



**Njoroge & 2 others v Nyoike; District Land Registrar, Muranga & another (Respondent)  
(Environment & Land Petition 1 of 2020) [2024] KEELC 3637 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 3637 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND PETITION 1 OF 2020**

**LN GACHERU, J  
FEBRUARY 29, 2024**

**BETWEEN**

**JAMES KIBE NJOROGE ..... 1<sup>ST</sup> APPLICANT  
NJIBA NJOROGE ..... 2<sup>ND</sup> APPLICANT  
PETER NJARAMBA MUGURO ..... 3<sup>RD</sup> APPLICANT**

**AND**

**JOHN MWANGI NYOIKE ..... PETITIONER**

**AND**

**THE DISTRICT LAND REGISTRAR, MURANGA ..... RESPONDENT  
THE ATTORNEY GENERAL ..... RESPONDENT**

**RULING**

1. The Judgement Creditors /Applicants herein have brought this Notice of Motion Application dated 7<sup>th</sup> November 2023, and have sought for the following orders; Spent
  - i. ....
  - ii. That the Court be pleased to issue a prohibitory order barring the Petitioner/Judgement debtor from transferring or charging the land parcels Loc.6/Muthithi/1720 and Loc.6/Muthithi/1721, together with the conditions for sale and settling terms.
  - iii. That in view of the pending decree passed against the Petitioner/Judgement debtor, the attachment against the Petitioner’s Land Parcels Loc.6/Muthithi/1720, and Loc.6/Muthithi/1721, be allowed.
  - iv. That the costs be provided for.



2. This application is premised on the following grounds;
  - i. That the Judgement debt is yet to be settled and the Petitioner has made no offer for payment of the said debt.
  - ii. That the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent/Judgement creditors need to enjoy the fruits of their judgment.
  - iii. That it is necessary for this court to issue a Prohibitory order over Petitioner's land parcels Loc.6/Muthithi/1720 and Loc.6/Muthithi/1721 to enable execution of the Judgement against the Petitioner in favour of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, with conditions for sale and settling terms accompanying the Prohibitory order.
  - iv. The Applicants are not aware of any means by the Petitioner to satisfy the decree of the Court.
3. The application is also supported by the Supporting Affidavit of Njiba Njoroge, the 2<sup>nd</sup> Applicant/Judgment Creditor herein, who averred that there is a Judgement in respect of this Petition dated 24<sup>th</sup> April 2022, in favour of the Applicants/Judgment Creditor herein, and a decree was later issued as is evident from annexures A & B respectively.
4. He averred that the Court granted costs of the Petition to the Applicants and the subsequent costs that were incurred for the Application in relation to this suit and the said costs were assessed at Ksh. 1,399,389/= plus ksh. 12,910/= as is evident from the certificate of costs marked as C&D.
5. Further that upon the said assessment of costs payable to the Applicants/ Judgement creditors, the Petitioner/ Judgement debtor did not make proposal on how he intended to make payments towards clearing the debt, despite being aware of the pending judgement.
6. It was his contention that the Applicants are not aware of any other means by the Petitioner/ Judgement debtor to satisfy the decree of the court except by sale of two land parcels being Loc 6/ Muthithi/ 1720& 1721, which the Petitioner/ Judgment debtor owns as per the attached search certificates marked E.
7. That they seek for Prohibitory order over the Petitioner/Judgment debtor said land parcels to enable execution of judgment against the Petitioner in favour of the Applicants herein/ Judgement creditors.
8. Further, that the Applicants are apprehensive that any delay and/ or failure to have the said land parcel protected from all dealings will give the Petitioner an opportunity to deal with the two parcels of land, in a manner that will be detrimental to the attachment and leave the decree of the court unsatisfied.
9. It was his further contention that the Applicants will suffer irreparable loss if the Petitioner engages the two land parcels in any dealings as they are not aware of any other means of having their debt settled by the Petitioner/ Judgment debtor
10. Further, that it is in the interest of justice to have a Prohibitory order issued against the two parcels of land.
11. The instant Application is not opposed. The same was served to R.m. Njiraini &co Advocates, the counsel representing the Petitioner herein vide an Affidavit Of Service Sworn By J. N Mbutia, Advocate dated 11<sup>th</sup> December 2023, but he failed to file any response to the said application.
12. However, on the date of the hearing, the court directed that the said application will be determined on merit, but not on default of Appearance. Thus, the court directed the Applicants to file brief written submissions in support of the instant Application.



13. In compliance with the court directions, the Applicants/ Judgment Creditors filed their written submissions on 22<sup>nd</sup> Dec 2023, and urged the court to allow their application.
14. The Applicants submitted that the Judgment debt is ksh. 1,415,229/= as per the certificate of costs attached to the application, and that the search certificate show that the two parcels of land are owned by the Petitioner.
15. Reliance was placed on section 44(1) of the *Civil Procedure Act*, which provides that the property belonging to a Judgement debtor shall be liable to attachment. That the same section provides a list of properties exempted from execution, and the two parcels of land do not fall into any of the categories.
16. The applicants also relied on Order 22 rule 48 of the Civil Procedure Rules, which require that for immovable property, such as the two land parcels, the attachment shall be by an order of prohibiting the Judgment Debtor from transferring or charging the property in any way, and all person from taking any benefit from such purported transfer or charge.
17. It was further submitted that the legal provisions make the attachment complete and effective upon registration of a copy of Prohibitory order or inhibition against the title to the property.
18. It was their further submissions that the Judgment debtor has not paid the whole or any part of the debt of ksh. 1,415,229/=, and the Applicants do not know any other assets in the name of the Judgment debtor, which could be attached to satisfy the Judgement debt, and if the Judgment debtor manages to deal with the two parcels of land, then the Judgment creditors, will suffer irreparable harm as the Judgement debt will remain unsatisfied, hence defeating the decree of the court.
19. In conclusion, the Applicants submitted that the JCs, have shown sufficient reasons as to why the Application should be allowed as prayed. They urged the court to allow the said application as prayed.
20. This court has considered the instant application, the brief written submissions and the cited provisions of law. This is a post Judgement application brought by the JCs, to recover costs that were awarded to them vide a judgement of the court dated 25<sup>th</sup> April 2022, wherein the Judgment debtor's Petition dated 27<sup>th</sup> February 2017, was dismissed, with costs to the Respondents. The Judgment creditors, herein were the Respondents in the said Petition.
21. The Court has perused the court file and has noted that after the Judgement, taxation proceedings followed, and costs were assessed at Ksh 1,399,389/= on 9<sup>th</sup> September 2022. There was an additional bill of costs of Ksh 12, 910/= that was assessed on 5<sup>th</sup> July 2023. Consequently, the amount due as costs is ksh 1,415,229/=.
22. Further, this court has noted that the Judgment debtor vide a chamber summons Application dated 22<sup>nd</sup> September 2022, had attempted to set aside the said Bill of costs assessed on 9<sup>th</sup> August 2022. The said application was dismissed on 28<sup>th</sup> March 2023, with costs to the Respondents/ the Applicants herein.
23. This court has not seen any order staying that ruling or setting aside the above ruling. Therefore, the taxing masters decision of 22<sup>nd</sup> August 2022, remains valid and thus the taxed amount is a judgement debt.
24. It is trite that a judgement debt is the sum of money that a court has ordered a person or company known as Judgement Debtor to pay, to the Judgement Creditor.
25. It is also trite that once the judgement debt remains unpaid or unsatisfied, then the Judgement creditors, like the Applicants herein can start the process of execution.



26. The Application herein is anchored under Order 22 rule 48 of CPR, which provides that attachment of immovable property is by an order of Prohibiting the judgement debtor from transferring or charging the property in any way.
27. It is trite that a prohibition order is directed to a body or person from continuing with any dealing or proceeding over the prohibited property. Further, Prohibitory orders are issued by courts upon applications by the affected party.
28. In the case of Samuel Njeru Daniel vs James Njeru Nthiga & 2 others(2017) eKLR, the court held as follows;-
- The purpose of such prohibitory or inhibition order is obviously to preserve the property pending completion of the process of execution. Such orders prevent any further dealings with the subject property so that a decree for its attachment or delivery, as the case may be, is not rendered nugatory.
29. Further, the purpose of a prohibitory order was stated in the case of Ogembo Ondieki V Samwel Bosire Angwenyi & 2 Others [2020] Eklr in Kisii ELC Case No. 942 of 2016, where the court stated;
- “ A Prohibitory order is an order obtained from the Court prohibiting a Judgment debtor from effecting any dealings in relation to his or her landed properties or interest in land held by him or her. Where judgment is obtained for the payment of money, in the event that a judgment debtor refuses or neglects to comply with the judgment made by the Court, the judgment creditor can proceed to obtain a Prohibitory Order, where the properties of the judgment debtor involves land”.
30. The Applicants have moved the court for prohibitory order to preserve the two suit properties which they allege and the only known assets of the Judgement debtor herein.
31. The Courts have discretion to issue inhibition order until occurrence of a particular event, and in this case, is until payment of the Judgement debt. Section 68 of the [Land Registration Act](#) provides as follows;
- “ 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
- A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register
- An inhibition shall not bind or affect the land, lease or charge until it has been registered”.
32. In the case of Dorcas Muthoni & 2 Others...Vs...Michael Ireri Ngari (2016) EKLR , the court held as follows;
- “ 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.



33. The Applicants have moved the court for prohibitory order, to preserve the two suit properties, until the Judgement debt is paid. The Applicants alleged that there is no other known assets or properties of the Judgement debtor, and thus this Application.
34. The Judgement debtor /Petitioner did not oppose this Application and this court has no reasons to doubt the Applicants. There is no evidence that the Judgement debtor has paid the Judgement debt or has made proposal to such payment.
35. Section 44 of the *Civil Procedure Act*, provides that all property of a judgement debtor is liable to attachment, and it gives exceptions of the properties which cannot be attached. These two properties are not among the properties falling in that categories.
36. Therefore, this court finds and holds that the Applicants herein have satisfied this court that the Judgement debtor herein has not satisfied the Judgement debt, and the only option remaining is to attach his immovable properties as provided by Order 22 rule 48 of the Civil Procedure Rules.
37. Consequently, the court finds the Applicants Application dated 7<sup>th</sup> November 2023, merited and the same is allowed entirely in terms of prayers No. 2 and 3 of the said Application. The Applicants are also entitled to costs of this Application.
38. It is so ordered.

**DATED,SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**L. GACHERU**

**JUDGE**

Delivered online in the presence of; -

1<sup>st</sup> Applicant/Judgment Creditor

Ms Wangui Wangai for the 2<sup>nd</sup> Applicant/Judgment Creditor

3<sup>rd</sup> Applicant/Judgment Creditor

Absent - Petitioner/Judgment Debtor

}

1<sup>st</sup> Respondent.

Absent

2<sup>nd</sup> Respondent

Joel Njonjo – Court Assistant

**L. GACHERU**

**JUDGE**

29/2/2024

