



**Munene v Mungania & 4 others (Environment & Land Case
81 of 2018) [2024] KEMC 100 (KLR) (13 February 2024) (Ruling)**

Neutral citation: [2024] KEMC 100 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
ENVIRONMENT & LAND CASE 81 OF 2018
AT SITATI, SPM
FEBRUARY 13, 2024**

BETWEEN

JAPHET MUNENE PLAINTIFF

AND

**DOROTHY GAKII MUNGANIA & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4
OTHERS & 4 OTHERS & 4 OTHERS DEFENDANT**

RULING

1. By a Notice of Motion brought under Order 51 rule 1 CPR, sections 1A, 1B and 3A of the *Civil Procedure Act* and section 70 of the *Land Registration Act* and Article 159 of *the Constitution*, the Defendant/Applicant prayed for:
 1. (spent).
 2. That this Honourable Court be pleased to issue an order to remove and/or lift the inhibition order registered against LR./ No. Abothuguchi/Kariene/2183.
 3. That the costs of this application be provided for.
2. The application was supported by the affidavit of Kajuju F. Murithi containing the following grounds:
 - a. The Honourable Court issued its decree on 2nd September, 2021 settling this matter herein.
 - b. That the commencement of this matter in MeruCM ELC No. 674 Of 2010 where an inhibition was issued and registered against L.R. No. Abothuguchi/kariene/2183 before being transferred to this court.
 - c. Now that this matter is settled, it is necessary for this honourable court to issue an order to remove and or lift the inhibition registered against the said land to enable them effectively utilize the same.



- d. It is in the interest of justice that this application be allowed as prayed.
3. Maitai Rimita & Company Advocates represented the applicant. The Defendant/Applicant canvassed the application by way of written submissions dated 19th October, 2023 placing reliance on the annexed authority of *M'rama Mitambo v nkonge Rubara* [2019]eKLR.
 4. The Plaintiff/Respondent opposed the application through written submissions dated 10th November, 2023. The main contention was that the Plaintiff/Respondent had filed a Notice of Appeal No. ELC 074/2021 against the determination arising for the judgment in MERU C. ELC 674 of 2010. Reliance was placed on the authority of *Dorcas Muthoni & 2 Others v Michael Ileri Ngari* [2016]eKLR. Further reliance was placed on *Victoria Wangui Ogada v Mwangi Kibara & 2 Others* [2018]eKLR.

Issue For Determination

5. The only issue for determination is whether the inhibition registered on the title should be vacated or not following the conclusion of MERU CM ELC 674/2010.

Determination

6. From the material placed before this court, it was common to both parties that the sit has bene resolved by way of a judgment. The Plaintiff now opposes the lifting of the inhibition order on the main ground that there is a Notice of Appeal pending against the subject judgement. In this court's considered view, if it be true that the Plaintiff/Respondent is really keen on pursuing the appeal to its logical conclusion, then at the point of filing the appeal, he ought to have applied for the necessary orders to preserve the subject matter since the by filing the appeal, the matter became vested in the jurisdiction of the superior court. The mischief that would arise if the present court was to maintain the inhibition when no substantive appeal has been or will be filed is that the Defendant/Applicant would be prejudiced from enjoying the fruits of the judgment.
7. As was correctly pointed out by the Plaintiff/Applicant's own submissions, the jurisdiction to preserve the subject property lies before the court seized of the main suit i.e. the appellate court. This position is borne out of the cited authority of *Victoria Wangui Oganga* (Supra) where the learned Judge had this to say:

Directions on Proceedings in the Environment and Land Courts and on Proceedings Relating to the Environment and use and Occupation of and Title to Land and Proceedings in other Courts: This court has jurisdiction to order the maintenance of status quo so as to preserve the suit property pending the hearing and determination of the main suit.
8. During the inter-partes hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order for status quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.” (underlining mine)
9. In other words, the jurisdiction to preserve the suit property is properly before the appellate court since the Plaintiff/Appellant is challenging the decision of the trial court at a higher level. This would avoid a multiplicity of proceedings running concurrently before courts of different jurisdictions.
10. Furthermore, the court is satisfied that on the authority of *M'rama Mitambo* (SUPRA) the present application is merited as a natural consequence of the success of the Defendant's case during the



main trial at the Magistrate's court. The same is allowed as prayed and the objection by the Plaintiff/ Respondent is dismissed with costs. Right of appeal is 30days.

DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 13TH DAY OF FEBRUARY, 2024

HON. T. A. SITATI SENIOR PRINCIPAL MAGISTRATE
GITHONGO LAW COURTS

