



**Gacheri v Gatobu (Environment and Land Appeal E041 of 2023)  
[2023] KEELC 20616 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20616 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E041 OF 2023**

**CK NZILI, J**

**OCTOBER 11, 2023**

**BETWEEN**

**JOYCE GACHERI ..... APPELLANT**

**AND**

**STANLEY GATOBU ..... RESPONDENT**

**RULING**

1. By an application dated 21.6.2023, the court is asked to issue as inhibition and a temporary injunction barring and restraining the respondent, his employees or servants, or anyone acting on his behalf from interfering with LR No. Nyaki/Kithoka/Mwanika/73, pending hearing and determination of the appeal. The grounds are listed on the application and in the supporting affidavit of Joyce Gacheri, sworn on 21.6.2023. The applicant avers that she bought 0.50 acres of the suit land on 9.8.2010, took vacant possession and developed the land, but the respondent declined to honor the terms of the sale agreement.
2. The applicant further avers that he filed the suit at the lower court, which was dismissed, and the respondent has threatened to dispose of the suit land to a third party, and there was a likelihood of eviction from the land she has extensively developed. She now wants this court to preserve the property; otherwise, she shall stand gravely prejudiced, jeopardizing this appeal. The applicant also avers that there was an inhibition order pending during the lower court hearing.
3. Stanley Gatobu, the respondent, opposes the application through a replying affidavit sworn on 18.7.2023 because the lower court ordered the reimbursement of the consideration paid of Kshs.330,000/=, plus Kshs.200,000/= compensation for the developments on the suit land. Essentially, the appellant won in the lower court, which judgment the respondent has not appealed against; hence, there would be no reason to encumber the land. The respondent avers that the appeal before the court is frivolous with no chance of success.



4. Order 42 rule 6 (6) of the Civil Procedure Rules provides that an appellant court may grant a temporary injunction on such terms as it thinks just, provided the procedure and institution of an appeal from a subordinate court has been complied with. Similarly, sections 68 and 73 of the Land Registration Act grant the court powers to issue inhibition orders to stop any dealings against a title to land for such a period or until the occurrence of an event.
5. The parameters to consider on whether to grant an injunction or inhibition pending appeal were considered in Kitbo Civil & Engineering Co. Ltd vs National Bank of Kenya & another (Civil appeal (appl) E706 of 2021 (2023) KECA 387 (KLR) 31<sup>st</sup> March 2023) (Ruling). The court cited with approval Alfred Mincha Ndubi vs. Standard Ltd (2020) eKLR, Multi Media University & another vs. Gitile Naituli (2014) eKLR, Stanely Kangethe Kinyanjui vs. Tony Keter & others (2013) eKLR, that the appeal should be arguable if without the order it would be rendered nugatory and as guided by African Safari Club Ltd vs. Safe Rentals Ltd (2010) eKLR, if the hardship of the parties was almost being equal, the court should pursue the overriding objective to act fairly and justly, by putting the difficulties of both parties on a scale and balance them by treating the parties with equality or placing them on equal footing in so far as practicable. As to irreparable loss, the court cited with approval Esso Kenya Ltd vs. Mark Makwata Okiya (1992) eKLR, that where an award of damages could compensate the remedy sought, the equitable relief of damages would not be available.
6. In the case of Munge vs. Munge (2023) KECA 75 (KLR) (3<sup>rd</sup> February 2023) (Ruling), the court observed that the low threshold of an arguable appeal is to establish at least one sufficient or plausible ground that was likely to succeed upon the hearing of the appeal and have the effect of overturning the impugned decision. The court said it was not enough to exhibit a memorandum of appeal.
7. On inhibition pending appeal, this court in Grace Kinoru Mark vs. Mark Muriungi Mark & 2 others (2022) eKLR cited with approval Charterhouse Bank Ltd vs. Central Bank Kenya Limited & others (2007) eKLR, where the court of appeal held that the purpose of an inhibition pending appeal was to preserve the status quo and to prevent an appeal, if successful from being rendered nugatory. The court also cited with approval Bilha Mideva Buluku vs. Everlyne Kanyere (2016) eKLR, that on whether or not to grant an injunction, the court has to establish if the appeal raises serious questions for the court's determination without delving into the merits of the appeal.
8. In this application, the applicant states that she is in occupation, while the respondent believes that the lower court judgment was favorable to the applicant, whose compensation was even assessed by the trial court to be refunded on top of the consideration. The respondent says that he has not appealed against the judgment; therefore, the appeal was frivolous and unmerited.
9. The order for refund was to take place in 14 days with effect from 31.5.2023. As of 21.6.2023, when the respondent filed a replying affidavit to this application, he did not indicate if any refund had been made, and vacant possession sought from the appellant. At issue in the appeal inter-alia is whether the trial court disregarded a binding sale agreement and considered interest to run from the date of the sale agreement.
10. To my mind, the memorandum of appeal raises serious points to be considered by this court. The appeal cannot be termed frivolous. The upshot is that I allow an injunction and an inhibition pending appeal to last for one year. The applicant shall deposit Kshs.100,000 as security for cost within 14 days from the date hereof.
11. The lower court file be availed for mention before the Deputy Registrar.

Orders accordingly.



**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU  
ON THIS 11<sup>TH</sup> DAY OF OCTOBER 2023**

**In presence of**

C.A Kananu

Kirimi for appellant

**HON. CK NZILI**

**ELC JUDGE**

