



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT

NAIROBI

ELC. CASE NO.E398 OF 2025

**JOSEPH GITAU KIBUCHI.....
.....PLAINTIFF/APPLICANT**

VERSUS

**JOY WANJIRU
KIANO.....DEFENDANT/RESPONDENT**

RULING

1. Before me for determination is the Notice of Motion dated 8th August 2025, brought under Order 40, Rules 1 and 2 of the Civil Procedure Rules, Section 68 of the Land Registration Act, Article 159 (2) (a) and (d) of the Constitution; and Sections 1A, 1B, and 3A of the Civil Procedure Act in which the Applicant seeks the following orders:

- i) *Spent.***
- ii) *THAT pending the hearing and***

determination of this application and the main suit, an order of inhibition be placed over Muhugu House Unit No. 3 (I.R 276070/1), Forest Edge Gardens, erected on Land Reference No 27626, Nairobi.

iii) THAT pending the hearing and determination of this application and the main suit, a temporary injunction be granted restraining the Defendant/Respondent, whether by herself or by her agents, servants, or any person acting under her instructions, from selling, transferring, charging, spying, or otherwise dealing with the property known as Muhugu House Unit No. 3 (I.R 276070/1), Forest Edge Gardens, erected on Land Reference No. 27626.

iv) THAT pending the hearing and determination of this application and the main suit, a temporary injunction be granted restraining the Defendant/Respondent, whether by herself or by her agents, servants, or any person acting under her instructions, from modifying, amending, altering, or otherwise deviating from the terms of the agreement for sale

dated September 5, 2024.

- v) ***THAT pending the hearing and determination of this application and the main suit, a temporary injunction be granted restraining the Defendant/Respondent, either by herself or by her agents, servants, or any person acting under her instructions, from spying on the property and interfering with his right and that of his young family to quiet possession.***
- vi) ***THAT the costs of the application be in the cause.***

2. The application is premised on the grounds appearing on its face together with the Supporting Affidavit of Joseph Gitau Kibuchi, sworn on even date.

THE APPLICANT'S CASE

3. The deponent averred that he purchased the suit property from the Defendant for Kshs 70,000,000/=, vide a sale agreement dated 5th September 2024. He further averred that he complied with his obligations under the sale agreement by paying the initial and subsequent deposits,

making monthly payments, and taking possession of the property.

4. He explained that he conducted a joint inspection of the suit property before taking possession and noted that it was in deplorable condition, requiring significant repairs to make it habitable. He stated that the Defendant's agent had, prior to the signing of the agreement, informed him that the property was sold as is, a condition incorporated into the sale agreement. He further averred that he made repairs to the suit property pursuant to Clause 5.4 of the sale agreement at a cost of Kshs 5,000,000/=.
5. On 24th April 2025, the Respondent dispatched a different agent who was unaware of the property's status at the time of sale. The agent subsequently prepared a report dated 18th June 2025 that exceeded the scope of the inspection by raising legal questions about the interpretation of the sale agreement and by citing him for an alleged breach of that agreement.
6. He asserted that the Inspection Report proposed new terms,

including a new payment plan and a restriction on future modifications, intended to alter the payment plan and coerce him into an early payment of the purchase price, thereby frustrating the sale agreement. He explained that he had observed third parties visiting the property, raising concerns that the Respondent is maliciously negotiating the sale of the property to third parties in breach of the sale agreement.

7. He maintained that the Respondents' actions have interfered with his quiet possession of the property, as she keeps sending strangers posing as agents to spy on the property, thereby infringing his right to privacy.
8. The deponent is apprehensive that, unless an injunction is issued, the Respondent may alienate the suit property, thereby causing him irreparable harm.

THE RESPONDENT'S CASE

9. The Respondent filed a replying affidavit dated 1st September 2025 in opposition to the application.
10. She deposed that Ms. Catherine Kinyua was not a stranger, as she had been formally introduced and her identity shared with the Applicant. She argued that the

Report was a proposal for consideration and did not alter the terms of the sale agreement between the parties. She denied sending third parties to spy on the suit property and added that the assertion that the Applicant had spent Kshs 5,000,000/= on repairs was unfounded, as there are no receipts to support it. She explained that the Applicant felled some trees and reconstructed the driveway, among other permanent and irreversible alterations, without her consent, which culminated in the request for inspection. She maintained that the Applicant has not adduced evidence of coercion or frustration of the sale agreement to warrant the grant of the orders sought.

11. In conclusion, she urged the court to dismiss the application with costs.
12. The application was canvassed by way of written submissions

THE PLAINTIFF'S SUBMISSIONS

13. The Plaintiff filed his submissions dated 22nd October 2025.
14. On behalf of the Plaintiff, Counsel outlined the following

issues for the court's determination:

a) Whether the Plaintiff/Applicant has satisfied the established principles for granting the injunctive relief sought

b) Whether this court should grant an inhibition/caveat order over the property;

c) Who should bear the costs of the application?

15. Regarding the first issue, Counsel submitted that the Applicant has established a prima facie case by showing a sale agreement between the parties, payment of the initial deposit, and possession of the property. It was further submitted that the Applicant's equitable interest in the suit property is protected under Section 54 of the Land Registration Act, which recognizes interests arising from sale agreements. To support this point, reliance was placed on the case of **Moge v Nyamwange & another (2014) eKLR**. Counsel argued that the Respondents' actions, including sending Ms. Catherine Kinyua to inspect the property and proposing unilateral changes to the sale agreement, constitute a breach of the sale agreement and an attempt to

undermine the Applicant's equitable interest.

16. Counsel further submitted that the Applicant lives with his family on the suit property, has spent Kshs 5,000,000/= on repairs and maintenance, and that an award of damages cannot compensate for the irreparable harm that would result if an injunction is not granted.

17. Counsel submitted that the balance of convenience favors the Applicant, as he is in possession of the suit property and has fulfilled all payment obligations under the sale agreement.

THE DEFENDANT'S SUBMISSIONS

18. The Defendant filed her submissions dated 8th November 2025.

19. On behalf of the Defendant, Counsel identified the following issues for the court's determination:

a) Whether the Plaintiff has met the threshold for granting injunctive orders.

b) Whether the Court should grant an inhibition or a caveat over the property

c) Whether costs should be awarded.

20. Regarding the first issue, Counsel submitted that an equitable interest arising from a sale agreement is subject to the contract's terms. It was further submitted that the Defendant is the registered proprietor of the suit property until the transfer is completed. Counsel argued that the Plaintiff lacks any legal or registrable interest in the suit property as he has not completed payment and therefore cannot claim ownership under the express terms of the sale agreement.
21. It was submitted that the Plaintiff's conduct disqualifies him from obtaining the equitable remedies sought because he undertook substantial and irreversible work on the property without a license or consent. To support this argument, reliance was placed on the case of **Thathey v Middle East Bank (K) Ltd & another (2002) KEHC 1159 (KLR)**.
22. Counsel further submitted that the Defendant's proposals for consideration do not constitute binding variations without mutual consent. To support this point, reliance was placed on the case of **Pius Kimaiyo Langat v**

Co-operative Bank of Kenya Limited (2017) KECA 152 (KLR).

23. Counsel further argued that the Plaintiff's claim of spying is unfounded and intended to provoke strong emotions, given that the agent was officially introduced to the Plaintiff and visited the property only once.
24. Regarding the second condition, Counsel submitted that the Plaintiff has not demonstrated that he would suffer irreparable harm because he has not attached the receipts for the repairs. It was further submitted that the improvements were undertaken voluntarily, even though completion had not occurred.
25. Counsel argued that the Plaintiff's claim of residing on the suit property with his family cannot convert a financial interest into an irreparable injury.
26. On balance of convenience, Counsel submitted that the Defendant is the legal and registered owner of the property and that the injunction would prevent her from dealing with the suit property. It was further argued that the Plaintiff would not suffer any harm if the orders sought were denied.

27. Regarding the second issue, Counsel cited the case of **Rosemary Wanjiu Njagi v Nance Munjiru Ngige (2013)** **eKLR** to outline the conditions for granting an order of inhibition. Counsel argued that such relief was unjustified in the present case.
28. In conclusion, Counsel urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

29. Having considered the application, the respective affidavits, and the rival submissions, the following issues are for determination:
- a. Whether the Applicant has satisfied the conditions for the grant of an injunction;*
 - b. Whether an order of inhibition should issue.*
30. The principles applicable to an application for an injunction were set out in the celebrated case of **Giella vs Cassman Brown & Co Ltd 1973 EA 358** as follows:
- i) First, the Applicant must show a prima facie case with a probability of success.***
 - ii) Secondly, an interlocutory injunction***

will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.

iii) *Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.*

31. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success.

32. A *prima facie* case was defined by the Court of Appeal in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR** as follows:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

33. It is common ground that the parties entered into a sale agreement for the suit property and that the Applicant paid a deposit under that agreement. Although ownership does not pass until the transfer is effected, the Applicant's interest under a valid sale agreement is a recognized equitable interest that the court can protect. In **Willy Kimutai Kitilit v. Micheal Kibet (2018) eKLR**, the Court of Appeal recognized that equity will enforce the rights of a purchaser in possession even where legal title has not passed.

34. The Applicant has raised arguable questions regarding

whether the inspection report influenced the modification of the repayment plans without mutual consent.

35. Whether the inspection report has the effect of varying the repayment plan must be fully canvassed at trial by calling evidence and subjecting it to cross-examination. At this stage, the court is not required to determine the issues that will be canvassed at trial. The court is aware that at the interlocutory stage, it is not required to make any definitive conclusion on the matters in controversy.

36. In the case of **Mbuthia vs Jimba Credit Corporation Ltd [1988] KLR**, the Court held that:

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law, and the court should only weigh the relative strength of the parties' cases.”

37. Similarly, in **Edwin Kamau Muniu -vs- Barclays Bank of Kenya Ltd, NBI HCCC No.1118 of 2002**, the Court held that:

“In an interlocutory application, the court is not required to determine the very issues which will be canvassed at the trial with finality. All the court is entitled to at this stage is whether the Applicant is entitled to an injunction sought on the usual criteria.”

38. Based on the material on record, I find that the Plaintiff/Applicant has established a prima facie case with a probability of success.

39. Regarding whether the Applicant will suffer irreparable harm that cannot be adequately compensated by an award of damages, the Applicant must show that the harm cannot be quantified in monetary terms or remedied.

40. The Court of Appeal in **Nguruman Limited -vs- Bonde Nielsen & 2 Others [2014] eKLR** held that:

“On the second factor, the Applicant must establish that he might otherwise suffer irreparable injury which cannot be

adequately remedied by damages in the absence of an injunction, which is a threshold requirement, and the burden is on the Applicant to demonstrate prima facie the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is, injury that is actual, substantial, and demonstrable; injury that cannot adequately be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy, or the injury or harm is such a nature that monetary compensation of whatever amount will never be an adequate remedy.”

41.The Applicant’s claim that the suit property may be

transferred to third parties is not baseless. If the suit property is transferred before the dispute is determined, the Applicant's equitable interest may be defeated, thereby rendering the suit nugatory. This court is convinced that the Applicant will suffer irreparable harm that cannot be compensated by damages if the suit property is transferred to third parties.

42. On balance of convenience, the court must weigh the hardship the Applicant would bear if the injunction is denied against the hardship the Respondent would bear if the injunction is granted.

43. In the case of **Virginia Edith Wambui -vs- Joash Ochieng Ougo, Civil Appeal No. 3 of 1987 eKLR**, the Court of Appeal held that:

“The general principle which has been applied by this court is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided on a trial.”

44. Having considered the evidence presented by the parties, I find that the balance of convenience favours maintaining

the status quo pending the hearing and determination of this suit.

45.Regarding the second issue, Section 68(1) of the Land Registration Act authorizes the court to restrict the registration of any dealings until a specified event occurs or the dispute is resolved.

46.In **Githu v Ndungu (1984) KLR**, the court held that an inhibition is intended to preserve property and prevent dealings that could defeat the ends of justice pending the resolution of a dispute.

47.Based on the evidence presented before me, I find that the Applicant has met the threshold for the grant of an order of inhibition and a temporary injunction.

48.The upshot of the foregoing is that the application dated 8th August, 2025, is allowed in the following terms:

a) An order of inhibition is hereby issued inhibiting any transfer, sale, charge, lease, or other dealings in respect of Muhugu House Unit No. 3 (I.R 276070/1) Forest Edge Gardens erected on L.R. No. 27626

pending the hearing and determination of this suit.

b) A temporary injunction is hereby issued restraining the Defendant, whether by herself or by her agents, servants, or any person acting under her instructions, from selling, transferring, charging, spying, or otherwise dealing with the property known as Muhugu House Unit No. 3 (I.R 276070/1), Forest Edge Gardens, erected on L.R. No. 27626, pending the hearing and determination of this suit.

c) The Applicant is awarded the costs of the application

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF JANUARY, 2026.

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T. MURIGI
JUDGE

IN THE PRESENCE OF:

Ms Mwiti holding brief for Miriam Kimiondiou for the Plaintiff

Ms Kiiru for the Defendant.

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