



**Kiura (Suing as the Administrator to the Estate of Kiura Rubutho (Deceased)) v Munyi
(Environment and Land Case E001 of 2024) [2025] KEELC 5732 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5732 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE E001 OF 2024**

**A KANIARU, J
JULY 30, 2025**

BETWEEN

**LUCY MUTHONI KIURA PLAINTIFF
SUING AS THE ADMINISTRATOR TO THE ESTATE OF KIURA RUBUTHO
(DECEASED)**

AND

ANSELIMO B NJIRU MUNYI DEFENDANT

RULING

1. Before me for determination is a motion on notice dated 30/1/2024 and filed in court on 31/1/2024. The applicant - Lucy Muthoni Kiura – is the plaintiff in the suit herein while the respondent – Anselimo B. Njiru Munyi – is the defendant. The dispute between the parties is essentially about ownership of land parcels No's. Mbeere/Kirima/1709 and Mbeere/Kirima/1710 with the defendant said to be registered as owner of both while in truth or actual fact, his land is parcel No. 1709 while parcel No. 1710 belongs to the applicant's deceased father – Kiura Rubutho.
2. The application before the court is about placing an order of inhibition on the parcels number No. 1710 as the respondent allegedly intends to dispose of it. According to the applicant, the order is meant to preserve the land as the outcome in the suit filed might be rendered nugatory if the land is disposed of.
3. The respondent first responded to the application via grounds of opposition dated 19/2/2024 and filed on 21/2/2024. In the grounds of opposition, the application was said to be incompetent, bad in law, an abuse of the court process, and lacking in merit. Later on, a replying affidavit was filed on 30/4/2024. In the replying affidavit, the respondent deposed, inter alia, that he bought land parcel No. 1710 from Alfred Nyagah Ngari and the applicant's late father was actually a witness to the sale. After purchase, the respondent was issued with a title. It is stated that there was some bit of a mix up on the ground with the respondent in this application occupying parcel No. 1709 instead of parcel No. 1710 while



- the applicant's late father occupied parcel No. 1710. The respondent stated that he approached the applicant's late father with a view to correcting the situation and the applicant's father agreed to move to parcel No. 1709. The applicant himself moved his family to parcel No. 1710 but the applicant's late father, who lived alone, was not keen on moving to parcel No. 1709. The father was allegedly requested several times to move but he refused and eventually opted to sell Parcel No. 1709 to the respondent.
4. Both then entered into an agreement of sale and the applicant's own brothers – Salesio Rubutho And Justin Ngari – were said to be witnesses to the sale. On 15/10/2008, the respondent became registered owner of parcel No. 1709. Later on, the applicant's late father died and was buried on parcel No. 1710 with the respondent's consent. The applicant's claim was therefore said to be malicious and baseless.
 5. The applicant filed a further affidavit dated 4/11/2024. She said the respondent was lying; that her late father was the original owner of Parcel No. 1710 having been awarded the same by the clan; that he was living on it for over 10 years prior to his death; that there has never been an agreement of sale as alleged. And that the issue has not been occupation of the land on the ground but rather a mix-up in registration regarding ownership.
 6. The application was canvassed by way of written submissions. The applicant's submissions are dated 13/11/2024. The applicant cited Section 68 of the *Land Registration Act*, which is the statutory provision providing for issuance of an order of inhibition. She then pointed out that her aim in asking for the order is to preserve the land and ensure that it is not alienated. She expressed her fears that if alienation takes place, that will defeat justice if she turns out to be successful in the case. The case of *Japheth Kaimenyi M'Ndatho v M'Ndatho M'mbwiria* [2012] eKLR was cited. In the case, it was held inter alia, that for an applicant to get an order of inhibition, the following needs to be demonstrated:
 - a. That the suit property is at risk of being disposed of or 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.
 7. The applicant was said to have met all the above requirements. The court was urged to grant the orders.
 8. The respondent's submissions are dated 13/11/2024. The respondent submitted that the applicant's late father never owned parcel No. 1710 and that he sold to the respondent land parcel No. 1709 which he owned. The applicant's claim was said to be misplaced.
 9. The case of *Gitau v Muboro & 3 Others; Mui (intended interested party)* (Environment and Land Case No. E010 of 2021) [2022] KEELC 15539 (KLR) (20th December 2022) (Ruling) was cited and quoted as deemed relevant and/or appropriate. The court was ultimately urged to dismiss the application.
 10. I have had a look into the case as filed, the application now under consideration, the responses made to it, the applicant's further affidavit, and the rival submissions filed by both learned counsel for the parties. The applicant has brought the suit as the administratrix of the estate of her late father – Kiura Rubutho. The starting point for the court where a party states to be representing a deceased person is to see the kind of grant that such party has from Probate and Administration Court. None was made available in this matter and that was a serious omission by the applicant. The next consideration, if the first impediment had been removed, would have been consideration as to whether the necessary threshold for grant of an order of inhibition has been met.
 11. In this regard, *Japheth Kaimenyi's case* (*supra*) is, or should be, instructive. The first requirement is that the disputed property has to be shown to be at risk of being alienated. My understanding is that the risk



of alienation has to be actual, very real, and imminent as opposed to one that is merely apprehended or merely possibly thought likely to take place. The applicant in this matter has not shown that the respondent is intending or planning to sell the disputed land. She needed to demonstrate the basis of her concern that the land is going to be alienated. It needed to be shown that it is more likely than unlikely that the land is going to be sold.

12. This first requirement is the most crucial in my view. And I think the threshold set has to be demonstrated in conjunctive rather than disjunctive terms. This means that all the conditions have to be met. Where there is no confluence of intentions in demonstration of the threshold, the order of inhibition should not issue in my view. The applicant has failed to demonstrate the very first requirement. I need not consider the others in the circumstances.
13. My considered view is that the merits of the application before me have not been demonstrated. I therefore dismiss the application with cost to the respondent.

RULING DATED, SIGNED AND DELIVERED ONLINE AT KITUI THIS 30TH DAY OF JULY, 2025.

A. KANIARU

JUDGE- ENVIRONMENT & LAND COURT, KITUI

In the presence of;

Ms. Kiragu for Defendant/Respondent

Andade for Plaintiff/Applicant – absent

Plaintiff/Applicant – absent

Respondent - absent

