



REPUBLIC OF KENYA



**KENYA LAW**  
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**Baik v Mwamulevi & 7 others (Environment and Land Case Civil Suit  
472 of 2011) [2025] KEELC 7034 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7034 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE CIVIL SUIT 472 OF 2011**

**JO OLOLA, J**

**OCTOBER 16, 2025**

**BETWEEN**

**MAHMUD BAKARI BAIK ..... PLAINTIFF**

**AND**

**SWALEH ABDALLAH MWAMULEVI ..... 1<sup>ST</sup> DEFENDANT**

**AMRAN ALI SEMPA ..... 2<sup>ND</sup> DEFENDANT**

**HALIMA ALI AMRANI ..... 3<sup>RD</sup> DEFENDANT**

**BIHIJA ALI SEMPA ..... 4<sup>TH</sup> DEFENDANT**

**HASSAN ALI SEMPA ..... 5<sup>TH</sup> DEFENDANT**

**AWADH SALEH SAID ..... 6<sup>TH</sup> DEFENDANT**

**SAID SALEH SAID ..... 7<sup>TH</sup> DEFENDANT**

**PANAL FREIGHTERS ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated 11<sup>th</sup> December 2024, Mahmud Bakari Baik (hereinafter “the Applicant”) prays for the following:
  1. Spent;
  2. That an inhibition order do issue to restrain any dispositions or dealings with the land known as Title Number Mombasa Block XVI/1048 pending the hearing and determination of this suit;
  3. That the Land Registrar Mombasa Land Registry do register the inhibition order on the register in respect of Title Number Mombasa Block XVI/1048; and



4. That costs of the Application be provided for.
2. The application is supported by an affidavit sworn by the applicant and is premised on the grounds;
  - i. That this Court issued an injunction prohibiting dealings with the suit property on 29<sup>th</sup> February, 2012;
  - ii. That despite the said order the 1<sup>st</sup> to 5<sup>th</sup> Defendants transferred the suit property to the 8<sup>th</sup> Defendant;
  - iii. That the 8<sup>th</sup> Defendant has charged the property to Diamond Trust Bank Kenya Limited, the Intended Interested Party;
  - iv. That it is necessary to enjoin the said Diamond Trust Bank Kenya Limited to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit;
  - v. That it is vital that an inhibition order is issued and registered on the title to the suit property to avoid further dispositions of the suit property and convolution of the issues herein;
  - vi. That the Plaintiff/Applicant stands to suffer grave and irreparable loss, harm and damage if the application is not granted.
3. Diamond Trust Bank Kenya Limited (the Interested Party) is opposed to the application. In a Replying Affidavit sworn on its behalf by its Legal Manager Faith Ndonga on 28<sup>th</sup> February 2025, the Interested Party avers that Panal Freighters Ltd (the 8<sup>th</sup> Defendant) is the proprietor of the suit property. The Interested Party avers that vide a letter dated 27<sup>th</sup> October 2017, the 8<sup>th</sup> Defendant obtained banking facilities aggregating Kshs. 320,229,000/= which facilities constituted previous borrowings issued and an overdraft facility of USD 250,000/-.
4. Further the Interested Party avers that it was a term of the Letter of Offer dated 27<sup>th</sup> October 2017 that the overdraft facility would be secured by a first legal charge over the suit property. Accordingly, the Interested Party states that a first legal charge dated 15<sup>th</sup> November 2017 was registered on the property on 17<sup>th</sup> November 2017.
5. It is further the Interested Party's case that pursuant to a Letter of Offer dated 28<sup>th</sup> May 2018, the overdraft facility of USD 250,000/- was received and extended for a period of 12 months. The 8<sup>th</sup> Defendant has since been issued with a statutory Notice of Sale under Section 90 of the Land Act after it failed to make payments as and when they fell due.
6. The Interested Party avers that there were several previous cases relating to the suit property but the Plaintiff did not at any time assert his right over the charged property. It is accordingly the Interested Party's case that the Plaintiff's application is not merited and that the same is merely meant to prevent the Bank from enforcing its legal right to call in its security.
7. I have carefully perused and considered the Plaintiff's application as well as the response thereto by the Interested Party. I have similarly perused and considered the submissions placed before the court by the Learned Advocate representing the Interested Party. I was unable to find any submissions on the part of the Plaintiff.
8. By the Notice of Motion dated 11<sup>th</sup> December 2024, the Plaintiff prays for an order of inhibition to issue to restrain any disposition or further dealings with the parcel of land known as Mombasa Block XVI/1048 (the suit property) pending the hearing and determination of this suit.



9. It is the Plaintiff's case that this court did on 29<sup>th</sup> February 2012 issue an order of injunction prohibiting any dealings with the suit property but despite that order the 1<sup>st</sup> to 5<sup>th</sup> Defendants had proceeded to transfer the suit property to the 8<sup>th</sup> Defendant. It was further the Plaintiff's case that the 8<sup>th</sup> Defendant has since charged the property to Messrs. Diamond Trust Bank Kenya Limited and that unless an order of inhibition was issued herein there is a danger that there might be further disposition of the property thereby convoluting the issues herein.
10. Messrs. Diamond Trust Bank Kenya Limited, recently enjoined at the behest of the Plaintiff as an Interested Party herein is strenuously opposed to the application. The Interested Party avers that the 8<sup>th</sup> Defendant is the registered proprietor of the suit property and that the said Defendant has since defaulted in repayment of the sum of Kshs. 320,000,000/- and another sum of USD 250,000/- which was secured with a first charge on the suit property.
11. The Interested Party asserts that since the year 2020, it has been involved in at least three (3) disputes in court with the 8<sup>th</sup> Defendant and that at no time did the Plaintiff assert his right over the charged property. The Interested Party avers that the Plaintiff is guilty of laches as he has all along been aware that the 1<sup>st</sup> to 5<sup>th</sup> Defendants had in breach of the court order, sold the property to the 8<sup>th</sup> Defendant in the year 2011 and the Plaintiff had wrongly chosen to wait for some 13 years before laying a claim to the land.
12. In support of his case the Plaintiff has annexed a court order issued on 29<sup>th</sup> August 2011 where Hon. Lady Justice M. Odero granted an order of injunction herein restraining the Defendants from inter alia, selling, disposing off or in any way whatsoever interfering with the suit property pending the hearing of an application dated 24<sup>th</sup> August 2011 as filed by the Plaintiff. It was clear from a perusal of the court record that upon hearing of the said application, those orders were confirmed by Hon. Justice E. Muriithi on 29<sup>th</sup> February 2012 and the Defendants were barred from selling or disposing off the property pending the hearing and determination of the suit herein.
13. That notwithstanding it was apparent from the transfer documents that the 1<sup>st</sup> to 5<sup>th</sup> Defendants had proceeded earlier on 29<sup>th</sup> September 2011 and transferred the property to the 8<sup>th</sup> Defendant. While it was true that this application had come quite late in the day, it was evident from the record that upon learning of the transfer, the Plaintiff had immediately made an application and by his Amended Plaint dated 20<sup>th</sup> February 2013, the 8<sup>th</sup> Defendant was enjoined as a Party in these proceedings.
14. Section 68 of the *Land Registration Act* 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.
  - (2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.
  - (3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.”
15. Given that the sale transaction was carried out while the suit was pending determination, I think it is only in the interest of justice that the subject property be preserved to prevent any further dealings which may lead to its loss before the suit is heard and determined.



16. While indeed it is true that the Interested Party has been engaged in a number of litigations over the suit property with the 8<sup>th</sup> Defendant, nothing had been placed before the court to demonstrate that the Plaintiff was a party to or aware of the said litigation to enable him to assert his rights as submitted by the Interested Party.
17. In the premises I find merit in the Motion dated 11<sup>th</sup> December 2024 and hereby issue orders as follows:
- a. An inhibition order is hereby issued restraining any disposition or dealings with the parcel of land known as Title Number Mombasa Block XVI/1048 pending the hearing and determination of this suit.
  - b. The Land Registrar Mombasa Land Registry is hereby directed to register an Inhibition Order on the register in respect of Title Number Mombasa Block XVI/1048.
  - c. The costs of this application shall be in the cause.
18. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT  
MOMBASA THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Ahmed Advocate for the Plaintiff

Mr. Nyabena Advocate for the Defendants

Mr. Kisinga Advocate for the Interested Party

