



Kinyamu & 3 others v Marete (Sued as the Legal Representative of the Estate of Leonard Marete M’nkoroï alias Marete M’nkoroï - Deceased) & 2 others (Environment and Land Appeal E049 of 2024) [2024] KEELC 13374 (KLR) (20 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13374 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E049 OF 2024
CK NZILI, J
NOVEMBER 20, 2024**

BETWEEN

**LIVINGSTONE NJUGUNA KINYAMU 1ST APPELLANT
LAZARUS MURITHI 2ND APPELLANT
IGNATIUS KABURU M’ARITHI 3RD APPELLANT
DANSON MBAABU KABURU 4TH APPELLANT**

AND

**DOMISIANO GITONGA MARETE (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LEONARD MARETE M’NKOROI ALIAS MARETE M’NKOROI - DECEASED) 1ST RESPONDENT
THE HON. ATTORNEY GENERAL 2ND RESPONDENT
THE LAND REGISTRAR -MERU CENTRAL 3RD RESPONDENT**

RULING

1. What is before the court for determination is the application dated 4.9.2024, brought by the 1st respondent in the appeal, who was among the successful parties before the trial court. He prays for a temporary injunction and inhibition orders restraining the appellants, whether by themselves or their servants, agents, or any person, from selling, leasing, charging, or transferring Parcels Nos. 279,1303 and 1387 Mweru III Adjudication Section (the suit parcels).
2. The application is founded on grounds on its face and further grounds in the affidavit sworn on 4.9.2024. The applicant, as the son of Leonard Marete (deceased), avers that the deceased was the registered proprietor of the suit parcels, which are family ancestral land bequeathed to him by his father M’Nkoroï who received from his father, Nto’Imenti.



3. The applicant avers that the appellants in 2021, without any justification, invaded and apportioned themselves the suit parcels through objection proceedings. Further, he avers that the suit parcels were fraudulently and illegally transferred by the land adjudication officer to the 1st and 2nd respondents upon the demise of his father, therefore depriving the estate of its property.
4. Similarly, the applicant avers that the 1st and 2nd appellants/respondents transferred and registered Parcel No. 279 to the 3rd appellant/respondent, Parcel No. 1303 to the 4th appellant/respondent, Parcel No.1387 to the 2nd appellant/respondent, and Parcel No. 1302 to the 4th appellant.
5. In efforts to restore the suit properties to the deceased's estate, the applicant avers that he filed Nkubu ELC Case No.13 of 2018, where the court found that the transfers were irregular, and fraudulent and ordered the 3rd respondent to revert them to the deceased's name. Further, the applicant avers that he is apprehensive that the parcel risks being charged, leased, or sold, hence, loss of the substratum of the appeal, rendering the appeal, which is arguable, nugatory, and no prejudice shall be occasioned to the appellants.
6. The applicant annexed copies of the limited grant, death certificate, 1st appellant's letter, objection proceedings, certificates of official searches, and a copy of the judgment as "DM I-VII."
7. Despite a return of service dated 8.10.2024, the appellants/respondents have not filed any responses.
8. What is before the court is an application for temporary injunction pending an appeal, following the issuance of a permanent injunction in favor of the applicant against the appellants by the trial court. The trial court also declared the acquisition, transfer, and registration of Parcel No's 279,1303 and 1387 Mweru 111 Adjudication Section in favor of the appellants invalid. The land registrar Meru Central, who is the 3rd respondent in this appeal, was directed to cancel the title deeds for L.R No's. Imenti South/Mweru III/1387 and 279 to revert to the name of Leonard Marete M'Nkoroi, deceased. The parameters to consider were discussed in Stanley Kangethe vs Tony Keter and others (2013) eKLR. An applicant has to show that he has an arguable appeal, and in the absence of an injunction, it will be rendered nugatory, and what will happen to the subject of the appeal shall be irreversible or incapable of being compensated by way of damages.
9. In this application, there is a pending appeal brought against the applicant who ideally was a successful party at the lower court. He seems to be asking the court to stop him from implementing the decree favoring him. The appellants/respondents have not opposed the application simply because the applicant is using the gun to shoot himself.
10. An order of inhibition is provided for under Section 68 (1) of the [Land Registration Act](#). This section gives the court discretion to inhibit registered dealings on land for a particular time or until the occurrence of a particular event. As such, an inhibition order is an order that is in the nature of a prohibitory injunction restraining dealings on land pending further orders of the court. The purpose of the said order is to preserve the property in question from acts that would otherwise render a court order incapable of being executed and or to give an opportunity to hear and decide the matter. See M'Murithi & another vs Kigia (Environment & Land Case E014 of 2022) [2023] KEELC 17760 (KLR) (7th June 2023) (Ruling).
11. The applicant has no pending cross-appeal against the lower court decree. The decree favors him and has not been stayed by this court or any other court. The conditions for the grant of temporary injunction and inhibition pending appeal have not been met. Ideally, the court is being asked to stay a permanent injunction and other orders favorable to the applicant. It would be nonsensical or illogical for this court to accede to a mistaken application by the applicant, who should be executing the decree



since it has not been stayed, pending the appeal. The upshot is that I find the application an abuse of the court process. It is dismissed with no order as to costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 20TH NOVEMBER, 2024**

In presence of

C.A Kananu

No appearance

HON. C K NZILI

JUDGE

