



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC NO. 31 OF 2018

BIKASHAI MUTHUBHAI PATEL .....1<sup>ST</sup> PLAINTIFF

CYPRIAN IBURI NGARURO .....2<sup>ND</sup> PLAINTIFF

DR. FRANK KAMBE MWONGERA .....3<sup>RD</sup> PLAINTIFF

VERSUS

MACCU MOTORS LTD .....1<sup>ST</sup> DEFENDANT

YUSUF MUSA MUCHEKE ..... 2<sup>ND</sup> DEFENDANT

MR. KARIUKI T/A GT MOTORS .....3<sup>RD</sup> DEFENDANT

GERVASIO KARIUKI .....4<sup>TH</sup> DEFENDANT

SALIM KIMATHI .....5<sup>TH</sup> DEFENDANT

JAMES MBAABU..... 6<sup>TH</sup> DEFENDANT

JOHN KURIA .....7<sup>TH</sup> DEFENDANT

FRANCIS MURIITHI .....8<sup>TH</sup> DEFENDANT

JOHN GATEMBU .....9<sup>TH</sup> DEFENDANT

HENRY MURIUNGI .....10<sup>TH</sup> DEFENDANT

NICHOLAS KINYUA.....11<sup>TH</sup> DEFENDANT

NJOROGE T/A SUNBIRD SERVICES .....12<sup>TH</sup> DEFENDANT

RULING

1. Through an application dated 11.8.2021 the plaintiff seeks for the cancellation of inhibition orders issued on 19.7.2005 over **Parcel No. Meru Municipality Block 11/50** and that the land registrar Meru Central District to be served with the orders.

2. The application is supported by an affidavit sworn on 12.8.2021. The grounds are that the inhibition orders were issued at the request of the 2<sup>nd</sup> defendant vide application dated 16.6.2005 pending the suit; the suit was determined on 3.6.2019; an appeal was preferred by the 1<sup>st</sup> defendant in which by a ruling dated 9.7.2021 the Court of Appeal declined to issue any stay or inhibition orders and lastly there is no good reason to have the orders of inhibition in place.

3. The 1<sup>st</sup> defendant opposes the application through grounds of opposition dated 8.10.2021 on the reasons that a right of appeal is a constitutional one; there is need to preserve the subject matter; the appeal is yet to be heard and lastly the 1<sup>st</sup> defendant is entitled to a fair

judicial and administrative action.

4. Both parties with leave have buttressed their arguments through written submissions dated 16.10.2021 and 12.10.2021 respectively.
5. On the part of the plaintiff, it is submitted that **Section 70 (b)** of the **Land Registration Act** requires an inhibition order to have timelines and in the instant case the inhibition was specific to conclusion of the suit.
6. Further it is submitted application for stay was dismissed on 9.7.2021 by the Court of Appeal hence this court should vacate the inhibition orders.
7. On the other hand, the 1<sup>st</sup> defendant submits an appeal is pending before a Court of Appeal hence this court is **functus officio** in so far as current application is concerned.
8. Secondly it is submitted the applicant ought to move the Court of Appeal under **Rule 45** of the **Court of Appeal Rules** for removal of the inhibition.
9. Third it is submitted this court should preserve the orders otherwise vacating the same would affect the substratum of the appeal hence the respondents' rights to appeal and a fair hearing contrary to **Articles 47 and 50 of the Constitution**.
10. The respondent relies on *National Media Group Ltd –vs- Attorney General 1 E.A [2007] 261.*
11. It is not in dispute that an inhibition was placed on 19.7.2005 out of an order granted by Hon. Justice D.A. Onyancha now retired on 14.7.2005. The order was explicit that it would pend till the determination of the suit.
12. Under **Section 70 (a) & (b)** of the **Land Registration Act**, the events contemplated occurred on 3.6.2019 hence the reason the 1<sup>st</sup> defendant now an appellant moved vide a notice of motion dated 20.12.2019 under **Rule 5 (2) (b)** of the **Court of Appeal Rules** to pray for an inhibition order pending hearing and determination of the appeal.
13. The 1<sup>st</sup> defendant knew the orders of inhibition herein were already spent. It would therefore amount to double speak for the said party to submit the said orders were in perpetuity and have force until the appeal is heard and determined.
14. Similarly the 1<sup>st</sup> defendant did not seek for the extension of the inhibition orders if at all he is of the considered view they would prejudice his appeal if vacated.
15. Submissions however forceful without a formal pray cannot translate into a request and in this case the 1<sup>st</sup> defendant had the onus to justify why the inhibition orders should subsist beyond this suit.
16. Again, it is clear the 1<sup>st</sup> defendant was unsuccessful in seeking the orders of inhibition at the Court of Appeal yet he submits that since the matter is now before that court, this court is **functus officio** in so far as determining the issue of inhibition subsisting. Moreover whether the inhibition was lawfully or unlawfully granted and if it should subsist does not form part of the 1<sup>st</sup> respondent's grounds of appeal.
17. In my view the first port of call is the court which issued the inhibition orders and not the one in which the appeal is preferred.
18. Given the foregoing, I find no good reasons why the inhibition orders should subsist beyond what the order itself and by extension the law under which it was registered state.
19. Court orders are ordinarily not issued in vain and or to result into absurd effects. The 1<sup>st</sup> defendant was enabled by the court to enjoy the preservation of the suit property. On the same vein the respondent is now the successful litigant and hence entitled to enjoy the fruits of his judgment.
20. In the circumstances I find the application with merits. The same is allowed in terms of prayers 1, 2 and 3.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 20<sup>TH</sup> DAY OF DECEMBER, 2021**

**In presence of:**

Ondari for 1<sup>st</sup> respondent/defendant

Mwangi Muthomi for plaintiff/applicant

Miss Mbubuya for Official receiver

Court Assistant – Kananu

**HON. C.K. NZILI**

**ELC JUDGE**