



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC APPEAL NO.29 OF 2020**

**DANIEL GITAU KURIA.....APPELLANT/APPLICANT**

**VERSUS**

**MUTHONI MBUGUA NDUMO.....1<sup>ST</sup> RESPONDENT**

**SIMON KIMANI MBUGUA.....2<sup>ND</sup> RESPONDENT**

**ANN WAITHERA KAMAU.....3<sup>RD</sup> RESPONDENT**

**DENNIS KAMAU MWAURA.....4<sup>TH</sup> RESPONDENT**

**RULING**

The matter for determination is the Notice of Motion Application dated **14<sup>th</sup> August 2020**, brought under **Order 46 Rule 4 (1) (2) (3)** of the **Civil Procedure Rules, Sections 1A & 3A** of the **Civil Procedure Act** brought by the Appellant/Applicant for Orders that;

***1. Spent***

***2. This Honorable Court be pleased to order the registration of a Prohibition Order on land parcel number Ruiru/Ruiru East Block /5404, until the hearing and determination of this Appeal.***

***3. Costs be borne by the Defendants.***

The Application is supported by the Supporting Affidavit of **Daniel Gitau Kuria**, who averred that a Judgement was delivered on **29<sup>th</sup> May 2020**, in **Thika CMCC No. 16 of 2015**, and having been aggrieved by the said Judgement, he has preferred an Appeal herein to protect his interest over suit property being LR No. **Ruiru/Ruiru East Block/5404**, and **recovery of Kshs.550,000/=**. **That the suit property has already been transferred in favor of the 1<sup>st</sup> Respondent.**

**He further averred that he believes that the trial magistrate erred in his Judgement as he should have awarded him his professional charges of Kshs.550,000/=. That he is advised by his Advocates which advice he believes to be true that unless a Prohibitory Order is registered on the suit property, the Appeal is likely to be rendered nugatory.**

The Application is opposed vide the 1<sup>st</sup> Respondent's Replying Affidavit filed on **8<sup>th</sup> September 2020**, by **Muthomi Mbugua Ndumo** with authority from the 2<sup>nd</sup> Respondent, who averred that **Kshs.550,000/=** should not be used as a reason and ground for registering an inhibition. That the Orders sought herein are baseless as the Court has the powers to cancel any title illegally transferred and the same way if the Appellant's Appeal is successful.

Parties were directed to file Written Submissions to canvass the instant Application and the Appellant/Applicant through the **Law Firm of Karanja Kangiri & Co. Advocates**, filed his written submissions dated **29<sup>th</sup> October 2020**, while the 1<sup>st</sup> Respondent's submissions are dated **26<sup>th</sup> March 2021**, filed through the **Law Firm of M. M Rungare & Co. Advocates**. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents did not file any pleadings with regards to the Appellant/Applicant's Application.

The Court has carefully considered the instant Application, the pleadings in general and the rival written submissions filed and renders itself as follows;

The issue for determination is;

· *Whether the Applicant/Appellant has satisfied the conditions for grant of a Prohibitory Order.*

**Whether the Applicant/Appellant has satisfied the conditions for grant of a Prohibitory Order.**

The Applicant/Appellant has sought for an Order of Prohibition under **Section 68** of the **Land Registration Act**, in respect of the suit property **LR. No. Ruiru/Ruiru East Block /5404. Section 68(1)** of the **Land Registration Act** provides:-

*“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.”*

Further in the case of **Dorcas Muthoni & 2 Others...Vs...Michael Ireri Ngari (2016)eKLR**, the Court 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”.*

It is evident that an Order of Inhibition is similar to prohibitory injunction. The lower Court decision delivered on **29<sup>th</sup> May 2020**, found in favor of the Plaintiffs and stated that *“even if the Plaintiff owed the 1<sup>st</sup> Defendant the sum of Kshs.550,000/= for his survey services, he more than compensated himself as the suit land was sold for a whopping Kshs.4,200,000/=”* the Applicant/Appellant has not placed evidence before court either in his annexures or otherwise to convince the court to issue Conservatory orders neither has he placed any grounds to warrant such orders.

The Applicant/Appellant having sought for Prohibitory Orders, have to establish good grounds. 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.

The Court finds that the Applicants/Appellant herein has no good reasons to seek for prohibitory orders against the 1<sup>st</sup> Respondent since whatever he paid in the alleged process of survey of **Kshs.550,000/=** is recoverable as a Civil debt, without affecting the 1<sup>st</sup> Respondent right to enjoy the fruits of his Judgement.

Consequently, at this juncture, the Court will not determine whether the Appeal is merited or not, as it is not amongst the prayers sought in the Applicant's/Appellant's Application. Further, this Court finds no reasons to issue any such other orders or directions apart from finding that the instant Application is not merited. It is trite that the Court cannot act in vain. Similarly, its orders cannot be issued in vain.

Having now carefully considered the instant **Notice of Motion** application dated **14<sup>th</sup> August 2020**, the Court finds it **not merited** and the same is dismissed entirely with costs to the 1<sup>st</sup> Respondent.

Let the Appellant strive to have the Appeal heard expeditiously. For the above reason, the Appellant is directed to file the Record of Appeal within a period of **30 days**, from the date hereof and have the matter placed before the Judge for either admission on summary dismissal of the said Appeal as provided by **section 79(B)** of the Civil Procedure Act.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THIS 15<sup>TH</sup> DAY OF JULY 2021.**

**L. GACHERU**

**JUDGE**

**15/7/2021**

**Court Assistant – Lucy**

**ORDER**

In view of the declaration of measures restricting Court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15<sup>th</sup> March 2020**, this **Judgment** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

**With Consent of and virtual appearance via video conference – Microsoft Teams Platform**

**M/s Kanja holding brief for Mr. Karanja for the Appellant/Applicant**

**No appearance for the 1<sup>st</sup> Respondent**

**No appearance for the 2<sup>nd</sup> Respondent**

**No appearance for the 3<sup>rd</sup> Respondent**

**No appearance for the 4<sup>th</sup> Respondent**

**L. GACHERU**

**JUDGE**

**15/7/2021**