



**Kinyitia v Njiru & another (Miscellaneous Civil Application
58 of 2001) [2024] KEHC 5780 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5780 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS CIVIL APPLICATION 58 OF 2001**

LM NJUGUNA, J

MAY 15, 2024

**IN THE MATTER OF AN APPLICATION BY NJIRU
KINYITIA FOR AN ORDER OF CERTIORARI**

AND

**IN THE MATTER OF THE DECISION OF THE GICHUGU LAND DISPUTES
TRIBUNAL DATED 11TH MAY 1999 AND FILED IN SENIOR RESIDENT
MAGISTRATE IN KERUGOYA AS LAND DISPUTES TRIBUNAL CASE
NO. 29 OF 1999 AS READ TO THE PARTIES ON 16TH JULY 1999**

BETWEEN

NJIRU KINYITIA APPLICANT

AND

DAVID KATHURI NJIRU 1ST RESPONDENT

HANIEL GICHOBI NJIRU 2ND RESPONDENT

RULING

1. For determination is the notice of motion dated July 20, 2023 through which the applicants are seeking the following orders:
 1. Spent; and
 2. That the Honourable Court be pleased to order the lifting of all the prohibitory orders entered against the 2nd respondent/applicant's property parcel number Ngariama/Nyangeni/906 on July 13, 2001.
2. The application is premised on the grounds that the inhibition order registered against the said property was only meant to last until determination of the suit and as it is, the suit is long concluded. That the inhibition no longer has legal basis and it should be removed in the interest of justice. In



the supporting affidavit sworn by the 2nd respondent/applicant, he stated that the case on which the inhibition was dependent, was determined with finality and an order to inhibit the property pending litigation has since been spent. That the 2nd respondent/applicant needs money for medical expenses but he is not able to sell the said land in order to raise the money.

3. The applicant/respondent filed chamber summons dated June 20, 2001 seeking leave to apply for an order of *certiorari* out of time. The application was allowed and the court issued an order dated 03rd July 2001, *inter alia*, prohibiting land parcel numbers Ngariama/Nyangeni/905 and Ngariama/Nyangeni/906. The substantive application seeking certiorari orders was also filed but was never prosecuted. The 2nd respondent/applicant filed a notice of motion dated November 15, 2019 seeking orders that the orders encumbering land parcel Ngariama/Nyangeni/906 be vacated since the applicant respondent died before prosecuting his application. The court allowed this application through its order issued on August 9, 2021, on the basis that the application had been spent and the file was marked as closed.
4. The issue for determination is whether the order sought should be granted.
5. When the 2nd respondent/applicant moved the court stating that the applicant respondent had died, the court allowed the application for the reason that the application has been spent and the file was marked as closed. However, the prohibitory orders over parcel numbers Ngariama/Nyangeni/905 and Ngariama/Nyangeni/906 are still in force. The *certiorari* application having been determined through this court's order dated August 9, 2021, the prohibitory order should be lifted since the encumbrance no longer served a purpose.
6. Therefore, in the interest of justice, I find that the application has merit. Prayer 2 of the same is hereby allowed.
7. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 15TH DAY OF MAY, 2024.

L. NJUGUNA

JUDGE

