



**Rimberia v M'Angaine (Environment & Land Case 68 of 2011)
[2024] KEELC 6467 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6467 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 68 OF 2011**

CK YANO, J

OCTOBER 3, 2024

BETWEEN

JULIUS BUNDI RIMBERIA PLAINTIFF

AND

ISABELLA MWENDWA M'ANGAINE DEFENDANT

RULING

1. By way of notice of motion application dated 29th February, 2024 stated to be brought under Section 130 (d) of the Registered Land Act Cap 300, Sections 1A, 1B, 3A & 3B of the Civil Procedure Act and all other enabling provisions of the law, the defendant/applicant seeks for removal of the restriction placed over LR No Ntima/Igoki/6629 by a court order issued on 15th December, 2011.
2. The applicant has averred that pending determination of the suit, the plaintiff/respondent placed restriction order on the said parcel of land through a court order to preserve the suit herein. That it is now five years since the suit was dismissed and no further claims against the applicant are pending. That it is only fair, just and in the best interests of the applicant that the said restriction be removed to enable the applicant enjoy the fruits of the judgment and deal with his land and bring this cause to an end. In the supporting affidavit, the applicant has annexed a copy of the said order marked "ISM – 1".
3. In opposing the application, the plaintiff/respondent filed a replying affidavit dated 8th July, 2024. The respondent has averred that being aggrieved by the judgment of this court, he preferred an appeal and has annexed a copy of the Notice of Appeal marked 'JBRI'. That the Notice of Appeal was served upon the applicant without delay on 24th April 2019. That the applicant is well aware of the respondent's intention to proceed to the Court of Appeal. The respondent further stated that he prepared and filed and served the Record of Appeal together with the Memorandum of Appeal, copies of which he has annexed and marked "JBRa" and "JBR 2b". It is the respondent's contention that the appeal being Civil Appeal No E098 of 2024 is awaiting a hearing date before the Court of Appeal. That the application herein is therefore brought in bad faith and is aimed at frustrating the respondent's efforts



to pursue the said appeal. That the suit land should be preserved as the respondent pursues the appeal so that the same is not rendered nugatory. That he shall suffer substantial loss if the inhibition is lifted and the property changes hands, the effect of which the substance of the attendant appeal shall be lost. The respondent urged to order that the suit land remains inhibited or status quo be maintained pending the hearing of a motion in the Court of Appeal. For those reasons, the respondent urged the court to dismiss the application.

4. The application was canvassed by way of written submissions which were duly filed by the parties through their advocates on record.
5. The court has considered the application, the rival affidavits and submissions. The only issue for determination is whether or not the restriction placed by an order of court on 15th December, 2011 should be removed.
6. I have perused the court record. By an application dated 19th May, 2011, the plaintiff/respondent sought for an order of inhibition inhibiting all dealings over parcel No Ntima/Igoki/6629 pending the hearing and determination of the suit. By a ruling dated and delivered on 15th December, 2011, the court issued an order of inhibition to be placed on land parcel No Ntima/Igoki/6629 pending the hearing and determination of this suit. The case subsequently proceeded for hearing, and in the judgment dated and delivered on 8th April, 2019 the plaintiff's suit was dismissed. The defendant's counterclaim was also dismissed.
7. It will be noted that the inhibition issued by the court on 15th December, 2011 was only to remain in force pending the hearing and determination of this suit. The suit has since been heard and determined, and there are no proceedings pending before this court. Whereas the respondent has indicated that he has preferred an appeal against the judgment of this court, it is my view that the orders granted by this court on 15th December, 2011 did not extend to proceedings before the Court of Appeal. A plain reading of the ruling made by the court was to the effect that the inhibition order was to remain in force "pending the hearing and determination of this suit." The reasoning is that a restriction should only hold a property in abeyance as the underlying issue leading to the restriction is being resolved. This suit has since been determined by this court and there is nothing that is pending. Section 78(2) of the [*Land Registration Act*](#) gives power to the court to order that a restriction be removed, varied or other order as it deems fit. This suit has been heard and determined by this court. There is nothing pending before this court. As stated above, the inhibition was only to remain in force pending the hearing and determination of the suit. I have therefore not seen any reason why such restriction should remain and I am persuaded that the application must be allowed.
8. Consequently, the notice of motion dated February 29, 2024 is allowed. I also award the costs of this application to the applicant.
9. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 3RD DAY OF OCTOBER, 2024.

In the presence of

Court Assistant – Tupet

MS Nelima for applicant

C.K YANO

ELC JUDGE

