



In re Estate of John Muuti Ngitura (Deceased) (Miscellaneous Civil Application E034 of 2023) [2025] KEHC 12424 (KLR) (3 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12424 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CIVIL APPLICATION E034 OF 2023**

EM MURIITHI, J

SEPTEMBER 3, 2025

IN THE MATTER OF THE ESTATE OF JOHN MUUTI NGITURA (DECEASED)

BETWEEN

DICKSON KIGO NAFTALY RESPONDENT

AND

MARGARET WAMBUI MUUTI APPLICANT

RULING

1. By Summons dated 9/12/2024 pursuant to section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules, the applicant seeks that:
 1. This honourable court be pleased to order the Land Registrar to lift the injunctive orders, cautions, inhibitions or encumbrances from the register of land parcels number Mutira/Kangai/6935, 6936, 6937, 6938.
 2. The costs of this application be provided for.
2. The application is premised on the grounds that the respondent filed the main application herein and procured injunctive orders on the aforementioned parcels of land. The aforementioned parcels are still encumbered, notwithstanding the dismissal of the main application on 14/11/2024 for want of prosecution, and it is mete and just that the orders sought are issued.
3. The respondent opposed the application vide a replying affidavit sworn by Anthony Muringa Naftally, his authorized attorney and brother on 16/1/2025. He avers that the respondent is the bona fide purchaser and owner of L.R No. Mutira/Kangai/1972, which he bought from the applicant's husband (now deceased). The respondent filed an application dated 15/6/2023 seeking injunctive orders to restrain the application from interfering and/or disposing the said land, which were duly issued. The application is therefore an abuse of the court process because the applicant transferred and subdivided



the suit parcel on 1/8/2023 in clear violation of the injunctive orders issued on 18/7/2023. The applicant is yet to show cause why she should not be committed to civil jail for disobeying the orders issued by this court.

Submissions

4. The applicant urges that the injunctive orders continue to inhibit her from enjoying her proprietary rights to the said parcels of land, and it is in the interest of justice that they are lifted.
5. The respondent urges that the applicant is undeserving of the orders sought as she has approached the court with unclean hands, and cites *Mwangi Rukwaro and Another v Land Registrar Nandi* (2019) eKLR.

Analysis and Determination

6. The issue for determination is whether the threshold for lifting the injunctive orders, inhibitions, cautions or encumbrances on L.R No. Mutira/Kangai/6935, 6936, 6937 and 6938 has been met.
7. Section 70 of the *Land Registration Act* provides for cancellation of inhibition as follows:

“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 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.”
8. The Respondent filed an application dated 15/6/2023 seeking injunctive orders to restrain the applicant herein, and the Respondent in that application, from interfering with L.R No. Mutira/Kangai/1972 pending the hearing and determination of the application and the appeal.
9. On 18/7/2023, the Court directed that;

“3. That interim orders of injunction are granted in respect of prayers (b) That the court be pleased to issue orders restraining the respondent by herself, her authorized agents and/or representatives from disposing, alienating, attaching, delineating, disposing and/or in any manner dealing with Land Parcel Mutira/Kangai/1972 pending hearing and determination of this application.”
10. On 15/11/2023, the court was notified that the applicant had since subdivided L.R No. Mutira/Kangai/1972 into L.R Nos. Mutira/Kangai/6935, 6936, 6937 and 6938. This court (R. Mwangi J) thus directed that;

“1. I have seen the Court’s orders issued on 18th July 2023. They are reflected as an Entry on 4/9/2023 in respect of an injunction in file E034/2023. 2. I also note that the official search of Mutira Kangai/1972 shows that the Title was closed upon partition on 1/8/2023. 3. Partition Nos shown are Nos 6935 to 6938. 4. Accordingly an inhibition on any transaction in respect of land partitions



Nos 6935 – 6938 hereby issues forthwith pending further orders of the court.

5. Respondent granted 10 days to file and serve a response to the application.”

11. The court was categorical in its latter orders of 15/11/2023 that the inhibition orders of the resultant subdivisions of L.R No. Mutira/Kangai/1972 were to subsist until otherwise varied, set aside or discharged.
12. The applicant contends that the inhibition orders lapsed upon the dismissal of the application dated 5/6/2024 by the court on 14/11/2024. With respect, the application dated 5/6/2024, which was dismissed for want of prosecution on 14/11/2024 was solely for joinder of 2 intended interested parties. Invariably, the dismissal of the subsequent application of 5/6/2024 had no effect on the prior application of 15/6/2023 under which the subsisting injunctive orders were issued.
13. Consequently, the Court finds that the applicant has not met the threshold set out under section 70 of the Land Registration Act to justify grant of the orders sought.

Orders

14. Accordingly, for the reasons set out above, this court finds the applicant’s application dated 9/12/2024 to be without merit and it is dismissed.

15. There shall be no orders as to costs.

Order accordingly.

DATED AND DELIVERED THIS 3RD DAY OF SEPTEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Macharia/ Mr. Ndungu Chege for the Applicant.

Mr. Moenga/ Ms. Atieno for Mr. Nyasani for the Plaintiff/Respondent.

