



REPUBLIC OF KENYA



M’Nkanatha & 3 others v M’Mbui (Environment and Land Appeal E036 of 2025) [2025] KEELC 5020 (KLR) (23 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5020 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E036 OF 2025**

**JO MBOYA, J
JUNE 23, 2025**

BETWEEN

**JAPHET KIMATHI M’NKANATHA 1ST APPELLANT
DANIEL MURIUNGI M’NKANATHA 2ND APPELLANT
JUSTUS MBURUGU NKANATHA 3RD APPELLANT
JOHN MWITI NKANATHA 4TH APPELLANT**

AND

M’NKANATHA M’MBUI RESPONDENT

RULING

1. The Appellants/applicants herein have approached the court vide Notice of Motion application dated 29th May 2025 brought pursuant to the provisions of Section 1A 1B, 3A and 63 e of the [civil procedure Act](#); Order 22 rule 22; Order 42 Rule 6 of the Civil Procedure Rules 2010, Section 68 of [Land Registration Act](#) 2012; Articles 50 and 159 2[a], [b] [d] and [e] of [the Constitution](#) 2010 and wherein the applicants have sought the following reliefs;
 - i. That this Application be certified as urgent, service be dispensed with and it be heard Ex-parte in the first instance.
 - ii. That this Honourable court be pleased to issue an order for stay of execution of the ruling/order delivered on 28th May 2025, in Githongo Misc ELC No. E005 of 2025(M’nkanatha M’mbui Vs Japhet Kimathi M’nkanatha & Others) pending the hearing and determination of this application inter parties.
 - iii. That this Honourable Court be pleased to order that an inhibition be issued and the same be registered against the parcel of land known as Title Number Abothuguchi/katheri/2081 to



restrict any dealings or transfer of the said parcel of land pending the hearing and determination of this application inter parties.

- iv. That this Honourable Court be pleased to issue an order for stay of execution of the ruling/ Order delivered on 28th May 2025, in Githongo Misc ELC E005 of 2025(M'nkanatha M'mbui Vs Jjaphet Kimathi M'nkanatha & Others) pending the hearing of this appeal.
 - v. That this Honourable court be pleased to order that an inhibition be issued and the same be registered against the parcel of land known as Title Number Abothuguchi/katheri/2081 to restrict any dealings or transfer of the said parcel of land pending the hearing and determination of this Appeal.
 - vi. That costs of this Application be provided for.
2. The instant application is premised on various grounds which have been highlighted in the body thereof. Furthermore, the application is supported by the affidavit of Daniel Murungi M'nkanatha[the 2nd applicant herein] sworn on 29th May 2025 and to which the deponent has annexed seven [7] documents including a copy of the memorandum of appeal filed in respect of the subject appeal.
 3. The subject application was served upon the respondent and who thereafter filed a replying affidavit in opposition thereto. In particular, the respondent posited that the caution which had been lodged by the appellants/applicants was duly removed by the trial court. Furthermore, the respondent averred that same is the lawful owner of the suit property and thus entitled to partake of and benefit from the statutory rights and privileged attendant thereto.
 4. The instant application came up for hearing on the 23rd June 2025 whereupon, the advocate for the applicants intimated to the court that the application was duly served. Moreover, learned counsel for the applicants posited that same was keen to adopt the grounds enumerated in the body of the application and the averments contained in the supporting affidavit. Additionally, learned counsel for the applicants also sought to rely on the contents of the annexures filed before the court.
 5. Though the respondent was present in court, same did not utter a word. To this end, the application before hand was deemed canvassed on the basis of the grounds and the contents of the supporting affidavit.
 6. Having reviewed the application; and the supporting affidavit thereto and upon consideration of the submissions ventilated by learned counsel for the applicants as well as the applicable law, I come to the conclusion that the determination of the subject application stands on three[3] salient issues, namely; whether the applicants have established a basis to warrant and order of stay of execution pending appeal or otherwise; whether the applicants herein have established and demonstrated a stake in respect of the suit property or otherwise; whether the applicants have proven a basis for the issuance of an order of inhibition or otherwise.
 7. As concerns the first issues herein, namely; whether the applicants have established a basis to warrant an order of stay of execution pending appeal or otherwise, it is important to underscore that any applicant, the applicants herein not excepted, desirous to procure an order of stay pending appeal must establish the peremptory conditions espoused vide the provisions of Order 42 rule 6(1) and (2) of the Civil Procedure Rules.
 8. Instructively, the applicants herein were obligated to demonstrate the existence of a sufficient cause/ basis; substantial loss [if any]; and readiness to provide security for the due performance of the decree that may ultimately arise and or ensue. [see Kenya Shell Limited versus Benjamin Kruga Kibiru and



another 1986 Eklr; see James Wangalwa versus Agnes Naliaka Chesito 2012 Eklr and RWW v EKW [2019] KEHC 6523 (KLR)]

9. Did the applicants establish and demonstrate the foregoing ingredients? To start with, it is imperative to observe that an application for removal of a caution is ordinarily predicated on the basis of section 71 of the Land Registration Act. In this regard what comes to mind is whether an order made removing/ lifting a caution [like the one before hand] is appealable as of right. In my humble view, the orders that are appealable as of right are well stipulated by section 75 of the Civil Procedure Act as read together with Order 43 of the Civil Procedure Rules.
10. I have not seen any evidence and or intimation that the appellants herein procured and or obtained leave of the subordinate court. To this end, I entertain doubts as to whether a sufficient cause has been demonstrated and or proven. [see order 42 Rule 6(1) of the Civil Procedure Rules that highlights the necessity to demonstrate sufficient cause.
11. Moreover, it is not lost on me that even where a claimant has proven and established the existence of sufficient cause [which is not the case] in respect of the instant matter, such an applicant must venture forward and demonstrate the existence of a likelihood of substantial loss occurring. Suffice it to state that substantial loss is the corner stone/ key pillar upon which an order of stay of execution does issue.
12. In respect of the instant matter, there is no gainsaying that the suit property belongs to and is registered in the name of the respondent. To this end, it is instructive to observe that unless there exist exceptional and peculiar circumstances, the respondent as the registered owner of the suit property ought and should be allowed to enjoy the rights flowing from such ownership.
13. On the other hand, it is worthy to recall that it is the applicants saying that same shall be disposed to suffer substantial loss. In this regard, it was incumbent upon the applicants to substantiate the loss [if any] that same are likely to suffer. However, it is important to posit that the applicants have not substantiated any such loss. For good measure, the applicants have merely contended that the respondent is likely to sell and or dispose of the suit property. However, no evidence or at all has been placed before the court to demonstrate the said allegations.
14. Additionally, it is important to highlight that the applicants herein have also not posited whether same are ready and willing to provide security for the due performance of the decree and or order that may ultimately arise. Whereas the order directing provision of security lies within the jurisdictional remit of the court, nevertheless it is a sign of good will for an applicant seeking security to make an offer and or undertaking as pertains to willingness to provide security. Such an undertaking or offer to provide security bespeaks bona fides.
15. However, where a claimant does not make any such undertaking and or offer to provide security, the court may infer that the application is not made in good faith. Furthermore, the circumstances surrounding the subject matter drives me to the conclusion that the application is not made in good faith. On the contrary, there appears to be a semblance of mala fides aimed at defeating the respondent's property rights, merely because of [sic] old age..
16. In a nutshell, I am afraid that the applicants herein have not established a basis to warrant the grant of an order of stay of execution pending appeal either as sought or otherwise. Moreover, it is not lost on me that an order of stay of execution is equitable in nature and thus falls within the discretionary powers of the court.
17. Regarding the second issue, it is important to recall and to reiterate that the applicants herein had previously lodged a caution against the title of the suit property. Suffice it to underscore that the caution



- that was lodged against the title of the suit property was intended to [sic] preserve the suit property on the basis that the applicants had a stake thereof on account of the suit property being family land.
18. Be that as it may, there is no gainsaying that the respondent who is the registered proprietor of the suit property moved the subordinate court seeking to remove the caution that had been lodged against the suit property. The application by the respondent for the removal of the caution was duly heard by the trial court who proceeded to and discharge the caution.
 19. Following the orders of the trial court which discharged the caution, the applicants herein are now before this court seeking for an order of stay of the lifting of the caution and issuance of an order of inhibition. The aspect pertaining to inhibition shall be addressed while dealing with issue number three hereinafter.
 20. Nevertheless, at this juncture I am concerned with the aspect as to whether or not the applicants have demonstrated any prima facie stake and or claim in respect of the suit property. Suffice it to state that the applicants have contended that the suit property is held by the respondent on trust for the applicants. To this end, the applicants have therefore posited that there is need to preserve the suit property and avert any sale/ alienation therefore by the respondent.
 21. However, it is worthy to observe that even though the applicants have contended that the suit property is family land and same is therefore held on trust by the respondent, there is no gainsaying that the applicants herein have not filed and or commenced any suit or at all to underpin the contention that the suit property is family land. The existence of a stake in the suit property would be a critical ingredient. [see Maria Ngangi Gwako v Charles Mwenzi Ngangi [2014] KEHC 7178 (KLR)].
 22. Furthermore, it is worthy to highlight that the burden of proving that the suit property was/ is family land and thus held on trust lay with the applicants. Instructively, it behoves the applicants to tender and place before the court a prima facie case with probability of success. [see Daniel Toroitich Arap Moi Versus Mwangi Stephen Mureithi [2014] eklr].
 23. Notwithstanding the foregoing, it is not lost on me that no such evidence has been placed before the court. For good measure, there is no previous suit that has been filed by the applicants herein wherein their claim as pertains to trust has been canvassed; or is being canvassed. To this end, I am afraid that the applicants have not established and or demonstrated any stake and or claim in the suit property or otherwise.
 24. Regarding the third issue, it is imperative to observe that an order of inhibition by its nature is akin to an order of temporary injunction. Pertinently, such an order has the effect of limiting, restricting and or curtailing the statutory rights of the registered proprietor if the designated land. In particular, the registered owner of the land is barred and or prevented from alienating, selling, charging and or in any other manner dealing with the property during the subsistence of an order of inhibition.
 25. Given the legal import and tenor of an order of inhibition, it then means that such an order cannot issue for the mere asking. In addition, there is no gainsaying that the issuance of an order of inhibition is not a right of the applicant. No wonder the provisions of section 68 of the [Land Registration Act](#) deploys the word that the court 'may' grant an inhibition. Consequently, the claimants seeking an order of inhibition must establish clear and actionable interest in the suit property.
 26. Furthermore, the clear and actionable interest in the suit property must be something known in the eyes of the law. For good measure, it must not be remote; hypothetical; or speculative in nature.
 27. To my mind, it behoves the appellants/applicants to demonstrate precipitate claims to the suit property. It was not enough to simply throw onto the face of the court omnibus and generalized



- allegations that the suit property is family land. In any event, it is common ground that the mere mention/reference that the suit property is family land does not by and of itself mutate into precipitate rights.
28. On the other hand, it is important to take into account that the registered owner of a particular land is entitled to freely use and or utilize his/ her property subject only to the known limitation. In this regard, I hasten to state that whereas a court of law can and often do issue an order of temporary injunction or an inhibition, the issuance of such orders can only be made on credible grounds and or basis.
29. Furthermore, it is important to posit that the issuance of an order of inhibition must be made sparingly and cautiously so as not to imperil the rights of the owner of the land. [see Moya Drift farm limited Versus Theuri 1973 EA 173]; Mohanson Kenya Limited versus the registrar of titles 2017 Eklr and Waas Enterprises limited versus Nairobi City Council 2014 Eklr, respectively].
30. Bearing in mind the foregoing observations, I am not persuaded that the applicants herein have laid a basis to warrant the grant of the orders of inhibition. To this end, I come to the conclusion that the twin limbs of the application before hand namely an order of stay of the ruling; and an order of inhibition, are not merited.
31. Before concluding on this issue, I beg to state that an inhibition just like and order of temporary injunction must only issue where there is in existence a prima facie case. Moreover, the claimant must demonstrate the peculiar circumstances warranting the issuance of such an order.
32. While considering the legal implication of an order of temporary injunction which is a keen to an inhibition, the Court of Appeal in the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)
- “It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.”
33. The foregoing observations were made as pertains to and in respect of an application for temporary injunction, but I beg to state that same apply mutatis mutandis to a matter touching on an inhibition. To this end I am obliged to and do hereby invoke the said ratio.

Final Disposition:

34. Flowing from the analysis, [whose details have been captured in the body of the ruling herein], I come to the conclusion that the applicants herein have neither established nor proven the requisite basis to warrant the issuance of the order of inhibition.
35. In the premises, the final orders that commend themselves to the court are as hereunder:-
- i. The Application be and is hereby dismissed.
 - ii. Each party shall bear won cost of the Application.
36. It is so ordered

DATED, SIGNED AND DELIVERED AT MERU THIS 23RD DAY OF JUNE 2025

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE

In the presence of:



Mr. Mutuma- Court Assistant.

Mr Kaimenyi for Appellants/Applicant .

Ms Gachohi holding brief for Ms Maore for the Respondent.

