



Ireri & 8 others v Munyi & 50 others (Environment & Land Case E028 of 2022) [2024] KEELC 181 (KLR) (17 January 2024) (Ruling)

Neutral citation: [2024] KEELC 181 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE E028 OF 2022
A KANIARU, J
JANUARY 17, 2024**

BETWEEN

JOB IRERI & 8 OTHERS PLAINTIFF

AND

MWANIKI MUNYI & 50 OTHERS DEFENDANT

RULING

1. This ruling relates to a Notice of Motion dated 24.01.2023 and filed on 31.01.2023 brought under a Certificate of Urgency. It is expressed to be brought under Section 1A, 1B and 3A of the [Civil Procedure Act](#), Order 40 Rules 1 of the [Civil Procedures Rules](#) and Sections 68 (1) of the [Land Registration Act](#). The Applicants – Job Ireri & 8 Others – are the plaintiffs in the suit while the Respondents – Mwaniki Munyi & 50 Others – are the defendants. The notice of motion came with four (4) prayers but prayers (1) and (2) are now moot, having been meant for consideration at the exparte stage. The prayers for consideration are therefore (3) and (4) and they are as follows:

Prayer (3): That this Honourable Court be pleased to issue an order of inhibition to be registered against Tittle NO. Mbatu/Gachuriri/2672, 2673, 2674, 2675, 2676, 2678, 2679, 5242, 5243, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 3525, 3526, 2691, 2692, 2693, 2694, 4509, 4510, 2696, 2697, 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2725, 2726, 2727, 2852, 3752, 3748, 2852, 3751, 3753, 4509, 5495, 5496, 3575, 3592 and 4510 pending the hearing and determination of the main suit.

Prayer (4): That the costs of this application be borne by the Defendants/Respondents.

2. The application is premised on the grounds on the face of it and on the Supporting Affidavit by the Applicants sworn on 24.01.2023 interalia; that the Applicants are members of mbandi clan and were to be beneficiaries of clan lands mbatu/gachuriri/250, 256 and 257; that vide court orders issued in



kerugoya misc appl 74 of 2013 and embu h.c.c.c 97 of 2005, the suit lands were to be registered in the name of the 1st respondent - mwaniki munyi - to hold the same in trust for mbandi' clan; that in breach of his fiduciary duty, the said trustee subdivided and subsequently transferred the resultant sub divisions of the suit lands to strangers and/or 3rd parties to the detriment of the Applicants; that upon institution of the suit herein, the Applicants have learnt that majority of the Respondents are in the process of selling their respective parcels of land to 3rd parties in a bid to defeat their suit; that it is imperative that this court orders that the suit lands be preserved until determination of the suit since the same is in danger of being wasted, damaged and or alienated by the Respondents.

3. The application was responded to vide a replying affidavit sworn on 20.04.2023 and filed on 02.05.2023. it was sworn by one mwaniki munyi, the 1st respondent herein. he deposed interalia, that while it's true the suit lands were adjudged to belong to members of mbandi clan, the same were to be divided among the members of the clan with the consent and input of all members of the said clan and under the supervision of the local area administration; that pursuant to various meetings held, the members of the clan came to a consensus on the mode of distribution of the said properties as well as the conditions every person who wished to be allocated a piece of the property had to comply with; that the Applicants refused to comply with the terms of distribution that the entire clan had agreed on and that they cannot claim to have been denied any proprietary right to the suit lands when the problem was occasioned by their wrong doings. They admit that some of the properties that were subdivided and distributed to members of the clan have been subsequently sold to third parties and as such, the orders sought cannot issue as the same would amount to interfering with the rights of third parties who are not party to the suit and who stand to be condemned unheard contrary to the rules of natural justice; that the Applicants have not satisfied the requirements to be granted the interim reliefs sought; and that the fact that the Applicants are not content with the mode of distribution as adopted by the clan is not itself evidence of irregularity or illegality. They pray that the application be dismissed.
4. The application was canvassed through written submissions. The applicant's submissions were filed on 31.05.2023. They submitted that they have satisfied the requirements for the orders they are seeking as set out in the case of *Giella v Cassman Brown & Co. Ltd* (19730 E.A in that they have showed that they have a prima facie case with probability of success; that they will suffer irreparable harm if the orders sought are not granted; and that they will suffer great inconvenience if the suit lands are left exposed and disposed of or dealt with in a manner that is adverse to their suit.
5. The Respondents on the other hand filed their submissions on 29.06.2023. According to the Respondents, the Applicants have not demonstrated that they are enTitled to the orders sought. Further that they have not produced concrete evidence to show on a prima facie basis that the 1st Respondent breached his fiduciary duty towards the members of the clan; and therefore their application ought to be dismissed. They cite the cases of *Dorcas Muthoni & 2 others v Michael Ireri Ngari* (2016) eKLR, *Giella v Cassman Brown*, *Mrao v First American Bank of Kenya Ltd & 2 others* (2003) eKLR, *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* (2016) eKLR to support their position.
6. I have considered the application, the response made to it, rival submissions, and the entire court record in general. The issue for determination is whether the Applicants are enTitled to an order of inhibition.



7. The law on inhibitions is found in Section 68(1) of the [Land Registration Act](#) which provides that: -
- “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. While considering an application for orders of inhibition Makau J In the case of [Japhet Kaimenyi M'ndatbo v M'ndatboM'mbwiria](#) [2012] eKLR cited in Nrb ELC No. 383 of 2012 [Rosemary Wanjiku Njigi v Nancy Munjiru Ngigi](#) outlined the conditions that an applicant must satisfy in an application for orders of inhibition.
- “In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions:-
- a) That the suit property is at the 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 arguable case.”
9. In this particular the Applicants case is that the suit lands herein were registered in favour of the 1st Respondent to hold in trust for the clan which land I understand was to be subdivided and transferred to the clan members. That the 1st Respondent in alleged breach of the said trust subdivided the said lands and transferred the same to some parties who are said not to belong to the Mbandi clan. The 1st Respondent does not deny that the said parcels of land were subdivided. He only denies that the land was transferred to parties who do not belong to the clan. He says that all the parties in whose favour the suit lands have been transferred so far belong to the clan. It appears that the parties seem to be in agreement on most facts of the case. What seems to be in dispute is whether there was a transfer of the suit lands to other parties who are not part of the Mbandi clan. This to me is something that would be worthy of determining at a full trial.
10. The Respondents also through their own admission confirmed that some of the properties that were subdivided and distributed to members of the clan have subsequently been sold to third parties. This is a clear indication that the Applicants have a legitimate concern that the suit lands may continue exchanging hands, hence defeating their claim. In my view, that is sufficient ground upon which to grant the orders sought by the Applicants.
11. Further, the court in the case of [Films Rover International & Others v Cannon Films Sales Ltd](#) 1986 ALL E R 772as cited in the case of [Harun Vusisa Kishasha v Pamela Jaladha Kihyahya & 6 others](#) [2022] eKLR observed that the Courts should always be guided by the course that carries the lower risk of injustice. In my view, in this case, the lower risk of injustice favours the Applicants as they stand to lose if those orders are declined and their case eventually prevails after the trial when those parcels are in the hands of other parties. The Respondents on the other hand would still be assured of their parcels of land should the Applicants case ultimately fail upon a full hearing.
12. The upshot of the foregoing is that the court finds merit in the Applicant's notice of motion dated 24.01.2023 and the same is hereby allowed in terms of prayer (3). Costs of the application shall be in the cause.



RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 17TH DAY OF JANUARY, 2024.

A.K. KANIARU

JUDGE

In the presence of Mageto for Agness Maina plaintiff/Applicant; Were for Khaemba for defendant/respondents and Mutua for Kiongo for 2nd defendant/respondent.

Court Assistant: Leadys

Interpretation: English/Kiswahili

