



REPUBLIC OF KENYA



RJC v WBKKL (Petition E006 of 2022) [2023] KEHC 18919 (KLR) (23 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18919 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PETITION E006 OF 2022
JRA WANANDA, J
JUNE 23, 2023**

BETWEEN

RJC PETITIONER

AND

WBKKL RESPONDENT

RULING

1. The parties herein were a married couple but are now divorced. On 22/09/2022, the Petitioner filed the Petition of the same date seeking orders for division of matrimonial property. Together with the Petition, she also filed the interlocutory Notice of Motion dated 20/09/2022 which is the subject of this Ruling.
2. The Application is filed through Messrs Nyagaka S. M. Advocates and seeks the following orders:
 - i. [Spent]
 - ii. That pending the hearing and determination of this Application, the Respondent by himself, his agents, servants, employees and relatives, be restrained by way of temporary injunction from interfering by disposing of through sale, transferring and alienating in whatsoever manner, land parcel No. Uasin Gishu/Elgeyo Border Scheme/198.
 - iii. That pending the hearing and determination of the Petition herein, the Respondent by himself, his agents, servants, employees and relatives, be restrained by way of temporary injunction from interfering by disposing of through sale, transferring and alienating in whatsoever manner, land parcel No. Uasin Gishu/Elgeyo Border Scheme/198.
 - iv. That pending hearing and determination of Petition herein, an order of inhibition be issued inhibiting registration of any dealing in respect of parcel of land known as Uasin Gishu/Elgeyo Border Scheme/198 by way of transfer, charge, subdivision or any other dealing whatsoever.
 - v. That Costs of the Application be borne by the Respondent.



3. The Application is stated to be brought under “Order 40 Rules 1, 2 and 3, Order 51 Rule 1 Civil Procedure Rules 2010, Section 1A, 1B, 3A, 63(c) *Civil Procedure Act* (Cap 21) Laws of Kenya, Section 68 of the *Land Registration Act* and other enabling provisions of the law”.
4. The grounds of the Application are that the parties divorced in June 2022, during the subsistence of the marriage, they acquired various matrimonial properties most of which are in the names of the Petitioner, of interest is Uasin Gishu/Elgeyo Border Scheme/198 which is registered in the name of the Respondent, the Petitioner had lodged a caution which was successfully registered but the Respondent removed it, the Petitioner is afraid that the land will be sold hence rendering the Petition nugatory.
5. In her Affidavit in support of the Application, the Petitioner has reiterated the matters above and added that the Respondent has sold part of the land parcel to a 3rd party forcing the Petitioner to apply for registration of the caution referred to above to prevent the Respondent from disposing the property to defeat the Petitioner’s interest, the Respondent has however removed the caution, the Respondent has disallowed the Petitioner access to the property to pick her personal belongings, she has contributed towards acquisition of the matrimonial properties, the move by the Respondent to remove the caution will be detrimental to the Petitioner as the Respondent will dispose of the said land parcel hence rendering the Application herein nugatory, if the Application is not allowed, the Petitioner’s share in the land parcel which is a matrimonial property will be lost. She then attached as exhibits, copies of the marriage certificate, Divorce Decree, Application for registration of the caution and Search Report for the land parcel.
6. The Application is opposed by the Respondent who swore the Replying Affidavit filed on 26/10/2022. In summary, he deponed that he inherited the land parcel from his father (now deceased) after paying a bank loan in the year 1979 amounting to Kshs 4,647.65, the Petitioner found him in possession of the parcel of land, she never contributed anything, they never purchased it together, he was employed as a civil servant between 1975 and 1995 and later as a chief after which he retired in the year 2000, he was able to educate his children, buy property and advance in farming, after the demise of his father, he filed a Succession Cause in respect of his father’s estate, there was no objection over the same by the Petitioner, there was no property jointly owned between the parties during their marriage, the land parcel is inherited property and he has no intention of selling it, the Petitioner has now settled at Illula Settlement Scheme on a plot measuring 1/8 acre which they purchased together during their marriage and at it is the Illula Settlement Scheme which is the only matrimonial property, the caution lodged by the Petitioner was removed because the Land Registrar confirmed that the Respondent was the only rightful owner thereof, he has never prevented the Petitioner from coming to the home to pick her personal belongings, the Petitioner disappeared from the matrimonial home since the year 2017, he is the one who planted trees in the land parcel, he has also been planting avocado without any assistance from the Petitioner, there are currently 150 seedlings, he took a loan from the bank to pay for his children’s higher education fees, he was unable to repay the loan in time and his daughter Carolyne Kipsang helped by paying Kshs 200,000/-, he single-handedly fenced the compound, the Petitioner did not contribute, the family timber house was renovated by the said daughter and not the Petitioner, the family furniture was also purchased by the said daughter, regarding the poultry houses, the said daughter assisted him without any contribution from the Petitioner, the feeding trough for livestock was purchased by their son, the Petitioner never purchased any livestock, the gates were purchased by the said daughter, the Petitioner has managed to incite the children who are now grown up, working abroad and married, against the Respondent, they have acquired properties which the Petitioner is enjoying alone while traveling abroad every time. The Respondent then attached as exhibits, copies of a payment slip for the bank loan upon which he inherited the land, salary payslip and certificate of confirmation of Grant.



7. With leave from the Court, the Petitioner swore the Supplementary Affidavit filed on 21/03/2023. She deponed that although the Respondent worked as a civil servant and later as a chief, he earned “peanuts” and was unable to pay his loan or develop the subject property, a property cannot fail to be a matrimonial home just because it was inherited, contributions of whatever nature are capable of granting a person an interest, the Illula Settlement Scheme alleged in the Replying Affidavit is not a matrimonial property as it does not belong to the Respondent, the Respondent was not capable of planting the trees and avocado seedlings because he was ill, it is the Petitioner who planted the same using her income, on the issue of the AFC loan, the Respondent has admitted failing to repay the same, the Petitioner is the one who paid on behalf of the Respondent’s behalf, her daughter Caroline Kipsang had no such amount to bail out the Respondent, regarding fencing of the compound, it is the Petitioner who purchased materials and paid labour charges, it is the Petitioner who initiated the refurbishing of the matrimonial home at a cost of Kshs 250,000/-, the daughter could not sponsor the repairs since she was by then still young and unemployed, it is the Petitioner who purchased the furniture, the said daughter did not contribute anything, the poultry house was the Petitioner’s project, the said daughter had nothing to do with it and never contributed towards it, it is the Petitioner who purchased the feeding trough, cows, sheep, goat and the security gate, although they divorced, the Respondent has maintained majority of the wealth.

Hearing of the Application

8. It was then directed that the Application be disposed of by way of written submissions. Pursuant thereto, the Petitioner filed his Submissions on 21/03/2023 and the Respondent filed on 8/05/2023.

Petitioner’s Submissions

9. Counsel for the Petitioner submitted that the Petitioner has an interest in the parcel of land, the same is matrimonial property which consists of the matrimonial home, she contributed in development thereof including planting 1.5 acres of trees, planting long life avocado trees and paying Kshs 70,000/- to clear the Respondent’s loan, among other contributions, on the principles involved in determining temporary injunctions, he quoted the case of *Meuledi Kitongo Iseme v Nairobi City County & Another* [2016] eKLR. He then quoted the case of *KM v MM* [2021] eKLR and submitted that in the instant case, although the Respondent has adduced evidence that he inherited the land, according to Section 6 of the *Matrimonial Property Act*, “matrimonial property” includes matrimonial home, household goods and effects in the matrimonial home, both parties concurred that they built a matrimonial home, the property, although inherited can mutate into a matrimonial home, the Petitioner has therefore demonstrated a prima facie case with serious issues to be tried. On irreparable injury, he argued that if an injunction is not granted and the Petitioner justifies her case at the hearing and the property is no longer available, the loss to her will be enormous, Section 2 of the *Matrimonial Property Act* defines “monetary and non-monetary contributions”, the Petitioner made non-monetary” contributions. On balance of convenience, he again quoted the case of *KM v MM* (supra) and submitted that the same lies towards preserving the subject land
10. On the prayer for an inhibition order, Counsel referred to Section 68 of the *Land Registration Act* and also the case of *Harun Vusisa Kishasha v Pamela Jaladha Kihyahya & 6 Others* [2022] eKLR and stated that if the subject land is disposed of by the Respondent, it will bring an end to this matter as any purchaser will plead the defence of an innocent purchaser for value, the *Land Registration Act* no longer recognizes spousal interest as an overriding interest, the only way is to preserve the subject to enable the parties ventilate on the matter.



Respondents' Submissions

11. Counsel for the Respondent submitted that the Respondent repaid the loan and discharged the land which was initially registered in the name of his father in the year 1979, when his father died he inherited the land, was issued with a certificate of grant of letters of administration and was issued with a title deed in July 1981 before marrying the Petitioner, they later acquired other properties including the plot in Illula Settlement Scheme, the land in question is inherited land, grant of the inhibition order amounts to final orders, the Petitioner has not furnished the Court with any material to show that indeed she has contributed to the development of the suit land hence she has not shown a prima facie case, He cited the case of Grace Kinoru Mark v Mark Muriungi Mark & 2 Others [2022] eKLR and submitted that an order of inhibition at this stage is premature for reasons that rights of a legally registered owner of the land to use and enjoy the land to the exclusion of the whole world will be infringed. On prima facie case, Counsel cited the case of Mrao Limited vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125 and submitted that the Petitioner has only pleaded verbatim that she has a matrimonial interest in the land, she alleges that she paid Kshs 700,000/- to offset the defaulted loans, she has not specified the loan, neither has she given any proof of repayment, he who alleges must prove, all other enumerated monetary contributions have also not been supported by any material evidence. He cited the case of Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR.
12. On irreparable loss, Counsel again cited the said case of Nguruman Limited (supra) and stated that the Petitioner admitted that there is another parcel of land in Illula Settlement Scheme, she does not deny that she resides on that parcel of land, there is therefore no irreparable harm that will be suffered if the Application is not granted. On balance of convenience, he reiterated the argument that the Petitioner resides on the said Illula Settlement Scheme and the Respondent resides on Uasin Gishu/Elgeyo Border Scheme/198, it will do more harm than good in granting injunction order against one plot and leave out the other. He also cited the case of Pius Kipchichir Kogo vs Frank Kimeli Tenai [2018] eKLR, and submitted that the balance of convenience tilts towards ordering that the state of affairs be maintained as they are, pending hearing and determination of the main case.

Analysis and Determination

13. I have carefully considered the Application, response thereto, submissions by Counsel and the decisions cited. I must mention that the parties have raised numerous issues which in my humble view cannot be conclusively dealt with at this stage. This is so because what is presently before the Court is simply determination of an interlocutory Application pending hearing and determination of the main Cause. At this stage, the Court must refrain from making conclusive findings on substantive matters, doing so may amount to prejudging matters that are yet to be canvassed in a full hearing.

Issues for Determination

14. In view of the foregoing, I find the following to be the issue that arises for determination;

“Whether, pending hearing and determination of this Cause, a temporary injunction and/or an inhibition should be issued to bar the Respondent from disposing, transferring or in any other way alienating the land parcel Uasin Gishu/Elgeyo Border Scheme/198.
15. I now proceed to analyse and determine the said issue.
16. Although the Petitioner has approached the Court vide Order 40 of the Civil Procedure Rules, this being a division of matrimonial property matter, Rule 20(2) of the Matrimonial Property Rules, 2022



enacted under the *Matrimonial Property Act* No. 49 of 2013 ought to have also been invoked as the primary provision. The Rule provides as follows:

“A party to the proceedings may, before or after commencement of the proceedings under these Rules, but before the final determination of the respective claims, apply for temporary injunctions or other interlocutory orders in accordance with Order 40 of the Civil Procedure Rules, 2010, and the court may grant the orders sought on such terms or conditions as may be just in the circumstances.”

17. On its part, Order 40 Rule 1 of the Civil Procedure Rules provides as follows;

Where in any suit it is proved by affidavit or otherwise —

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

18. The principles that guide a Court in dealing with applications for injunctions were well settled in the celebrated case of *Giella –vs-Cassman Brown and Company Limited*, Civil appeal No. 51 of 1972 where it was held as follows;

- i. The Applicant must establish a prima facie case with a probability of success.
- ii. Applicant has to demonstrate that it will suffer irreparable injury which cannot be compensated by damages.
- iii. Applicant has to demonstrate that balance of convenience tilts in its favour.

19. In *Nguruman Limited v Jane Bonde Nielsen and 2 Others*, NRB CA Civil Appeal No. 77 of 2012 [2014] eKLR, the Court of Appeal reiterated the above principles by giving the following guidelines:

“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. (See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86). If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”



20. The first limb that I have to therefore determine is whether the Petitioner has established a prima facie case. What constitutes a prima facie case was discussed in the case of *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, where the Court of Appeal held as follows:

It may not be easy to define what is meant by “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence ...The terms “prima facie” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a sustainable cause of action, the words “prima facie” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant’s interest to adopt a genuine and arguable case standard rather than one of a prima facie case, the former being the lesser standard of the two ... In civil cases a prima facie case is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”

21. The Petitioner’s case is hinged on the fact that the property in question is “matrimonial property” and that the same may be sold or alienated before the determination of the main Cause herein. On this point, Section 2 of the *Matrimonial Property Act* defines “matrimonial home” as follows:

“Matrimonial home” means any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property.”

22. Further Section 6 of the *Matrimonial Property Act* gives the meaning of matrimonial home to be as follows:

- “(a) the matrimonial home or homes;
- (b) household goods and effects in the matrimonial home or home;
- (c) or any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.”

23. Section 7 then stipulates the manner in which “matrimonial property” is to be divided where a situation requiring such division arises. It states as follows:

“Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.”



24. Section 12(1) provides further protection to the matrimonial home in the following terms;
- “an estate or interest in any matrimonial property shall not, during the subsistence of a monogamous marriage and without the consent of both spouses, be alienated in any form, whether by way of sale, gift, lease, mortgage or otherwise.”
25. In this matter, there is no dispute that the parties were married and are now divorced. The Petitioner has deponed that they cohabited between 1981 and 2022, a period of about 41 years, during which they acquired and developed some properties, among them, the property known as Uasin Gishu/Elgeyo Border Scheme/198. The Respondent has not contested these facts and has only denied that the Petitioner contributed to the acquisition or development of the property. While it is true that the issue of what each party contributed is yet to be heard and determined, I cannot ignore the fact that the parties were in a marriage. As such, it cannot be denied that each in some way contributed to the marriage. By law, during the pendency of marriage, each party is presumed to have acquired certain rights which this Court has a duty to protect pending the hearing and determination of this Cause. Of course, such determination will be based on proof of individual contribution towards acquisition and/or development of the property.
26. In my view, the fact that the Respondent has aggressively pursued the removal of the caution on the property known as Uasin Gishu/Elgeyo Border Scheme/198 raises reasonable apprehension that he may well be considering alienating the property in some way. The Petitioner’s apprehension does not therefore seem far-fetched. In view of the above and given that the Petitioner contends that she contributed to development of the property, I find that prima facie, she has demonstrated that there exists a bona fide question to be answered in these proceedings. She has accordingly demonstrated a clear right that is under threat.
27. Based on the material placed before the Court, I find that the Plaintiff has established a prima facie case. Needless to state, a final determination of the matter must await the hearing of the suit. It is my considered view that in the meantime, the Petitioner has surmounted the first hurdle in establishing whether the injunction should be granted. She has shown that there exists a prima facie case with probability of success for the purposes of the grant of a temporary injunction. That does not necessarily mean that the Petitioner will succeed at the full trial. What it means is that there is a basis upon which this Court can restrain the Respondent from selling, disposing or in any other way alienating the said property pending resolution of the dispute.
28. It is true that the Respondent has deponed that he inherited the land parcel from his father (now deceased), that the Respondent found him already in possession of the parcel of land, that she never contributed anything and that they never purchased it together. He also deponed that after the demise of his father, he filed a Succession Cause in respect of his father’s estate, that there was no objection over the same by the Petitioner, that the property was not jointly owned by the parties during their marriage. However, the Petitioner contends that she substantially contributed to development of the property. This allegation of contribution is yet to be canvassed and at this stage the Court cannot make conclusive findings thereon. The same therefore remains a contentious matter to await trial.
29. The Respondent has also deponed that the Petitioner has now settled at Illula Settlement Scheme which they purchased together during their marriage and that this is the only matrimonial property. Again, this allegation is also yet to be canvassed and at this stage the Court cannot make conclusive findings thereon.
30. Although therefore the Petitioner has, in my view, demonstrated the existence of a prima facie case, as was described in the case of Nguruman Limited (supra), the requirements in an interlocutory



injunction application are the three pillars on which rest the foundation of any order of injunction and all the three and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.

31. The second ingredient that this Court has to therefore consider is whether the Petitioner will suffer irreparable injury which will not be compensated by damages. On this, I again allude to Nguruman Limited case (supra) where the following was expressed:

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

32. I appreciate that the Respondent has deponed that he has no intention of disposing the property as it is inherited property. I have no reason to disbelieve the Respondent and I agree that no evidence has been presented to demonstrate that he has put in plans to sell the property. However, his action of aggressively pursuing the removal of the caution and succeeding in doing so gives the Petitioner reasonable apprehension that the Respondent may indeed alienate the property. There is therefore a real threat that the property may be placed beyond the reach of the Petitioner before the main Cause is heard and determined. I am therefore satisfied that by the actions of the Respondent, there is danger that the eventualities stated under Order 40 of the Civil Procedure Rules may arise before the issue of each party’s contribution, if any, towards the acquisition or development of the property is determined. Given the nature of the cause, the Petitioner would suffer irreparably if the property were to be disposed or alienated before her claim is determined on evidence. Indeed, her suit may well be rendered nugatory. In the circumstances, I am satisfied that the Petitioner may suffer irreparable injury, which may not be adequately compensated by an award of damages.

33. As regards the third limb, balance of convenience, I associate myself with the decision in Pius Kipchirchir Kogo vs. Frank Kimeli Tenai [2018] eKLR where it was held as follows:

“The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.”



34. I am also guided by the case of Paul Gitonga Wanjau vs. Gathuthis Tea Factor Company Ltd & 2 others (2016) eKLR, where the Court expressed itself as follows:

“Where any doubt exists as to the applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance on convenience lies. ”

35. Applying the above principles, it is my view that it is the Petitioner who stands to suffer greater harm if the injunction is not granted. I find that the Petitioner will suffer more if the injunction is denied, the property is disposed of as a result and she ultimately turns out to be right after the trial than the suffering that the Respondent will suffer if the injunction is granted, the property preserved and the Respondent ultimately turns out to be right after the trial.

36. Regarding the prayer for inhibition, Section 68(1) of the [Land Registration Act](#) of 2012 provides as follows:

(1) 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.

37. In Mwambeja Ranching Company Limited & another v Kenya National Capital Corporation Limited (Kenyac) & 6 others [2015] eKLR, Gikonyo J held as follows:

“Of great significance on the request for an order of inhibition is Section 68(1) of the [Land Registration Act](#) which reads as follows; 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. The case of Japhet Kaimenyi M’ndatho v M’ndatho M’mbwiria [2012] eKLR dealt with the threshold for granting orders of inhibition in a pointed manner as follows; “In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions:-

- a. That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless Preservatory orders of inhibition are issued.
- b. That the refusal to grant orders of inhibition would render the applicant’s suit nugatory.
- c. That the applicant has arguable case.

I am content to refer to the decision by Okwengu, J (as she then was) in the case of Philip Mwangi Githinji v Grace Wakarima Githinji (2004) eKLR when she rendered herself inter alia; “An order of inhibition issued under section 128 of the Registered [Land Act](#) is akin



to an order of prohibitory injunction for it restricts the registered owner and any other person from having their transaction regarding the land in question registered against the title. Before the court can issue such an order it must be satisfied that the person moving the court for such orders has good grounds for requesting such an inhibition, such grounds would normally be in the form of a sustainable claim over the suit land.”

38. From the foregoing, it can be deduced that inhibition envisaged under Section 68 of the Registration of *Land Act* is in the nature of prohibitory injunction and act to preserve the suit property just as an interlocutory injunction would do. For the same reasons that I had found that the injunction orders are appropriate, I also find that the inhibition orders are also merited.

Conclusion

39. In light of my findings above, I am satisfied that the Petitioner has satisfied the conditions necessary for the grant of the interlocutory injunction and inhibition orders sought. It is therefore my considered view that in the circumstances of this case, the Court should issue orders for the preservation of the property known as Uasin Gishu/Elgeyo Border Scheme/198 pending the hearing and determination of the suit.

Final Orders

40. In the premises, I order as follows:
- i. I allow the Petitioner’s Notice of Motion dated 20/09/2022.
 - ii. Accordingly, pending the hearing and determination of the Petition herein, the Respondent by himself, his agents, servants, employees or relatives, is hereby be restrained by way of temporary injunction from disposing, selling, transferring or alienating in whatsoever manner, the parcel of land known as Uasin Gishu/Elgeyo Border Scheme/198.
 - iii. Further, pending the hearing and determination of the Petition herein, an order of inhibition is hereby issued inhibiting registration of any dealing in respect of the said parcel of land known as Uasin Gishu/Elgeyo Border Scheme/198 by way of transfer, charge, subdivision or any other manner whatsoever.
 - iv. Costs of the Application shall await the outcome of the main Cause.
 - v. In order to expedite the matter, I direct that within 21 days of today’s date, the Applicant shall file and serve her Witness Statements and List/bundle of documents upon the Respondent. Upon being served, the Respondent shall, within a similar period, also file and serve his Witness Statements and List/bundle of documents. Thereafter, the parties shall appear before Court on a date to be given, for Mention for further pre-trial directions and/or fixing of a hearing date.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 23RD DAY OF JUNE 2023

WANANDA J. R. ANURO

JUDGE

