



**Parklane Construction Ltd v Shubham Business Park Limited (Commercial Case E371 of 2020) [2025] KEHC 6755 (KLR) (Commercial and Tax) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6755 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E371 OF 2020**

**BM MUSYOKI, J**

**MAY 23, 2025**

**BETWEEN**

**PARKLANE CONSTRUCTION LTD ..... PLAINTIFF**

**AND**

**SHUBHAM BUSINESS PARK LIMITED ..... DEFENDANT**

**RULING**

1. The plaintiff has by way of notice of motion dated 3rd of October 2023 sought the following orders;
  - a. The Honourable Court be pleased to grant the applicant an order of inhibition on Land Reference Number 10087/50 where the boundary wall has been constructed for the purposes of preserving the substratum of the suit.
  - b. The costs of this application be provided for.
2. The application is supported by the affidavit of Suresh Bhudiya sworn on 3<sup>rd</sup> October 2023. The gist of the main suit is an alleged contract entered between the parties where the plaintiff is said to have been retained to construct a perimeter wall on land parcel number 10087/50. The plaintiff claims that after completion of the project, the defendant owed it Kshs 24,927,122.83 which is the amount it pleaded in prayers (a) and (b) of its amended plaint dated 26<sup>th</sup> May 2021.
3. Of importance is that, the plaintiff has not made claim on ownership, interest or right to use or occupy the land. The land is said to have been offered as a contribution of the defendant's director as part of his stake in a joint venture for which the defendant had been incorporated. The plaintiff's claim is payment of its costs of construction based on a commercial agreement. Unfortunately, the agreement has not be exhibited which makes it difficult for this court to appreciate whether the land was tied to the agreement as a lien or security for payment of the contract price. That notwithstanding, the



plaintiff has not claimed that such an arrangement existed. The land the plaintiff seeks to inhibit as per the plaintiff's own annexure is owned by one Jackson Irungu Wangari who is one of the six directors of the defendant.

4. The application is opposed through a replying affidavit dated 10<sup>th</sup> November 2023 sworn by Anish Suresh Mehta, a director of the defendant. The deponent denies that the plaintiff was evicted from the land and that and adds that it was contracted for the specific purpose of constructing the wall and therefore the plaintiff could only sue for recovery of the amount owed to it and not retention or occupation of the property. He adds that the owner of the and has no intention of disposing the property.
5. The application was argued by way of written submissions. I have read the parties' submissions and the affidavits. The plaintiff filed submissions dated the 23<sup>rd</sup> of November 2023 where it relied on Section 68 of the [Land Registration Act](#) which provides that;

“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”.

6. Additionally, the plaintiff submits that if the order is not granted, the suit property is at risk of being disposed of by the defendant which would be detrimental and prejudicial to the plaintiff because the land is the only known asset of the defendant. In essence, the plaintiff says that the land is the only security it has for satisfaction of the decree it may secure in this matter.
7. The defendant's submissions are dated the 19<sup>th</sup> January 2024 in which it has taken stand that the application cannot be granted unless the corporate veil of the defendant is lifted and plaintiff seeks to pursue one Jackson Irungu Wangari and properties under his name and that the plaintiff can only sue for the amount owing but not claim possession or occupation of the property.
8. An order of inhibition is in nature of an injunction as it prevents a land owner or anyone from dealing with or interfering with the status of the land pending an occurrence of an event or further orders of the court. In *Dorcas Muthoni & 2 others v Michael Ireri Ngari* (2016) KEHC 6213 (KLR), it was 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.<sup>7</sup>

9. The other instance of prohibitory order would be where the land is sought to be disposed of in execution of the decree. In that instance, a party would be seeking to prevent disposal or transaction on the land after issuance of the decree so that execution of the same is not rendered nugatory. In *Samuel Njeru Daniel v James Njeru Nthiga & 2 others* [2017] KEELC 3312 (KLR), it was held that;

The purpose of such prohibitory or inhibition order is obviously to preserve the property pending completion of the process of execution. Such orders prevent any further dealings with the subject property so that a decree for its attachment or delivery, as the case may be, is not rendered nugatory.<sup>7</sup>



10. This being an order in the nature of injunction, the plaintiff must establish a prima facie case with a probability of success and also that if the application not granted, it stands to suffer damages which are not capable of being compensated in monetary terms. If the court finds itself harbouring doubts on the existence of the first two conditions, it would determine the application on a balance of convenience. These are the well-established principles which a court must consider to determine whether the orders of injunction are merited.
11. The plaintiff has clearly no claim over the land. The claim in the suit is a liquidated claim which flows from a contract in development of land owned by one of the defendant's directors. The owner of the land did not enter into a contract with the plaintiff. This court has not been favoured with the agreement for the perimeter wall or the joint venture between the directors of the defendant to enable it decipher the connection between the claim in the suit and the land.
12. Based on the above, there is no privity of contract between the plaintiff and the owner of the land and as such the plaintiff does not have a legitimate claim against the said registered owner. It does not matter that the registered owner Jackson Irungu Wangari is a director of the defendant or has interest in the defendant. It is trite law that a limited liability company is a different and separate entity from its directors or shareholders. The only instances where a director's property may be attached or encumbered as a result of a contract executed by the company is where there is a successful application to lift the veil against the director or where the director had issued a personal guarantee in respect of the contract.
13. An inhibition order would prohibit and stop transactions on the mentioned land until the hearing and determination of the suit or further court orders are made. It would serve the purpose protecting the property in question from actions that would otherwise make any court order or decree in this matter unenforceable. The plaintiff has not in my assessment demonstrated which order or decree is likely to be rendered unenforceable if the orders are not granted. I have not seen any prayer in the amended plaint which relates to the status or ownership of the land the plaintiff seeks to inhibit. I do not see any probable order which is likely to be affected by change of the status, nature, ownership or character of the land. Satisfaction of a monetary decree cannot be affected by existence or non-existence of a property belonging to a person who is not a party to the suit.
14. If the amounts claimed are found due and payable to the plaintiff, the only party which can be bound by such decree is the defendant. The remedy available to the plaintiff in this matter can only be found in pursuing the defendant for payment of the contract amount. Even if judgment was entered for the plaintiff, it will not have a right to dispose or encumber the property in execution of the decree. The court cannot inhibit property whose owner has not been given right to respond.
15. In view of the above, I am not convinced that the plaintiff has established a prima facie case with a probability of success in relation to the land. He may have a strong case against the defendant but that cannot be used to encumber or inhibit property belonging to a person who is not a party to the suit.
16. Considering the above and specifically that the plaintiff has no recognizable legal right over the land, I find the application unmerited and I hereby dismiss it with costs to the defendant.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Miss Oduor holding brief for Miss Luther for the plaintiff and Mr. Ochieng for the 1<sup>st</sup> defendant and in absence of the 2<sup>nd</sup> for the 2<sup>nd</sup> defendant.

