



**Kubai v Karimi (Sued as the administratrix of the Estate of Late
Justus M’Murithi M’Mbagiri) & 3 others (Environment & Land Case
149 of 2012) [2024] KEELC 3646 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 3646 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 149 OF 2012
CK YANO, J
JANUARY 18, 2024**

BETWEEN

JAMES TAITUMU KUBAI PLAINTIFF

AND

**JEMA KARIMI (SUED AS THE ADMINISTRATRIX OF THE ESTATE OF LATE
JUSTUS M’MURITHI M’MBAGIRI) 1ST DEFENDANT**

JOYCE KANANA MURITHI 2ND DEFENDANT

JENADIS NKATHA MURITHI 3RD DEFENDANT

FAITH WANJA MURITHI 4TH DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion application dated 18th September, 2023. The said application is supported by an affidavit sworn by Jema Karimi on the same date.
2. The application is brought under Section 70 of the *Land Registration Act*, 2012, Order 51 Rule 1 of the *Civil Procedure Rules*, and Section 3A of the *Civil Procedure Act*. The defendants/applicants are seeking the lifting of all inhibitions, restrictions and/or cautions lodged against LR. No. Ntima/igoki/1227.
3. In his supporting affidavit, the 1st applicant contends that the suit land was the subject of this suit and inhibition orders were placed on it pending hearing and determination of the suit. The 1st applicant further contends that the suit was finalized on 12th July, 2023 wherein the court dismissed the plaintiffs suit with costs to the defendants. The applicants now wish to have the inhibition order lifted as the suit has been determined and no longer serving any purpose. The 1st applicant states that the defendant are



now desirous of freely dealing with their land. A copy of the Certificate of Official Search showing the inhibition order registered on 16th July, 2020 and marked “JKI” has been annexed.

4. The plaintiff/respondent opposed the application and filed a replying affidavit sworn by James Taitumu Kubai on 3rd October, 2023 and a further replying affidavit on 31st October, 2023. In the said replying affidavit, the respondent deponed that he was aggrieved by the Judgment of this court and that he has preferred an Appeal. The respondent also stated that he has moved the court of Appeal under Rule 5(2) (d) of the [court of Appeal Rules](#) and Section 68 of the [Land Registration Act](#). The respondent has annexed a copy of the said application marked “JKT3” in which he is seeking an order of injunction and in the alternative an inhibition to be placed on the suit land pending the hearing and determination of the intended appeal. The respondent states *inter alia*, that he needs the suit land to be preserved as he pursues the appeal. It is also his contention that the application has been made in bad faith, adding that if the application is allowed he shall suffer substantial loss as the substance of the intended appeal shall be lost.
5. The application was canvassed by way of written submissions. The defendants/applicants filed their submissions dated 6th October, 2023 by Mithega & Kariuki Advocates while the respondent filed his dated 10th November, 2023 through the firm of Muia Mwanzia & Company Advocates.
6. I have considered the application, the response and the submissions filed. I have also considered the applicable law.
7. It is not in dispute that pursuant to orders of court dated 15th July, 2020 an inhibition was registered on 16th July, 2020 against the suit property. The inhibition stated that “No dealings until hearing and determination of ELC Case No. 149/2012”. It is also not in dispute that this court delivered a judgment in this case on 12th July, 2023 dismissing the respondent’s suit with costs to the applicants. Therefore, the said judgment was in favour of the applicants herein. The intention of the court was to inhibit any transaction on the suit parcel of land until the hearing and final determination of the case. That came to pass when this court delivered its judgment on 12th July, 2023. There is no application before this court made by the respondent for stay of the Judgment and decree issued on 12th July, 2023. The application before me is to lift the inhibition orders issued by this court pending the hearing and determination of this suit. Now that the event has eventually come to pass, the inhibition orders are spent and are no longer serving the purpose for which it was issued. Upon the determination of the suit by this court, the consequences is that the inhibition orders became spent. I note that the respondent has stated he has preferred an appeal and has already filed an application seeking similar orders in the Court of Appeal. The respondent is therefore at liberty to pursue the said application before the Court of Appeal.

In my considered view there is nothing stopping this court from considering the application herein which seeks to lift inhibition orders issued by the court pending the hearing and determination of the suit as there are no orders of stay of execution in place. In view of the fact that there is nothing pending before this court, I think it is only fair and just that the successful litigants enjoy the fruits of their Judgment.

8. In the result, I allow the application dated 18th September, 2023 as prayed.
9. It is so ordered.

Dated, signed and delivered at MERU this 18th day of January, 2024

Hon. C. Yano

ELC – Judge



In the presence of:-

Court Assistant - Kiragu

Ms Gitari for defendants/applicants

Mrs Muia for plaintiff/respondent

Hon. C. Yano

ELC – Judge

