



**Mbaya v Kadima & another (Environmental and Land Originating Summons
113 of 2019) [2025] KEELC 7454 (KLR) (27 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7454 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 113 OF 2019
A NYUKURI, J
OCTOBER 27, 2025**

BETWEEN

JAMES OMBWAVO MBAYA APPLICANT

AND

MWANZAMBA JOHN KADIMA 1ST RESPONDENT

AGRICULTURAL FINANCE CORPORATION 2ND RESPONDENT

RULING

1. Before court is a notice of motion dated 1st October 2024 filed by the applicant seeking the following orders;
 - a. Spent
 - b. Spent
 - c. This honourable court be pleased to grant inhibitory and temporary injunctive orders restraining the first respondent from dealing with the suit property in any manner pending the hearing and determination of the intended appeal
 - d. The costs of this application be provided for.
2. The application is anchored on the affidavit of the applicant sworn on 1st October 2024. The applicant's case is that this court dismissed his case in its judgment delivered on 19th September 2024 and that the respondent has threatened to evict his sister who is residing on the suit property. That he has since filed appeal which raised arguable grounds. That the intended appeal may be rendered nugatory if an inhibition and injunction are not granted and that granting the orders sought will not cause hardship to the 1st respondent as he has never been in occupation of the suit property. That the applicant has a house, sugarcane and installed electricity on the suit property. He attached a photograph and copies of the notice of appeal and letter seeking supply of proceedings.



3. The application was opposed. The 1st respondent filed replying affidavit sworn on 14th October 2024. The respondent stated that the application was premised on falsehoods. That the court is now functus officio and cannot entertain production of new evidence. He denied issuing threats to evict the applicant and stated that the house shown by the applicant was built by his father and not the applicant and that the applicant does not live on the suit property. That during hearing, the applicant alleged that he was the one in possession but has now changed the narrative that it is his sister in occupation hence he should not be believed because he is not truthful. That the applicant was merely speculative and that the suit property is registered in his name.
4. The application was disposed by way of written submissions. On record are submissions filed by the applicant dated 10th February 2025 and those of the respondent dated 21st March 2025; both of which the court has duly considered.

Analysis and determination

5. The court has carefully considered the application, response thereto and the parties' written submissions. The single issue that arise for determination is whether the applicant deserves orders of inhibition and temporary injunction pending hearing and determination of his intended appeal to the Court of Appeal.
6. An inhibition is an order prohibiting for the time being, the registration of dealings on a title and therefore, it is an order in the nature of an injunction.
7. Section 68 of the [Land Registration Act](#) provides for the power of the court to grant inhibition as follows;

“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.”

8. The power of this court to grant injunction is provided for in Order 40 Rule 1 and Order 42 Rule 6 (7) of the Civil Procedure Rules.

Order 40 Rule 1 of the Civil Procedure Rules provides that;

Cases in which temporary injunction may be granted [Order 40, rule 1]

Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

Order 42 Rule 6 (7) of the Civil Procedure Rules provides that;

Stay in case of appeal [Order 42, rule 6]



- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
- (2) No order for stay of execution shall be made under subrule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
3.
4.
5.

Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

9. Essentially, this court has jurisdiction to grant injunction while exercising its original jurisdiction in a case where the suit is yet to be heard; and also, while exercising its appellate jurisdiction in regard to a decision from the subordinate court, before the appeal is heard. After making a determination on merit whether exercising original or appellate jurisdiction, it has no power to grant an injunction pending determination of an appeal to the court of appeal. There is no provision granting power to this court to grant an injunction pending hearing of an appeal to the Court of Appeal. The only intervention this court can make in regard to an appeal from this court to the Court of Appeal, is the grant of stay of execution pending appeal to the Court of Appeal, but it cannot grant an injunction. Stay pending appeal and temporary injunction pending appeal are two different orders.
10. Principles for grant of temporary injunction are well settled. The applicant must demonstrate prima facie case, irreparable loss and show that the balance of convenience tilts in favour of granting an injunction. (See *Giella v Cassman Brown* [1973] EA 358)
11. In the instant matter, this court has already determined the issues, disposed the suit herein and pronounced itself on the rights of the parties as expressed in its judgment delivered on 19th September 2024. The crux of the same being that the applicant failed to prove his claim of adverse possession. Therefore, this court having determined the rights of parties substantively and conclusively upon hearing parties on merit, cannot revert to the issue of whether or not the applicant has a prima facie case. It is the Court of Appeal that can determine if the appeal raises triable issues with chances of success and not this court.



12. In the premises, I find and hold that this court has no jurisdiction to grant inhibition and injunction pending hearing and determination of the appeal at the Court of Appeal. Therefore, I hereby dismiss the application dated 1st October 2024 with costs.

13. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 27TH DAY OF OCTOBER 2025

A. NYUKURI

JUDGE

In the presence of;

Mr. Osango for the 1st respondent

No appearance for the applicant

No appearance for the 2nd respondent

Court Assistant- Delphine

