



**Githinji v Mararo (Environment and Land Appeal E026 of 2021)
[2025] KEELC 6941 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6941 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E026 OF 2021
LG KIMANI, J
OCTOBER 9, 2025**

BETWEEN

JOHN GAKUO GITHINJI APPELLANT

AND

JACKSON MURIITHI MARARO RESPONDENT

(Being an appeal arising from the determination of Hon. W. Kagendo delivered on 30th June 2021, ELC No.240 of 2018 (Formerly ELC No.240 of 2014))

RULING

1. Before the Court for determination is the Notice of Motion application dated 18th September 2024 by the Appellant/Applicant, seeking the following orders:
 1. Spent.
 2. That this Honourable Court in exercise of its appellate jurisdiction be pleased to grant an order for Inhibition restraining the Respondent, his agents, servants, employees or anyone claiming through them from selling, subdividing, entering thereon, trespassing, demolishing, alienating, wasting or howsoever interfering in any way with that property known as LR Nyeri/ Island Farm/651 (Hereinafter referred to as the "Suit Property" pending the hearing and final determination of the Appeal herein.
 3. That this Honourable Court be pleased to make an order for the revocation of the purported registration of that property known as LR Nyeri/Island Farm/651 (Hereinafter referred to as the "Suit Property" pending the hearing and final determination of the Appeal herein.
 4. That this Honourable Court be pleased to make such other interlocutory orders as may appear to the court to be just and convenient to prevent the ends of justice from being defeated.
 5. That the cost of this application be provided for.



2. The Application is supported by the grounds on the face of the application and the Applicant's affidavit. The Applicant stated that he filed an application dated 3rd March 2022 seeking stay of execution of the lower court's judgment pending appeal, and orders were delivered on the 30th day of November, 2022. He claimed that the Respondent failed to file a response to his application despite having been served with a notice.
3. The Applicant claims that the Appeal herein has high chances of success, and if the order for temporary injunction is not granted, the Appeal herein shall be rendered nugatory and a mere academic exercise.
4. The Appellant/Applicant is apprehensive that he shall suffer great and substantial loss and damage unless the order for an inhibition, together with a revocation of the purported registration, is made. He deposed that the Respondent will suffer no prejudice. He further stated that he shall suffer great and substantial loss and damage unless the order for an inhibition is made pending the hearing and final determination of the Appeal herein.
5. He claims that there is sufficient cause for this court to grant the orders sought.

The Respondent's Grounds of Opposition

6. The Respondent filed Grounds of Opposition on 31st November 2024 in reply to the instant application and set out the following grounds:
 1. That the said Application is misconceived, vexatious and an abuse of the Court process.
 2. The Application has been overtaken by events.
 3. The Respondent was not served with a stay order from the Lower Court, and the same was not served on the Land Registrar to stop any registration; thus, contempt can't arise on an order not served.
 4. The Appeal has no chances of success.

The Applicant's written submissions

7. Counsel for the Appellant/Applicant submitted that he has satisfactorily discharged the conditions warranting the grant of stay of execution pending appeal, relying on the authority in *Yakub v. Wesonga* (2024) KEELC 6811 (KLR), in which the Court cited with approval the case of *Butt vs Rent Restriction Tribunal* (1982) KLR 417 the guiding principles of granting stay of execution.
8. Their submission is that the purpose of the application for stay pending appeal is to preserve the subject matter in dispute, and the appeal, if successful, is not rendered nugatory. That an order of inhibition and a revocation of the registration of the suit land in the Respondent's name would preserve the subject matter.
9. The Applicant highlighted that he has put in an application for a stay of the lower court's judgment, but the Respondent failed to respond to the same. He submits that the Respondent has shown disregard for the court's orders and that it would be in the interest of justice to allow the application.

The Respondent's Written Submissions

10. Counsel for the Respondent submitted that the instant application has been overtaken by events, as the judgment and decree of the lower court were to have the documents signed to effect the transfer of the suit land to the Respondent's name, which has already been done. That the Applicant filed this



appeal and an application for stay unbeknownst to the Respondent, and also did not serve the said stay order on the Land Registrar, Nyeri, thus the stay granted by the lower court was not effected.

11. It is further submitted by Counsel for the respondent that this appeal has no chances of success as both parties were heard exhaustively in the lower court and the decision was made by the Learned Magistrate rightly. Thus, the title the Appellant seeks to be revoked has been issued subject to a valid lower court order, preempting the Respondent's right to fair hearing and that the application has been brought after inordinate delay and has no merit, as it is meant to vex the Respondent who has been in possession of the suit land since 1988 as the lower court found.
12. The Respondent thus submits that the application has no merit and should be dismissed with costs.

Analysis and Determination

13. Having considered the instant application dated 18th September 2024, the grounds of opposition and rival submissions, the Court is of the view that the following issues arise for determination:
 1. Whether the Court should grant an order of inhibition against the suit property's title pending the hearing and final determination of the Appeal.
 2. Whether the Court should grant an order for the revocation of the current registration of the suit property pending the hearing and final determination of the Appeal.
14. On the 1st issue, the Applicant has submitted on conditions necessary for the grant of an order of stay of execution. However, these conditions are not applicable in this case as the Applicant seeks orders of inhibition and revocation of the title to the suit property.
15. 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.”
16. In the case of *Peter Kariuki Njue v Severina Njira Kithumbu & another* [2020] eKLR, the court found:

“The purpose of an order of inhibition is to prohibit further dealings with the suit property. The court is thus of the opinion that it has a duty to preserve any property which is the subject of a dispute to prevent the risk of its alienation before the suit is heard and the rights of the parties conclusively determined. That legal duty was recognised in the case of *Shivabhai Patel v Manibhai Patel* [1959] EA 907.
17. The conditions necessary for the grant of an order of inhibition were set out in the case of *Japhet Kaimenyi M'Ndutho vs M'ndatho M'Mbwiria*(2012)eKLR, which are:

“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, alienated or transferred to the detriment of the applicant unless preservative 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 an arguable case.

The court has the power to grant orders of inhibition against a suit land restricting registration of any dealing with suit land for a particular time or until the occurrence of a particular event or generally until further orders."

- 18. In the present case, it is the Court's opinion that any change in the suit property's title, such as sale, lease, charge or subdivision, may be to the detriment of the Appellant's interests and may render the appeal herein nugatory if successful. Thus an order of inhibition would aid in preserving the suit land.
- 19. On the 2nd issue, the Applicant/Appellant seeks an order to revoke the registration of the Defendant as the proprietor of the suit property, LR Nyeri/Island Farm/651 pending hearing and final determination of the Appeal. This registration was carried out on the strength of the judgment and decree of the trial court delivered on 3rd June 2021, dismissing the Appellant's suit and allowing the Respondent's counterclaim. The Respondent claims that he was not served with the orders of stay of execution of the trial court's decree issued on the 3rd of March 2022, thus leading to the transfer being registered.
- 20. Considering all the issues raised, the Court is of the view that issuing an order of revocation of title at this interlocutory stage would be tantamount to deciding the appeal in favour of the Appellant without the same being fully heard and determined. In the circumstances of this case, it would not be in the interests of justice to make such final orders in the interim unless there are special circumstances. In the present case, the court is not persuaded that such circumstances exist. The court thus finds that this prayer is premature.
- 21. In any event, the court is convinced that an order of inhibition is sufficient to preserve the suit property so as not to render the appeal nugatory if it succeeds. The rights of an Appellant must be balanced with the rights of the successful litigant pending appeal. The Learned Judges of Appeal in the case of Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] eKLR held that:

"...a litigant, if successful, should not be deprived of the fruits of a judgment in his favour without just cause."
- 22. The application dated 18th September 2024 partly succeeds in the following terms;
 - 1. An order of inhibition is hereby issued, inhibiting registration of any dealing with LR Nyeri/Island Farm/651 pending the hearing and final determination of the Appeal herein.
 - 2. The Appellant will prosecute the appeal herein within 90 days from the date of this order, in default of which the order herein will lapse automatically.
 - 3. The Appellant is directed to file and serve written submissions on the appeal within 14 days from the date of this order. The Respondent is to file and serve submissions within 14 days from the date of service.
 - 4. This appeal will be mentioned for final directions and a date for judgment on 17th December 2025

DATED, SIGNED AND DELIVERED AT NYERI THIS, 9TH DAY OF OCTOBER 2025.

HON. LADY JUSTICE L.G. KIMANI



JUDGE

In the Presence of:-

C. Kendi: Court Assistant

No attendance for the Appellant/Applicant

Mrs. Wahome for the Respondent

