



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kirunyu (Suing as the administrator of the Estate of Stephen Kirunyu Macharia - Deceased) v Kinyanjui & 36 others (Environment & Land Case 190 of 2018) [2024] KEELC 7026 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7026 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT & LAND CASE 190 OF 2018**  
**LC KOMINGOI, J**  
**OCTOBER 24, 2024**

**BETWEEN**

**MARGARET MUTHONI KIRUNYU (SUING AS THE ADMINISTRATOR OF THE ESTATE OF STEPHEN KIRUNYU MACHARIA - DECEASED) ..... APPLICANT**

**AND**

**KONAN NYASAI OLE KINYANJUI ..... 1<sup>ST</sup> DEFENDANT**  
**RACHEL WAIRIMU KIBORE ..... 2<sup>ND</sup> DEFENDANT**  
**PJ DAVE FLOWERS LIMITED ..... 3<sup>RD</sup> DEFENDANT**  
**WANJIRU PROPERTIES LIMITED ..... 4<sup>TH</sup> DEFENDANT**  
**KARANO KIBORE ..... 5<sup>TH</sup> DEFENDANT**  
**CAROLINE WANJIKU MUGO ..... 6<sup>TH</sup> DEFENDANT**  
**ADELHELO MARIE BWIRE ..... 7<sup>TH</sup> DEFENDANT**  
**CAROL BWIRE WANYAMA ..... 8<sup>TH</sup> DEFENDANT**  
**ELIUD CHEGE KIRU ..... 9<sup>TH</sup> DEFENDANT**  
**LUCIA NJOKI KIBORE ..... 10<sup>TH</sup> DEFENDANT**  
**MINNIE WANJIRA KIBORE ..... 11<sup>TH</sup> DEFENDANT**  
**ROMANO MICHUBU ..... 12<sup>TH</sup> DEFENDANT**  
**BONDI PATRICK KINOTI ..... 13<sup>TH</sup> DEFENDANT**  
**ALLAN GITONGA MUGA ..... 14<sup>TH</sup> DEFENDANT**  
**KAIRU AUGUSTINE THUO ..... 15<sup>TH</sup> DEFENDANT**



ESTHER WAMBUI KIBORE .....	16 <sup>TH</sup> DEFENDANT
CARLOS JACKSON NAKUOH .....	17 <sup>TH</sup> DEFENDANT
BENSON MAINA GATHIA .....	18 <sup>TH</sup> DEFENDANT
ALLIED (E.A) LIMITED .....	19 <sup>TH</sup> DEFENDANT
HENRY MAINA MWITHIGA .....	20 <sup>TH</sup> DEFENDANT
SD INVESTMENTS LIMITED .....	21 <sup>ST</sup> DEFENDANT
IRELAND INVESTMENTS LIMITED .....	22 <sup>ND</sup> DEFENDANT
MERCY MUTHONI MBUBA .....	23 <sup>RD</sup> DEFENDANT
WANJIRU PROPERTIES LIMITED .....	24 <sup>TH</sup> DEFENDANT
MONICA WAMBU NGUGI .....	25 <sup>TH</sup> DEFENDANT
MARY NJERI NGARUIYA .....	26 <sup>TH</sup> DEFENDANT
ABDISALAN MAALIM ALI .....	27 <sup>TH</sup> DEFENDANT
SALOME WANJA NDERITU .....	28 <sup>TH</sup> DEFENDANT
MULTI HOLDINGS INVESTMENTS CO LTD .....	29 <sup>TH</sup> DEFENDANT
JOSEPH NGIGI NYAMU .....	30 <sup>TH</sup> DEFENDANT
GRACE MWIHAKI NGIGI .....	31 <sup>ST</sup> DEFENDANT
DAVID MURAGURI MURIITHI .....	32 <sup>ND</sup> DEFENDANT
MUNTHE INVESTMENTS LIMITED .....	33 <sup>RD</sup> DEFENDANT
MATHEW KIPKOECH KIMONING .....	34 <sup>TH</sup> DEFENDANT
BENJAMIN LAWINO MAINA .....	35 <sup>TH</sup> DEFENDANT
LAND REGISTRAR, KAJIADO .....	36 <sup>TH</sup> DEFENDANT
HON ATTORNEY GENERAL .....	37 <sup>TH</sup> DEFENDANT

## RULING

1. This Notice of Motion application dated 13<sup>th</sup> February 2024, brought under: Article 159 (2)(d) of *the Constitution*, Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*, Order 45 Rule 1(1) of the Civil Procedure Rules and all other enabling provisions of Law seeks:

i. That the Hon. Court hereby clarifies that the suit lands referred to in this Hon. Court's inhibition Order of 1<sup>st</sup> July 2019 are the following:

Title Number Kajiado/Kisaju/56 and all parcels and/or subdivisions resulting therefrom including title numbers Kajiado/Kisaju/2454, 2455, 2459, 2473, 2474, 2675, 2676, 2677, 2678, 2710, 2711, 2712, 2796, 2797, 2798, 2823, 2824, 2825, 2873, 2960, 2961, 2962, 2965, 2966, 2967, 2891, 2892, 3054, 3055, 3056, 3057, 3058, 3059, 3060, 3061, 3066, 3067, 3068, 3069, 3070, 3071, 3072, 3073, 3074,



3075, 3076, 3077, 3078, 3079, 3080, 3081, 3082, 3083, 3084, 3085, 3086, 3087, 3088, 3089, 3090, 3091, 3092, 3093, 3094, 3095, 3096, 3097, 3098, 3099, 3100, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3142, 3143, 3625, 3626, 3627, 3628, 3633, 3634, 3635, 3640, 3641, 3642, 3643, 3644, 5335, 5336, 9492, 9493, 3602, 3603, 3604, 3605, 3726, 3727, 3728, 3802, 3803, 3804, 3805, 3806, 3811, 3812, 3813, 3814, 3815, 3816, 3817, 3818, 3819, 4535, 4536, 4537, 4538, 4539, 4540, 4541, 4542, 4545, 4546, 4547, 4548, 4549, 4550, 4551, 4552, 4704, 4705, 4706, 4707, 4708, 4709, 4710, 4711, 4712, 4713, 4714, 8135, 8136, 8137, 11356, 10619, 10620, 11357, 11358, 13061, 13062, 13063, 13064, 13065, 13066, 13067 and 13068 and any further parcels and/or sub - divisions arising therefrom.

- ii. The costs of this application be in the cause.
2. This application supported by the sworn Affidavit of the applicant Margaret Muthoni Kirunyu is on the grounds that on 1<sup>st</sup> July 2019, this Court issued an inhibition Order against the suit lands pending the hearing and determination of this suit. However, her Advocate upon trying to register the Inhibition order on 25<sup>th</sup> January 2024, was informed by the Land Registrar (the 37<sup>th</sup> Respondent) that he was unable to register the order on the basis that it did not specify the affected properties. The Applicant averred that if the inhibition is not registered, the properties were at a risk of being alienated which would affect the substratum of the suit.
3. The 1<sup>st</sup> and 17<sup>th</sup> Respondents in their replying affidavit dated 18<sup>th</sup> June 2024, though incomplete, sought that the application be dismissed with costs to them on grounds that it was brought several years after the inhibition order was granted in 2019 which was inordinately late. Adding that it was not clear on what grounds the inhibition order was granted.
4. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not oppose the application while the other Defendants did not file their response.
5. This application was canvassed by way of written submissions but at the time of writing this ruling, the said submissions had not been filed. They were neither on the Court Tracking System nor in the court file.

### **Analysis and determination**

6. I have considered the Notice of Motion, the affidavits in support and the response thereto, the rival submissions, the authorities cited and find that the issues for determination are:
  - i. Whether the application dated 13<sup>th</sup> February 2024 is merited;
  - ii. Who should bear the costs of this application?
7. When this matter came up for mention, Counsel for the 1<sup>st</sup> and 17<sup>th</sup> Respondents submitted that the application should be dismissed on grounds that it was brought inordinately late. Counsel for the Applicant submitted in open court that they came on record for the Applicant late last year and that is when they started following up on the matter.
8. In the replying Affidavit, the 1<sup>st</sup> and 17<sup>th</sup> Respondents also contested that the application was brought inordinately late and the status of the properties may have been overtaken by events over the years. On this ground the court wishes to draw attention of the parties to the doctrine of *lis pendens* which aims to preserve the status quo of a property by preventing any dealings with it during the pendency of the suit. The Court of Appeal in *Dhanjal Investments Limited v Shabaha Investments Limited* [2022]



KECA 366 (KLR) held that: “...Lis pendens literally means ‘litigation pending’ or ‘pending suit’ and is drawn from the maxim “Pendente lite nihil innovature”, which means that nothing new must be introduced while a litigation or suit is pending. Therefore, what the doctrine entails is that the property which is subject matter of a suit shall not be transferred during pendency of the suit, and it prevents transfer of the title of any disputed property without the Court’s consent...”

9. This doctrine thus protects and safeguards rights of parties by maintaining the status quo.
10. Counsel for the 1<sup>st</sup> and 17<sup>th</sup> respondents also argued that it was not clear on what grounds the orders dated 1<sup>st</sup> July 2019 were issued and what the suit lands made reference to. This court has perused the court file and the pleadings and note that the lands listed in this application are the same parcels of land listed in the Plaint. Therefore the suit lands could only be in reference to the lands listed in the pleadings.
11. I note that, the said order dated 1<sup>st</sup> July 2019 has neither been appealed against nor set aside. As such, it stands as a valid order of the court. The Order reads:
  1. ...
  2. That the inhibition order be and is hereby registered against the suit lands pending the outcome of the suit.
  3. ...
12. Therefore, having found that it is a valid order, this court finds that the prayer to have the inhibition order specifying the particular parcels of land affected is merited.
13. The Application dated 13<sup>th</sup> February 2024 is hereby granted and ordered that:
  - i. The Inhibition Order be and is hereby registered against the following parcels of land pending the outcome of this suit: Title Number Kajiado/Kisaju/56 and all parcels and/or subdivisions resulting therefrom including title numbers Kajiado/Kisaju/2454, 2455, 2459, 2473, 2474, 2675, 2676, 2677, 2678, 2710, 2711, 2712, 2796, 2797, 2798, 2823, 2824, 2825, 2873, 2960, 2961, 2962, 2965, 2966, 2967, 2891, 2892, 3054, 3055, 3056, 3057, 3058, 3059, 3060, 3061, 3066, 3067, 3068, 3069, 3070, 3071, 3072, 3073, 3074, 3075, 3076, 3077, 3078, 3079, 3080, 3081, 3082, 3083, 3084, 3085, 3086, 3087, 3088, 3089, 3090, 3091, 3092, 3093, 3094, 3095, 3096, 3097, 3098, 3099, 3100, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3142, 3143, 3625, 3626, 3627, 3628, 3633, 3634, 3635, 3640, 3641, 3642, 3643, 3644, 5335, 5336, 9492, 9493, 3602, 3603, 3604, 3605, 3726, 3727, 3728, 3802, 3803, 3804, 3805, 3806, 3811, 3812, 3813, 3814, 3815, 3816, 3817, 3818, 3819, 4535, 4536, 4537, 4538, 4539, 4540, 4541, 4542, 4545, 4546, 4547, 4548, 4549, 4550, 4551, 4552, 4704, 4705, 4706, 4707, 4708, 4709, 4710, 4711, 4712, 4713, 4714, 8135, 8136, 8137, 11356, 10619, 10620, 11357, 11358, 13061, 13062, 13063, 13064, 13065, 13066, 13067 and 13068 and any further parcels and/or sub - divisions arising therefrom.
  - ii. Costs of this application shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24<sup>TH</sup> DAY OF OCTOBER 2024.**

**L. KOMINGOI**  
**JUDGE.**



In the Presence of:

Mr. Otieno for the Plaintiff.

Mr. Owiti for the 1<sup>st</sup>, and 17<sup>th</sup> Defendants.

Mr. Njogu for the 12<sup>th</sup>, 31<sup>st</sup> and 35<sup>th</sup> Defendants.

Ms. Mureithi for the 3<sup>rd</sup>, 4<sup>th</sup> Defendants.

Court Assistant – Mutisya.

