



**Micheni v Kamunde & 2 others (Environment & Land Case  
2 of 2022) [2024] KEELC 1123 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1123 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT & LAND CASE 2 OF 2022  
CK YANO, J  
FEBRUARY 29, 2024**

**BETWEEN**

**ESTHER MUGURU NJERI NJOROGE MICHENI ..... PLAINTIFF**

**AND**

**IAN KARANI KAMUNDE ..... 1<sup>ST</sup> DEFENDANT**

**FRANCIS KAMUNDI MUNYUA ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR THARAKA NITHI COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The subject of this ruling is a notice of motion application dated 24<sup>th</sup> October 2023 brought under Section 3 & 3A of the *Civil Procedure Act* and Section 70 (d) of the *Land Registration Act*. The 1<sup>st</sup> Defendant/Applicant is mainly seeking an order to vacate the inhibition order issued on 14<sup>th</sup> October, 2020 in respect of land parcel No. Kiera/East Magutuni/98.
2. The application is premised on the grounds thereon and supported by the affidavit of Ian Karani Kamundi, the applicant sworn on 24<sup>th</sup> October 2023. The Applicant avers that the court issued the said inhibition order inhibiting any dealings or transfer of the suit land until the current suit is heard and determined. That even before the inhibition order was registered, there existed a lease in favour of Safaricom PLC from 1<sup>st</sup> October 2018 over a portion of the land for a period of 15 years. The applicant has annexed a copy of the green card marked “KK 1.”
3. The applicant avers that pursuant to the issuance of the inhibition order, Safaricom PLC have withheld and discontinued payments in respect of the lease until either the dispute is resolved or the inhibition order is lifted. A copy of a letter dated 12<sup>th</sup> June 2023 from Safaricom PLC marked “1 KK 2” has been annexed. Than an attempt to have the inhibition order vacated by consent has elicited no response from the plaintiff. A copy of a letter dated 7<sup>th</sup> July 2023 marked “1 KK 3” has been annexed.



4. The applicant avers that the plaintiff is not a party to the said lease and has never expressed any interest over the money paid by Safaricom Plc. It is the applicant's contention that he has no intention of transferring the suit land, adding that even such transfer cannot even be effected without the consent of Safaricom PLC as lessee. He prays for the inhibition order to be vacated or lifted to allow Safaricom PLC release the funds to him. He has given an undertaking to have the status quo of the suit land maintained pending the hearing and determination of the suit herein.
5. In opposing the application, the respondents filed a replying affidavit sworn on 24<sup>th</sup> November 2023 by Esther Muguru Njeri Njoroge Micheni wherein she states *inter alia* that the application is *mala fide*, misconceived, incompetent, vexatious, frivolous and an abuse of the court, brought in bad faith and bad in law. It is her contention that the orders are not remedies between one individual as against another, but meant to keep the subject matter of the dispute in situ. That interim orders are issued not to aid a party but to preserve the status quo that is being challenged by the plaintiff and are issued in the best interest of administration of justice as was done in the case, and that to set aside the interim orders would have the effect of rendering the plaintiff/respondent herein mere pious sojourner or explorer in her pursuit of justice and in effect render the substance of the suit an academic exercise and nugatory.
6. The respondent avers that the applicant has not stated any prejudice he will suffer or has suffered. That the order of inhibition was issued by the court upon hearing both parties. The respondent states that she moved to the court after the Applicant had threatened and or issued a demand of evicting her from her matrimonial home in the suit property which would have resulted to the children and her being left destitute and landless. That the court issued the orders after assessing that there was a real risk of the Applicant dealing with the suit land in a manner that may be prejudicial to her and that may defeat the interest of justice.
7. The respondent further states that she is aware that the orders of 14<sup>th</sup> October, 2023 were issued pursuant to a consent of the parties and is advised by her advocate that a consent order once entered into by the parties cannot be varied or set aside except on grounds of fraud, misrepresentation, illegality or lack of authority.
8. It is also the respondent's contention that she was not aware of the said lease with Safaricom PLC and that in any event the Court considered all the prevailing circumstance at the time before the issuance of the order.
9. The respondent states that she was aware that the discontinuance of payments by Safaricom PLC is not a good ground for vacation of the orders issued on 4<sup>th</sup> October, 2020 and that the Applicant has not demonstrated any prejudice he will suffer. The respondent avers that a letter was written to her advocates, but they could not allow the Applicant's request as she stood to suffer grave prejudice in the event the orders are vacated as she stood to be evicted from her matrimonial home. The respondent admitted that she is not a party to the said lease adding that she has never expressed any interest in the moneys paid by Safaricom PLC to the Applicant.
10. It is the respondent's contention that the order of inhibition cannot be vacated on the premise of an undertaking by the Applicant not to transfer the suit land and that it beats logic why the Applicant could make reference to the effect that the suit land cannot be transferred without the consent of Safaricom PLC which does not have an interest in the said land and argued that is clearly malice on the part of the Applicant. The respondent states that the reason advanced by the Applicant for the vacation of the orders is self-defeating as it seeks to advance his own interests. The respondent further states that the court has the powers to vacate an inhibition order but it can only do so for good cause which has not been demonstrated by the Applicant and that the Applicant has not pleaded any vitiating factors to the orders which were issued by consent. That accordingly and in the circumstances of the case, the



court ought not to exercise its discretion to grant the orders sought in the application herein, and urged the court to dismiss the same with costs.

11. The application was canvassed by way of written submissions. The applicant filed his submissions date 26<sup>th</sup> June 2023 through the firm of Njuguna & Njuguna Co. Advocates while the respondents filed theirs dated 4<sup>th</sup> July, 2023 through the firm of Ojwang Sombe & Co. Advocates. The court has read and considered the submissions and I need not to reproduce them in this ruling.

### **Determination**

12. I have considered the application and the response filed. The main issue for determination is whether the court should vacate the inhibition order dated 14<sup>th</sup> October, 2020.
13. The applicant avers that on 14<sup>th</sup> October, 2020 the court issued an inhibition order inhibiting any dealings or transfer in respect of suit land until the current suit is heard and determined. That even before the inhibition order was registered, there existed a lease in favour of Safaricom PLC from 1<sup>st</sup> October 2018 over a portion of the suit land for a period of 15 years. The applicant further states that pursuant to the issuance and the registration of the inhibition order, Safaricom PLC have withheld and discontinued payment in respect of the lease until either the dispute is resolved or the inhibition order is lifted. On her part, the 1<sup>st</sup> respondent states that she sought prohibitive orders because he rights had been infringed and she was apprehensive that the Applicant would evict her out of her matrimonial property while the case is still pending and further that the court issued the orders after assessing that there was a real risk of the Applicant dealing with the suit land.
14. Section 70 of the *Land Registration Act* provides that:

“The Registration of an inhibition shall not be cancelled except in the following cases: - (a) on the expiration of the time stated in the inhibition; (b) on the proof to the satisfaction of the Registrar of the occurrence of an event stated in the inhibition; (c) on the land, lease or charge being sold by a charge, unless such sale is itself inhibited; or (d) by a consequent order of the court.”
15. The inhibition order dated 14<sup>th</sup> October, 2020 was categorical that no dealings shall be registered until Chuka ELC No. E001 of 2020 is determined. The case is yet to be determined. The purpose of the inhibition was to maintain the status quo pending the hearing and determination of the suit. This court is not convinced that the applicant is deserving the orders sought herein. There is nothing other than the inhibition, that would stop the applicant from alienating the suit land before the conclusion of the case.
16. The upshot of the matter is that the applicant’s application dated 24<sup>th</sup> October, 2023 is not merited and the same is dismissed with costs to the respondents.
17. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 29TH FEBRUARY, 2024**

**C.K YANO,**

**JUDGE**

In the presence of:

Court Assistant – Martha

Ms. Oduo for Plaintiff/Respondent



No appearance for 1<sup>st</sup> Defendant/Applicant

No appearance for 2<sup>nd</sup> & 3<sup>rd</sup> Defendants

