

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ELC (OS) NO. E004 OF 2024

**IN THE MATTER OF LAND PARCEL NO. SOUTH
MARAGOLI/MASANA/1568 (Hereinafter referred to as the Property)**

AND

**IN THE MATTER OF INHIBITION ORDERS OVER THE PROPERTY
HEREIN ABOVE MENTIONED**

BETWEEN

NEVILLE OTIENO ODALO WATTANGA.....APPLICANT/PLAINTIFF

AND

DAVID AYIEKO.....RESPONDENT/DEFENDANT

JUDGEMENT

Neville Otieno Odalo Wattanga, the applicant herein, approached the court vide the Originating Summons dated 9th December 2024 praying that the court may determine the following question.

- 1) Whether an order of inhibition should issue and be registered against the Title to land Parcel No. SOUTH MARAGOLI/MASANA/1568 to inhibit the transfer, pledge, charge or any dealing therewith adverse to the interest of the plaintiff until the Defendant completes his part of the bargain as the seller to the plaintiff in an agreement for the sale of land parcel No. KISUMU/BAR/1101 pursuant to the agreement entered between them on the 4th August 2023 and further confirmed on the 4th October 2023.

The plaintiff claims to be an equitable mortgagee/pledgee over land parcel No. SOUTH MARAGOLI/MASANA/1568, (the suit land)

The grounds upon which the Originating Summons was brought are that the plaintiff and the defendant have a binding contract for the sale of land parcel No. KISUMU/BAR/1101, that there is in court a claim over the same parcel of land by Third Parties alleging purchaser's interest, that the applicant and the respondent have thus agreed to have the plaintiff hold the original title deed to land parcel No. SOUTH MARAGOLI/MASANA/1568 belonging to the respondent as security for any eventual loss that the plaintiff may suffer arising from the pending case, that the applicant has come to court with clean hands, that the material facts prevailing are known to both parties, that if the application is not allowed, the respondent will frustrate the terms of the obligation between them, that it is necessary that an order of inhabitation be registered against title No. KISUMU/BAR/1101 in order to preserve its status as security as stated in No. 3 above.

The Originating Summons was supported by the contents of the Supporting Affidavit sworn by the applicant on 9th December 2024.

No response was filed to the Originating Summons. Affidavit of Service sworn by Juliet Akinyi Dima Advocate on 11th February 2025 indicates that the respondent was personally served with the Originating Summons and other accompanying documents on 13th December 2024.

The matter therefore proceeded *ex parte* and was disposed of by way of viva voce evidence.

The evidence

The applicant testified as PW1. He adopted the contents of his witness statement dated 9th December 2024 as his evidence. He had stated in the witness statement that he had purchased land parcel known as KISUMU/BAR/1101 from the respondent at an agreed consideration of Ksh 3,100,000/- which he had paid in full

by an agreement dated 4th August, 2023. That at the time of the agreement there was no encumbrances over the land. That since the date of purchase he has been in possession of the property which he had fenced all round and erected a structure thereon and put the property under guard.

That sometimes in the month of September 2024 he learnt that there were two people who had sued the respondent claiming to have similarly bought the same parcel of land from the respondent. That having paid the agreed consideration within the agreed period, he believes he has superior and better equity over the said property.

That he had applied to be joined as a party in the suit and has also agreed with the respondent that he (applicant) should hold the respondent's title deed for the defendant's property SOUTH MARAGOLI/MASANA/1568 as security for any possible loss that he may suffer from the court case.

PW1 produced a copy of his identity card, sale agreement dated 4th August, 2023, copy of plaint filed in Maseno E028 of 2024, copy of Chamber Summons dated 5th November 2024, copy of draft defence dated 15th November 2024 and copy of title deed for SOUTH MARAGOLI/MASANA/1568 as exhibits.

Submissions

Written submission dated 15th July 2025 were filed on behalf of the applicant by the firm of Juliet Dima & Associates Advocates. Counsel submitted that Section 68 of the Land Registration Act, 2012 grants the court the power to inhibit registered dealings with land. That the principles applicable to grant of an order of inhibition are the same as those applicable for grant of an order of temporary injunction. Counsel relied on the cases of *Dorcas Muthoni & 2 Others Vs Michael Ireri Ngari*

(2016) eKLR and Japhet Kaimenyi M’Ndatho Vs M’Ndatho M’Mbwiria (2012) eKLR to support the submission.

Counsel urged the court to uphold the principle of the lower risk of injustice as in the case of Films Rover International & others Vs Cannon Films Sales Ltd (1986) 3 All ER 772 and the case of Alice Karuri Kithinji Vs Gideon Kithinji Limberia (1997) eKLR.

Determination

I have considered the pleadings, evidence and submissions herein. The substantive relief sought is for an order of inhibition preventing registration of transactions on land parcel No, SOUTH MARAGOLI/MASANA/1568 pending the determination of the suit in relation to L.R NO. KISUMU/BAR/1101.

The grounds for issue of an order of inhibition as submitted on behalf of the applicant are similar to grounds for grant of an interlocutory injunction. A prohibition is an order that protects the status quo of the register in respect of the subject land pending the occurrence of an event or for a specified period. In the case of Dorcas Muthoni & 2 Others vs Michael Ileri Ngari (2016) e KLR, the Court held that: -

“An order of inhibition issued under Section 68 of the Land Registration Act is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit in which the said property is a subject is disposed of. The court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an

interlocutory injunction, such an order preserves the property in dispute pending trial.”

The applicant has demonstrated that he is holding the title deed in respect of the suit land pursuant to an agreement/understanding with the respondent. He produced a copy of the title deed as exhibit in the case. He explained the circumstances that led to him having possession of the said title deed.

The sole purpose of the order sought is to secure the applicant’s interest pending the determination of the suit.

I find that the application has merit and hereby allow it. The question placed before court is therefore hereby determined in the affirmative as follows; -

- i) An order of inhabitation is hereby granted inhibiting registration of any transactions on the register for L.R No. SOUTH MARAGOLI/MASANA/1568 pending hearing and determination of Maseno MELC No. E028 of 2024 relating to LR NO. KISUMU/BAR/1101.
- ii) No order as to costs.

Orders accordingly.

**JUDGEMENT DATED AT VIHIGA AND DELIVERED VIRTUALLY
THIS 11TH DAY OF DECEMBER, 2025.**

**E. ASATI,
JUDGE**

In the Presence of;-

Patricia- CA

Atieno for the applicant.