



REPUBLIC OF KENYA



**KENYA LAW**  
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**Karamana v Mwari & another (Environment and Land Case Civil Suit  
E065 of 2021) [2022] KEELC 3734 (KLR) (4 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3734 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND CASE CIVIL SUIT E065 OF 2021**

**CK NZILI, J**

**MAY 4, 2022**

**BETWEEN**

**GRACE KARAMANA ..... APPLICANT**

**AND**

**FRIDAH MWARI ..... 1<sup>ST</sup> RESPONDENT**

**M'KIARA M'MBOGORI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. The Application**

1. By an application dated 19.11.2021, the court is asked to issue inhibition orders against LR No. Abothuguchi/Mariene/123 forbidding any transactions thereof pending the hearing and disposal of this appeal. The application is based on the supporting affidavit of Grace Karamana sworn on the even date. The reasons given are that following the lower court judgment in favour of the 1<sup>st</sup> respondent, the aforesaid title deed stands as cancelled and the ownership is to revert to the deceased Stanley Mbogori Muthamia, a permanent injunction was also issued against the appellant and the 2<sup>nd</sup> respondent.
2. Further, the applicant deponed she lives on the suit land and if the status quo is not maintained, she was likely to suffer irreparable loss and damage, become destitute, homeless and the appeal rendered nugatory. The applicant stated she conducted an official search on 6.10.2021 and found out that the decree had been implemented resulting in the cancellation of the name of her late husband as proprietor and reversion to the name of the deceased.
3. The applicant averred, given the aforesaid developments she was fearful the suit property may be distributed through succession thereby rendering the appeal nugatory, hence the prayer for inhibition.



## B. Grounds of Opposition

4. The respondents have opposed the application by replying affidavits sworn on 27.1.2021 and on 26.2.2022 respectively. First, the 1<sup>st</sup> respondent disputes the allegations that the suit land was ever registered in the name of the applicant's husband. Further, it was averred the applicant had Parcel No. Abothuguchi/Mariene/1226. The issue of irreparable harm, destitution, homelessness or otherwise, pending the filing and distribution of the estate of the deceased does not hold any merits.
5. Secondly, the respondents averred the application herein was filed late, is frivolous, vexatious, a waste of courts time and meant to delay her from enjoying the fruits of the judgment as the beneficiaries to the estate of the deceased.

## C. Written Submissions

6. In written submissions dated 15.2.2022, the applicant urged the court to find under Section 68 (1) of *Land Registration Act*, the application meritorious since the property was at the risk of disposal or alienation to her detriment and the appeal would be rendered nugatory, on account of distribution by way of succession.
7. Reliance was placed on *Japhet Kiamenyi M'Ndatho vs M'Mwiria* (2012) eKLR, *Joel Kipkurui Arap Koeb vs Alice Wambui Magandu & 3 others* (2018) eKLR.
8. The applicant submitted, the overall objective for the court was to do justice to the parties before it and their interest put on scales. In this instance, since both the applicant and the 1<sup>st</sup> respondent were claiming the land, the best thing was to maintain the status quo until the appeal is heard and determined.
9. Reliance was placed on *Films Rover International & others vs Cannon Films Sales Ltd* (1986) 3 ALL ER 772, *Victoria Wangui Oganga Ogada vs Mwangi Kibara & 2 others* (2018) eKLR.
10. As regards whether the appeal was arguable, the court was urged to be guided by the reasoning in *University of Nairobi vs Riccati Business College of East Africa* (2015) eKLR, *Stanley Kang'ethe Kinyanjui vs Tony Keter and 5 others* (2013) eKLR and find the appeal was arguable and not frivolous, since the trial court ignored the decision in Meru Succession Case No. 298 of 2003 whereon the court vested the suit property to the applicant hence breaching the doctrine of stare decisis under Article 163 (7) of the *Constitution*.
11. Reliance was placed on *Wanjohi vs Kariuki* (supra) and *Jasbir Singh Rai & 3 others vs Tarlochan Singh & 4 others* (2013) eKLR, *Jacinta Nduku Masai vs Leonida Mueni Mutua & 4 Others* [2018] eKLR.

## D. Determination

12. An inhibition has been defined as being in the nature of a prohibitory injunction.
13. In *Dorcas Muthoni & 2 others vs Michael Ireri Ngari* (2016) eKLR, the court held while issuing such an order must be satisfied that there were good grounds to warrant the issuance of inhibition orders, which are aimed at preserving the suit property pending trial.
14. In *Films Rovers International Supra*, the court held it should always take the course that carries the lower risk of injustice while in *Victoria Wangui Oganga Ogada* (supra) the court held in paragraph 32 of Gazette Notice 5178 required a court to grant orders of status quo, to preserve the property bearing in mind the overriding interests of justice.



15. In this matter, the applicant says her rights over the property stems from the vesting of the property by dint of a superior decree which the lower court ignored in arriving at the decision appealed against.
16. The court has also been told the decree appealed against has been implemented going by the search dated 6.10.2021.
17. The court has carefully looked at both the judgment by Hon. Lady Justice Lessit as she then was now a judge of appeal, in Meru High Court Succession Cause No. 298 of 2003 delivered on 8.11.2012. At the time the judgment was delivered, the grant had not been confirmed in favour of the applicant or anyone else. The applicant has not attached a confirmed grant issued after the said judgment. Additionally, the search for Land Registraion No. Abothuguchi/Mariene/1231 dated 6.10.2021 indicates the property has been in the name of M'Muthamia Stanley with effect from 2.2.1999.
18. The applicant did not attach any copies of record showing prior to the appeal, the property was in the name of the applicant's deceased husband and has now reverted to the name of the deceased M'Muthamia Stanley pursuant to the judgment.
19. Given the foregoing, I find the applicant has not established a prima facie case with a probability of success.
20. The trial court merely ordered the suit property to revert to the estate of the deceased. There is no evidence attached that since the judgment, the respondents have field and obtained grant which has now been confirmed by a competent court and is due for the implementation.
21. In absence of such, I find it would be premature for this court to stop a legal process governed by the Law of Succession Act, where the applicant also has a right to lodge a protest for the determination of any inheritance rights.
22. The upshot is the application dated 19.11.2021 is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 4<sup>TH</sup> DAY OF MAY, 2022**

**In presence of:**

Miss Wangui for applicant

Otieno C. for respondent

**HON. C.K. NZILI**

**ELC JUDGE**

