts by the Plaintiff to reinstate the suit were not successful. The suit stands determined and the justification for the inhibition no longer exists.
12. The Plaintiffs' argument that they intend to file a new case does not justify the retention or maintenance of the inhibition indefinitely.
13. The inhibition orders registered against Gaturi/Nembure/11453 to 11457 are no longer justified. The continued registration of the orders of inhibition amounts to unjustified restriction of the rights of the registered proprietors.
14. The application dated 3/10/2022 is allowed. The orders of inhibition are hereby lifted. The Defendants shall have the costs of this application.

**DELIVERED VIRTUALLY AT EMBU THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Ms. Pamela Kimathi for the Defendants

Diana Kemboi- Court Assistant

No appearance for the Plaintiffs

