



REPUBLIC OF KENYA



**LWG v BGG & 2 others (Environment and Land Appeal  
E001 of 2023) [2024] KEELC 807 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 807 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND APPEAL E001 OF 2023  
YM ANGIMA, J  
FEBRUARY 15, 2024**

**BETWEEN**

**LWG ..... APPELLANT**

**AND**

**BGG ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR NYAHURURU ..... 2<sup>ND</sup> RESPONDENT**

**DANIEL KIRURI KURUGA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**A. Appellants' Application**

1. Vide a notice of motion dated 03.10.2023 expressed to be grounded upon Article 50(1) of *the Constitution*, Sections 1A, 1B & 3A of the *Civil Procedure Act* (Cap.21), Rule 22 and Order 51, Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law the Appellant sought the following orders:
  - a. Spent;
  - b. Spent;
  - c. Spent;
  - d. An order of inhibition be granted under Section 68 of the *Land Registration Act*, 2012 to prevent any dealings with the suit property pending the hearing and determination of this appeal.
  - e. An order of stay of proceedings in Nyahururu Chief Magistrate's Court ELC Case No. E008 of 2023, LWG -vs- BGG, the Land Registrar Nyahururu and Daniel Kiruri Kuruga, be granted pending the hearing and determination of this appeal.



- f. The costs of this application be in the appeal.
  - g. Any other order as the court will deem just and fair to make.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the Appellant, LWG, on 03.10.2023 as well as the further affidavit sworn on 30.11.2023. The Appellant contended that she was aggrieved by the decision of the trial court dated 27.09.2023 dismissing her application for an interim injunction pending the hearing and determination of the suit before that court. The Appellant contended that being aggrieved by the said decision she filed the instant appeal hence the appeal may be rendered nugatory and a mere academic exercise if the suit property is alienated and transferred to the 3<sup>rd</sup> Respondent during the pendency of the appeal.
  3. The Appellant further contended that it was necessary for her suit before the trial court to be stayed pending the hearing and determination of the interlocutory appeal. The main reason why she wanted a stay of her own suit was that she did not want to suffer the inconvenience of prosecuting two matters simultaneously, that is, the instant appeal and the suit before the trial court. The Appellant was of the view that her appeal had high chances of success and that the application had been filed without unreasonable delay. She also contended that it would be in the interest of justice to grant the orders sought.

## **B. Respondents' Response**

4. The 1<sup>st</sup> Respondent filed a replying affidavit on 18.10.2023 in opposition to the application. He disputed that the suit property was matrimonial property or that it was purchased during the subsistence of his marriage to the Appellant. He contended that he solely acquired the suit property in 1995 long after separation with the Appellant. He asserted that there was no evidence on record to demonstrate that the Appellant would suffer irreparable loss or injury in the absence of the order of inhibition sought. It was further contended that a stay of proceedings should not be granted because the Appellant had not demonstrated any sound reasons to warrant such a stay.
5. The 3<sup>rd</sup> Respondent filed a replying affidavit sworn on 03.11.2023 in opposition to the application on several grounds. First, he stated that he bought the suit property from the 1<sup>st</sup> Respondent on 05.04.2023 and paid the full purchase price for it. Second, that prior to the purchase he had leased the suit property from the 1<sup>st</sup> Respondent and his wife, JWG, for over 12 years and that he was unaware of the Appellant's claim on the suit property. Third, that there was no evidence on record to demonstrate the Appellant's contribution towards acquisition of the property. Fourth, that he was aware that when the Appellant filed her claim for division of matrimonial property before the High Court at Nakuru the suit property was not among the properties listed for division.

## **C. Directions on Submissions**

6. When the application was listed for inter partes hearing, it was directed that the same shall be canvassed through written submissions. The parties were subsequently granted timelines within which to file and exchange their respective submissions. The record shows that the Appellant's submissions were filed on or about 10.11.2023, the 1<sup>st</sup> Respondent's on 21.12.2023, whereas the 3<sup>rd</sup> Respondent's were filed on 15.12.2023. However, the 2<sup>nd</sup> Respondent did not file any response or submissions to the application.



## D. Issues for Determination

7. The court has considered the Appellant’s notice of motion dated 03.10.2023, the replying affidavit in opposition thereto as well as the Appellant’s further affidavit. The court is of the opinion that the following are the key issues which arise for determination herein:
  - a. Whether the Appellant is entitled to the order of inhibition sought.
  - b. Whether the Appellant is entitled to a stay of proceedings before the trial court.
  - c. Who shall bear costs of the application.

## E. Analysis and Determination

### a. Whether the Appellant is entitled to the order of inhibition sought

8. The court has considered the material and submissions on record on this issue. The prayer for an order of inhibition is essentially based upon Section 68(1) of the *Land Registration Act*, 2012 which stipulates 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.”

9. Whereas the Appellant submitted that the order was necessary for the purpose of preserving the suit property and that she had satisfied the requirements for the grant of such order, the Respondents contended otherwise. The Appellant relied upon the case of *Dorcas Muthoni & 2 Others v Michael Ileri Ngari* [2016] eKLR in which the court granted such order pending the determination of the substantive dispute among the parties.
10. In the case of *Joseph Mumita Kipees (Suing as the legal representative of the estate of Moses Kisento) v Nteri Merik Obo Kipaika & 2 Others* [2014] eKLR it was held, inter alia, that:

“The applicant has alleged that the 1<sup>st</sup> defendant intends to sell the suit land. There is no evidence of that allegation. Under Section 68(1) of the *Land Registration Act*, the court has power to grant inhibition orders against a suit land restricting registration of any dealing with the suit land for a particular period or until the occurrence of a particular event. The courts have severally held that in an application for orders of inhibition the applicant has to satisfy the court that:

- a. That the suit property is at risk of being disposed off 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 an arguable case.”
11. It is evident from the material on record that the Appellant has a pending suit before the trial court seeking to prevent the alienation of the suit property on the basis that it constitutes matrimonial property. Although the Appellant’s claim is highly contested it is clear that the suit is yet to be heard on merit and her rights, if any, over the suit property determined. The material on record shows that



vide a sale agreement dated 05.04.2023 the suit property was sold to the 3<sup>rd</sup> Respondent even though no transfer appears to have been registered in his favour.

12. The court is of the opinion that there is a real risk of the suit property being transferred to the 3<sup>rd</sup> Respondent or subsequent purchasers in the absence of a preservation order to the detriment of the Appellant. The court is further of the opinion that the refusal to grant the order might render the Appellant's main prayer before the trial court nugatory. The court is also of the view that the Appellant's claim before the trial court is not frivolous or fanciful. She may as well prove her claim after the trial of the action.
13. The court has noted that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents' responses and submissions canvass questions and issues which are yet to be determined by the trial court upon a full hearing. They argued the matter as though they were canvassing the merits of the pending interlocutory appeal. The court shall refrain from making any comments or expressing any views on the merits of the claim pending before trial court since such views may prejudice the fair trial of the action suffice it to state that the court is satisfied that the Appellant has made out a case to warrant the issuance of an order of inhibition to preserve the suit property pending the hearing and determination of the appeal.

#### **b. Whether the Appellant is entitled to a stay of proceedings before the trial court**

14. The court has considered the material and submissions on record on this issue. The court has noted that in her written submissions the Appellant indicated that she would be ready and willing to prosecute her suit before the trial if the order of inhibition was granted. In view of the fact that the court is inclined to grant the Appellant an order of inhibition, it is not inclined to grant a stay of proceedings before the trial court.
15. It is a bit strange that the Appellant is seeking a stay of further proceedings in her own suit in order to pursue an interlocutory appeal on the refusal of the trial court to grant a temporary injunction. A litigant who files suit should always endeavour to prosecute his claim expeditiously in line with the overriding objectives of the *Civil Procedure Act* (Cap.21) and the Civil Procedure Rules. A court of law ought not to encourage litigants to file suits and park them at the court of first instance so that they may pursue interlocutory appeals on decisions resulting from the exercise of judicial discretion.
16. In the premises, the court shall decline to grant a stay of further proceedings before the trial court and instead direct the Appellant to prosecute her claim before the trial court expeditiously. In order to encourage the Appellant to prosecute her pending suit the court shall grant the inhibition for a limited period only.

#### **c. Who shall bear costs of the application**

17. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. In view of the fact that the appeal itself is still pending, the court is of the opinion that costs of the application should abide the outcome of the appeal.

#### **F. Conclusion and Disposal Order**

18. The upshot of the foregoing is that the Appellant's notice of motion dated 03.10.2023 partly succeeds and partly fails. As a result, the court makes the following orders for disposal thereof:



- a. An order of inhibition be and is hereby made under Section 68 of the *Land Registration Act*, 2012 to prevent any dealings with Title No. Nyandarua/Ol Joro Orok Salient/4360 for a period of one (1) year from the date hereof.
- b. The prayer for stay of proceedings in Nyahururu ELC No. E008/2023 is hereby declined and the Appellant is hereby directed to expeditiously prosecute the said suit to its logical conclusion.
- c. Costs of the application shall be costs in the appeal.

Orders accordingly.

**RULING DATED AND SIGNED AT NYANDARUA THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

In the presence of:

Ms. Wambui Njenga for the Appellant

Ms. Wangari for the 1<sup>st</sup> Respondent and holding brief for Ms. Wanjiru Muriithi for the 3<sup>rd</sup> Respondent

N/A for the 2<sup>nd</sup> Respondent

C/A - Carol

.....

**Y. M. ANGIMA**

**JUDGE**

