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## Emergency Judicial Proceedings and the Digitalization of Land Registration Procedures in Morocco: Shifting Challenges and Evolving Powers -The Case of Pre-notation –

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### Abstract:

This research examines the profound transformation experienced by summary proceedings jurisdiction in Morocco during the era of land registration procedure digitalization, specifically focusing on pre-notation cases. Following the implementation of Decree No. 2.18.181 of December 10, 2018, which established electronic management of land registration operations, summary judges face new procedural paradigms that fundamentally redefine the exercise of their jurisdictional mandate. Digitalization generates unprecedented challenges for summary magistrates, as the compression of processing timeframes—a central objective of digitization—intensifies temporal pressures on judicial decision-making, while the emergence of cybersecurity vulnerabilities and data transmission complexities inherent to digital systems necessitate heightened scrutiny in evaluating conservatory measures.

**Keywords:** Digitalization impact judicial system, Interim relief judge powers, Land registration digitalization, Pre-notation procedure digital, Judicial modernization Morocco, Digital transformation justice

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### 1.Introduction

The present study is dedicated to a rigorous analysis of the impact of digitalization on the exercise of the powers vested in the interim relief judge in the context of land registration proceedings. The advent of digitization within the sphere of land registration—particularly with respect to the preliminary notation procedure (“prénotation”)—has fundamentally reshaped the judicial functions of the interim relief judge. Traditionally entrusted with the critical mission of providing provisional protection of property rights, the interim relief judge now sees the scope and nature of his responsibilities transformed in light of recent technological advancements. These innovations affect both the procedural landscape and the very substance of the protective measures that may be ordered.

This study illuminates the transformation and expansion of the judicial role prompted by the integration of digital tools, offering a detailed examination of the novel mechanisms now available to the judge. It further explores how, in urgent circumstances, the orders rendered by the interim relief judge must now operate within a substantially restructured legal framework characterized by the widespread adoption of electronic communications, enhanced transaction security, and the possibility of ongoing traceability—all of which redefine the safeguarding mission attributed to the interim relief judge within this renewed context.

In the current era, the mission of justice is no longer limited to the preservation of fairness; it also requires efficient organization and facilitated access for litigants. This need for modernization necessitates the implementation of transparent procedures, aimed at ensuring

compliance with reasonable timeframes (Steering Committee of the National Justice Convention, 2022), in line with the guidelines issued by the competent authorities regarding judicial reform.

The rise of information and communication technologies has become an essential driver in the modernization of the judicial system. Their integration seeks not only to ensure swift access to legal services but also to streamline exchanges among the various actors within the judicial sphere (Kamal, M., El Qour, T., 2024, p.138). Within this framework, the digitalization of legal procedures plays a pivotal role. It enables the progressive transition of case processing into electronic formats, leading to a significant reduction in paper use in favor of more efficient digital solutions.

Through the implementation of secure digital platforms, both legal professionals and citizens now benefit from immediate and protected access to case files. This centralized management of exchanges strengthens traceability and guarantees the preservation of documentary integrity within the judicial process (Ibid., p.138).

The digital transformation of the judicial system also manifests itself in the automation of many administrative tasks, thereby expediting the handling of disputes and enhancing institutional responsiveness (High Council of the Judiciary, 2021). By streamlining formalities and rationalizing procedures, the justice system is brought closer to the public, making judicial services more accessible and comprehensible to all. Moreover, the widespread adoption of digital tools helps to alleviate court congestion by ensuring more effective monitoring and optimized case management.

For this transition to be both sustainable and effective, it remains essential to invest in the development of a reliable and well-adapted technological infrastructure (Lemercier, K. (2022), p. 41), supported by cutting-edge IT equipment accessible to all jurisdictions. This modernization, however, goes beyond its purely technical dimension; it entails an evolution in professional practices and calls upon all stakeholders to reconsider their organization and approach, with the aim of embedding the justice system in a lasting dynamic of innovation and progress at the service of citizens.

Land law, in particular, is undergoing a structural transformation driven by the digitalization of its procedures (Akkour S., David K. (2021), p. 36). From applications for registration to urgent proceedings before the summary judge, all acts and exchanges are gradually shifting towards dematerialization, thereby enhancing and modernizing public action. This development is not confined to this field alone; it extends to the entire judicial and administrative apparatus, fundamentally reshaping the management of information flows (Gadbin-George, G. (2020), p.123). Anchored in a broader international movement for digital security, this transition has the notable effect of accelerating decision-making timelines while redefining interactions among all the actors involved.

**Issue:** In the face of the rapid and sweeping expansion of digital technologies, the interim relief judge, entrusted with the immediate preservation of rights, is confronted with a redefinition of his role. He is now required to ensure, under conditions of urgency, the effective protection of fundamental freedoms while safeguarding the integrity and confidentiality of information flows, containing cyber vulnerabilities, and continuously adapting procedural guarantees to a technological environment in constant evolution (High Council of the Judiciary, 2021). This

environment is characterized by the volatility of data, the persistence of digital traces, and the ever-present risk of technical incidents likely to undermine legal certainty.

**Question: To what extent can interim relief proceedings, when seized with a request for pre-notation in the context of a dematerialized land registration procedure, succeed in striking an appropriate balance between the swift response necessitated by technological innovation, the effective protection of the parties' fundamental rights, and the safeguarding of real estate transactions?**

### **-Substantive Hypotheses**

#### **H1- Primacy of the Effectiveness of Rights**

The enhanced use of digital tools before the judge in summary proceedings requires a substantive review of the alleged infringement of fundamental rights and of the plausibility of the claimed right, insofar as features such as pre-annotation, traceability, and instant access to records strengthen the concrete assessment of urgency and manifestly unlawful disturbance. The requirement of an authenticated and time-stamped evidentiary flow allows for a more precise qualification of the alleged violation and supports the function of immediate judicial protection, without separating speed from effective legal safeguard.

#### **H2- Accumulated Procedural Celerity**

The digitization of applications and exchanges objectively shortens the timeline for both examination and decision in urgent proceedings, without undermining adversarial process, provided that the platform ensures time-stamping, proof of filing, and opposable electronic notification. The integration of electronic receipts of submission and access notices, recognized in case law, further consolidates both the reliability of procedural deadlines and the integrity of adversarial exchanges within a digital environment.

#### **H3 - Safeguarding through Pre-Annotation**

For registered real estate, pre-annotation provisionally preserves the asserted right and secures its ranking as of the date of provisional entry. Thus, where the conditions of registration are *prima facie* met in summary proceedings, digital systems anticipate potential conflicts of priority and reduce the risk of documentary fraud. Provisional registration, coupled with a digital traceability chain, enhances the predictability of transactions and the overall security of reformed land registry publicity.

### **Methodological Hypotheses**

#### **H1 - Digital Evidentiary Standard**

In urgent proceedings, the judge elevates the evidentiary threshold applicable to electronic records by requiring integrity, verified source identification, time-stamping, and proven origin. The presumption of authenticity linked either to a qualified electronic signature or an official platform therefore conditions judicial protection. In the absence of a reliable mechanism compliant with both eIDAS and national requirements, electronic evidence cannot effectively sustain the granting of an immediate measure.

#### **H2 - Proportionality of Measures**

Interim measures (such as provisional registration, suspension of instruments, or technical injunctions) are assessed against a proportionality test that accounts for cyber vulnerabilities, technical malfunctions, and the risk of disproportionate interference with property rights and contractual freedom. The judge's mandate requires minimizing intrusion while guaranteeing effectiveness, subject to procedural traceability and reversibility controls.

### **H3 - Institutional Complementarity**

The success of dematerialized emergency proceedings presupposes operational coordination among the courts, land registry services, and governance bodies, in order to ensure enforceability, swift execution, and the reliability of digital entries. Such coordination guarantees continuity between provisional judicial orders, public notice, and execution within the reformed framework of land registry publicity.

#### **-Procedural Validity Hypotheses**

##### **H1 - Guarantee of Adversarial Principle**

Electronic notifications, continuous file availability, and centralized exchanges may satisfy the adversarial requirement in urgent matters, provided that reliable proof of receipt is established and that an appropriate response time, tailored to the nature and seriousness of the alleged infringements, is granted. Electronic acknowledgments of receipt and availability notices, expressly provided by statute and upheld in case law, structure the adversarial safeguard in a paperless procedural environment.

#### **Purpose of the Research:**

This analysis extends beyond a mere theoretical overview by thoughtfully examining the real-world and societal implications of evolving land justice, especially within a context of increasing procedural digitalization. Particular attention is given to the role of the interim relief judge (“juge des référés”), who acts as the guarantor of the delicate balance between the promptness demanded by urgent situations and the preservation of property rights, notably through the use of preliminary annotations (“prénotation”). By weighing procedural safeguards against both the imperatives of efficiency and the requirements of legal certainty, this study seeks to illuminate the contemporary challenges surrounding the involvement of the interim relief judge.

At a time when public confidence in the judicial system depends on the robustness and transparency of digital mechanisms, it is essential to question the magistrate's capacity to ensure effective protection of property, while embracing technological transformation and upholding procedural fairness. The present analysis thus seeks to make a renewed contribution to doctrinal discourse, highlighting the preventive and protective functions of the interim relief judge—functions realized, in particular, through the preliminary annotation procedure—an essential tool for securing land rights in a rapidly changing environment.

#### **The Thesis :**

The central argument articulated in the article is as follows: the functional expansion of the powers vested in the interim relief judge is the cornerstone for the effective protection of rights in a digital environment. This paradigm shift is increasingly recognized in recent case law,

which reconciles prompt intervention with rigorous adherence to fundamental principles, consistently maintaining close scrutiny of proportionality.

### **Overview of the Study:**

This study is organized into three principal sections:

- First, it will clarify the methodological approach, which is grounded in a critical analysis of scholarly commentary, recent judicial decisions, and the ongoing transformation of digital tools used in property recordation.
- Subsequently, the study will systematically examine the evolving role of the interim relief judge in safeguarding property rights, with particular attention to the advent of digital processes and the novel challenges they present.
- Finally, the research will offer a comprehensive assessment of the risks and opportunities associated with digital innovation in this field, together with practical recommendations for improving the urgent judicial oversight required by contemporary property law.

### **2.Method:**

The transition toward digitalization of land registration procedures is profoundly transforming the judicial practice of the urgent applications judge. This development is marked by the introduction of rapidity, the dematerialization of documents, and the implementation of new mechanisms for the management of land titles. In this evolving context, the urgent applications judge must adapt the exercise of his or her responsibilities to a digital environment- a setting that, while innovative, presents unprecedented challenges, particularly with respect to safeguarding legal certainty and the administration of evidence.

#### **2.1Epistemological Foundations and Methodological Framework:**

##### **2.1.1 A Hybrid Analytical Paradigm:**

This study is grounded in a methodological approach underpinned by clearly articulated epistemological choices that shape both reflection and the design of the research framework. The establishment of a rigorous methodological framework is intended to ensure the scientific integrity of the research, while guaranteeing consistency among the research objectives, hypotheses, and analytical tools selected.

##### **2.1.2 Interdisciplinary Perspective:**

The analysis employed transcends the traditional boundaries of law and draws upon developments in information science and technological innovations. This approach is designed to foster a more comprehensive assessment of the impact of digital changes on the modalities of judicial review, while also examining the transformation of the duties entrusted to the urgent applications judge in the context of the digitalization of land registration procedures.

#### **2.2 Sequential and Innovative Methodological Approach:**

##### **2.2.1 The Threefold Convergent Methodological Framework:**

### **In-depth Documentary Analysis**

The first stage entails a systematic investigation of legal sources pertaining to real estate registration in Morocco, with particular attention to the mechanism of “prénotation” (pre-noting of rights). This phase prioritizes a review of historical legislation, notably the Decree of August 12, 1913, governing land registration, as well as recent reforms aimed at the digitalization of land-related transactions. Additional administrative guidelines and circulars issued by the National Agency of Land Conservation are also scrutinized, as they clarify the practical implementation of these procedures.

Within this context, case law—particularly interim relief decisions—plays a central role. The emergency judge emerges as a key actor in pre-noting, a provisional measure designed to safeguard property rights by temporarily suspending any changes to the land registry. Judicial decisions highlight the delicate balance between the need for swift action to protect property owners' interests and compliance with procedural guarantees.

Specialized legal scholarship offers valuable insights into these developments, especially by analyzing the impact of digitization on emergency judicial interventions. The shift toward digital processes profoundly alters the modalities of the emergency judge's interventions, now required to reconcile demands for efficiency with the protection of fundamental rights in an increasingly automated environment.

This documentary analysis thus highlights the normative and jurisprudential transformations that are redefining the role of the emergency judge, underscoring how pre-noting has become an essential instrument for the provisional protection of land rights, adapted to contemporary challenges posed by the introduction of information technology in land administration.

### **2.2.2 Comparative Study and Legal Benchmarking**

#### **Pre- and Post-Digitization Assessment**

The second stage involves a comparative assessment in two distinct dimensions:

- **Evolution Pre- and Post-Digitization:** This axis evaluates, on an empirical basis, the changes affecting the management of disputes related to land registration. It focuses on the practical impact of digitization in terms of processing speed, transparency of procedures, traceability of transactions, and legal certainty.
- **International Comparison:** This comparative analysis extends to the examination of foreign systems that have initiated the digitalization of their land procedures. Emphasis is placed on the handling of emergency relief matters and the necessary adaptations of judicial powers in the digital era. This benchmarking exercise identifies exemplary practices and innovative solutions transferable to the Moroccan context, while respecting national specificities.

### **Modelling, Synthesis, and In-depth Analysis of Legal Impacts**

The final component of the methodology adopts an enriched analytical approach, structured around two complementary axes:

- **Qualitative Analysis:** This involves detailed reading of the reasoning adopted by emergency judges, mapping the new powers conferred due to the imperatives of digitalization, as well as cataloguing practical challenges, institutional resistance, and



emerging issues—such as the admissibility and security of electronic evidence, the fight against cybercrime, and the reliability of digitized instruments.

- **Mapping the New Powers of the Emergency Judge:** Ultimately, the approach calls for the development of an analytical framework highlighting the enhanced prerogatives of the emergency judge in this new context. This modeling seeks to clarify expanded judicial functions, such as the authority to order urgent technical measures, require the production of digital records, and ensure a balance between procedural efficiency and the guarantee of legal certainty in accelerated proceedings.

### 3. Construction of the Documentary Corpus

The compilation of the documentary corpus is guided by a selective and stratified methodological approach, designed to ensure both comprehensiveness and relevance of the sources examined. With this objective in mind, the materials are organized as follows:

**Primary Normative Sources:** The corpus integrates foundational legal texts, including the Dahir of August 12, 1913—as subsequently amended, the Civil Procedure Code, as well as regulatory instruments governing digitalization, such as Decree No. 2.18.181. These documents constitute an analytical framework for assessing legal developments in real property law.

**Jurisprudential Sources:** The analysis incorporates decisions of both higher courts and courts of first instance, with particular attention to rulings in matters of summary land proceedings and electronic evidence administration, covering the period from 2010 to 2024. This selection enables a meaningful evaluation of judicial adaptation to emerging digital challenges.

**Doctrinal Sources:** The corpus draws on specialized academic literature authored by recognized scholars and reputable academic institutions, focusing on real property law and administrative transformation through digitalization, thereby enriching the depth and scope of the analysis.

#### Advanced Legal Analysis Techniques

The corpus is examined using established analytical methodologies:

##### Thematic Structural Analysis

This method systematically identifies, categorizes, and interprets developments in judicial competencies, the emergence of digital disputes, as well as procedural and technological challenges encountered by judicial stakeholders.

##### Diachronic Analysis

This approach focuses on a chronological comparison of legal rules and case law over the past decade, highlighting significant discontinuities, shifts, or continuities that influence the judicial function.

#### Methodological Innovations and Digital Impact Assessment

- **Integration and Utilization of Digital Resources**  
The adopted approach emphasizes the incorporation of advanced digital tools, including:
  - **On-site observation of ANCFCC systems:** Analysis of software interfaces (such as LOGCF and Sigest) and digital alert mechanisms like “Mouhafadati”

provides concrete insight into digitalization procedures and the traceability offered for land transactions.

- **International Benchmarking:** Comparative analyses with French experiences in judicial procedure digitization enrich the discussion through the confrontation of foreign practices and innovations.

### Prospective and Evaluative Approach

- **Impact Modeling:** The study models the effects of digitalization on the speed of case processing, the evolution of evidentiary standards, the enhancement of legal certainty, and the redefinition of the competences of urgent proceedings judges in the face of new digital contexts.
- **Anticipation of Systemic Risks:** The analysis anticipates risks inherent to digitalization-service interruptions, cyberattacks, regulatory gaps- and proposes recommendations to strengthen the resilience of the system.
- **Reliability:** The reproducibility of the study is ensured by the rigor of the documentary process and the transparency in defining analytical criteria.

### Identified Limitations

- The rapid evolution of regulatory and technological frameworks may lead to the partial obsolescence of certain findings.
- Some recent court decisions remain difficult to access, limiting the comprehensiveness of jurisprudential analysis.
- Continuously evolving digital platforms may reveal vulnerabilities, particularly in their ability to adapt to regulatory and technical changes.

## 3.Results

### 3.1 Rethinking the Moroccan Provisional Judge's Role in Land Registration: Modernizing Traditional Authority via the Pre-Recording Mechanism

Land registration constitutes a fundamental pillar of secure real estate transactions within the Kingdom of Morocco.

The inception of a fully digital pre-recording procedure stands as one of the most notable innovations spearheaded by the National Agency for Land Conservation, Cadastre, and Mapping (ANCFCC) in its ongoing digitization of public land services. Conceptualized to respond to mounting expectations of reliability, administrative efficiency, and transactional transparency in real estate matters, this mechanism fosters the strengthening of land publicity instruments in alignment with the needs of a digital economy. Specifically, it empowers both notaries and other duly authorized professionals to engage with secure digital platforms for the entirely electronic filing of all supporting documentation required for pre-recording—thereby eliminating the necessity for traditional, paper-based submissions.

This transaction, which initiates the formality cycle, is based on secure electronic transmission governed by certification and encryption protocols designed to safeguard



the integrity of documents. To ensure their authenticity and evidential value, these instruments are accompanied by a qualified electronic signature, which holds the same legal effect as a handwritten signature, thereby serving as a bridge between notarial tradition and technological innovation. Upon submission of the application, the ANCFCC undertakes a substantive and formal review of the documents before forwarding them to the territorially competent land registry, which then proceeds with the registration on the land title. The resulting provisional notation is temporary in nature, as its purpose is either to reserve a potential right or to publicize a legal situation pending further consolidation, thereby providing a relative yet essential measure of protection to the parties involved.

The innovation also lies in the fact that users can now monitor the progress of their applications in real time through online interfaces, fostering a culture of traceability and empowering citizens to oversee administrative action. In this way, the digital prenotation procedure transcends mere technicality: it establishes a new model of land administration that combines legal security, procedural efficiency, and accessibility, thereby contributing to bolstering the confidence of economic operators and modernizing Moroccan property justice in a globalized environment increasingly defined by digitalization.

Nevertheless, the pace demanded by economic life often comes into tension with the inherent slowness of ordinary legal procedures. At the intersection of these imperatives stands the emergency judge, whose “classic” powers now warrant reconsideration to meet the dual constitutional requirements of protecting property rights and ensuring effective access to justice. This article develops a legal analysis that moves beyond traditional constraints—notably the requirement of provisionality—to assign a central role to the emergency judge in the regulation of prenotations, these provisional registrations that have the potential to immobilize a land title.

### **3.1.1 Normative and Constitutional Framework**

The right of property in Morocco enjoys robust constitutional protection under Article 35 of the 2011 Constitution, while access to judicial recourse is guaranteed by Article 118. These fundamental rights necessitate a dynamic balancing act: safeguarding property rights while facilitating their prompt economic utilization (O. Staes, 2018, p. 91).

Concurrently, the judicial intervention framework is structured by three principal legal instruments:

- The Dahir of 12/08/1913, as amended by Law 14-07 of 2011 (published in Official Bulletin No. 6004, 19 Moharrem 1433 [15-12-2011], p. 2519)
- Articles 148 to 154 of the Code of Civil Procedure (CPC), which govern *ex parte* orders and urgent interim measures
- Sector-specific provisions, such as those found in the Banking Law 12-34, which authorize preliminary registration by court order in certain defined circumstances

Table 1 – Key Legal Sources Governing Preliminary Registration

Nature of the Source	Relevant Article(s)	Legal Scope
2011 Moroccan Constitution	Art. 35, 118	Right of property, right of access to the judge
Dahir 1913 amended by Law 14-07	Art. 85-86	General regime of preliminary registrations
CPC (Orders)	Art. 148 (ex parte orders), 149-152 (urgent measures)	Procedural modalities
Special Texts (e.g., Banking Law)	Various	Sector-specific preliminary registrations

Nature and Classification of Notations legislative provisions clearly delineate three distinct categories of notations:

- **Extrajudicial Notation (Pursuant to a Deed):** Established on the basis of an authentic instrument, valid for a period of ten days.
- **Judicial Notation on Introductory Motion:** Initiated by filing a stamped copy of the writ of summons, valid for one month.
- **Notation by Court Order:** Issued by judicial authority, effective for three months (previously six months under former provisions)

Table 2 – Comparison of Pre-notification Features

Type of Pre-notification	Document Establishing the Pre-notification	Procedure	Validity Period	Legal Effect
Extrajudicial	Authentic instrument	Purely administrative	10 days	Temporary freezing of the instrument only
Judicial (by application)	Copy of the substantive claim	Adversarial	1 month	Provisional preservation of disputed rights
By court order	Presidential or summary judgment	Non-adversarial or adversarial, as applicable	3 months	Potential risk of wrongful blocking

### Urgency as a Catalyst for Interim Relief (Duality between Interim Proceedings and Orders upon Petition)

The Code of Civil Procedure provides for two distinct avenues:

- **Order upon petition (Art. 148):** a unilateral procedure, without the involvement of the court clerk, and conducted in the absence of adversarial debate.
- **Interim relief proceedings (Arts. 149–152):** adversarial in nature, subject to limited publicity, and producing a decision enforceable as of right.

While both mechanisms share the same protective purpose and the feature of immediate enforceability, they differ fundamentally in their treatment of adversarial process, which remains the cornerstone of the right to a fair defense. The paradox lies in the fact that *prenotation*, by definition a provisional measure, may be pursued under either route, thereby fueling jurisprudential uncertainty.

### The Criterion of Urgency

Urgency, though never expressly defined by the legislature, is recognized when the mere lapse of time risks serious or irreparable harm. In real estate matters, urgency is almost structural: a single malicious prenotation can suffice to block bank financing or derail a strategic transaction.

### Doctrinal Debate on Competent Authority

Two schools of thought are in conflict:

- **Advocates of the order upon petition** argue for a strict reading of the new Article 86 §4, which entrusts its issuance to “the authority of the President of the Court of First Instance” in accordance with Article 148 of the Code of Civil Procedure.
- **Supporters of the interim relief judge** maintain that the same President must act in his capacity as interim relief judge, given that the measure is grounded in urgency and does not prejudice the merits (Art. 152 CPC).

**Table 3 – Comparative Argumentation of the Two Legal Positions**

Nature of the Source	Relevant Article(s)	Legal Scope
<b>2011 Moroccan Constitution</b>	<b>Art. 35, 118</b>	<b>Right of property, right of access to the judge</b>
<b>Dahir 1913 amended by Law 14-07</b>	<b>Art. 85-86</b>	<b>General regime of preliminary registrations</b>
<b>CPC (Orders)</b>	<b>Art. 148 (ex parte orders), 149-152 (urgent measures)</b>	<b>Procedural modalities</b>
<b>Special Texts (e.g., Banking Law)</b>	<b>Various</b>	<b>Sector-specific preliminary registrations</b>

### **The Issue of the "Provisional": Hurdle or Facilitator?**

The "provisional" issue, viewed through the lens of judicial practice, is often framed as a procedural safeguard that theoretically prevents emergency judges (juge des référés) from encroaching upon the merits of a case (Y. Strickler, 1993, p. 421). However, insisting on absolute neutrality strict abstinence from any consideration of the underlying legal questions- fails to reflect the practical realities of land disputes (X. Bébin, 2013, p. 268). In actual proceedings, judges already assess the “likelihood” of the asserted legal position to prevent manifestly abusive registrations. Consequently, the traditional reasoning- that emergency measures must not under any circumstances overlap with substantive adjudication- has proven untenable as a rigid principle.

### **Propose Redéfinition**

- **Temporal vs. Juridical Provisional Measures:** It is essential to distinguish between provisional measures that are limited in duration and those that involve a preliminary, non-definitive legal assessment.
- **Temporal Measures:** Such orders are strictly time-bound (e.g., limited to three months by Article 86 of Law 14-07) and are reversible.

- **Juridical Measures:** Here, the judge's engagement with legal questions remains "apparent"—a preliminary examination, not a final adjudication (recognized as a tool for reducing judicial backlogs, CEPEJ, 2023, p. 4).

### Constitutional Proportionality Principle

A limited and reversible interference with property rights can be justified by a compelling public interest, such as preventing irreparable harm (ACCPUF Report, Bulletin No. 9, 2010, p. 259). This approach allows emergency judges to assess whether there is a "serious appearance" of a legitimate legal claim- without issuing a final ruling on the substance of the case.

### Economic and Security Perspectives

Land assets underpin approximately 60% of bank guarantees granted within Morocco's private sector (Practical Guide to the Financing and Support Mechanisms for Project Promoters and Companies in the Marrakech-Safi Region, p. 3). An abusive annotation on a land title (prénotation) can delay financing up to nine months, with an estimated average cost of 10% of the property's sale price (Article 86 bis of Law 14-07). By promptly lifting vexatious annotations, the emergency judge contributes to the fluidity of the real estate market and supports economic growth.

**Table 3 : Recent Case Law : Fundamental Trends and Their Implications**

Jurisdiction	Date	Decision	Scope
Court of Appeals, Meknès	03/15/2022	<b>Ruling No. 187: Lifting of a preliminary registration via interim relief (référé), due to a clear emergency caused by the imminent cancellation of a real estate sale agreement</b>	<b>Recognizes the court's authority to grant interim relief under urgent circumstances</b>
Court of Appeals, Tanger	01/12/2023	<b>Ruling No. 45: Denial of interim relief on the grounds that the alleged right was deemed "merely contingent"</b>	<b>Reinforces the standard requiring a demonstrably credible legal claim (filtre de vraisemblance)</b>

Renewed Legal Reasoning: Procedural Guidelines

### Constitutional Foundations: Primacy of Practical Effect

- The right to property is deemed "inviolable," except where a compelling public interest necessitates otherwise (Article 35(2) of the 2011 Moroccan Constitution).
- Access to justice must be "unrestricted and guaranteed," including within a reasonable timeframe (Article 118 of the 2011 Moroccan Constitution).

### Characterization of Pre-notation: A Provisional Protective Measure

- **Duration:** The measure is limited to a predetermined period (three months), reflecting its provisional material nature.

- **Legal Effect:** There is no permanent transfer or extinguishment of rights; the measure remains inherently temporary in legal terms.

#### The Court's Three-Part Test in Interim Proceedings

- **Clear Urgency:** The claimant must demonstrate a tangible risk of imminent, irreparable harm—such as loss of financing or missed sale opportunities (A. Zinedine, p. 131).
- **Apparent Merit:** The claim must show a sufficient likelihood of success, in line with the “fumus boni iuris” standard (appearance of a plausible right) (H. Belmeki, 2016, p. 38).
- **Proportionality:** The requested measure—whether seeking inscription or removal—must be strictly necessary to safeguard the right at issue (Casablanca Court of Appeal, 2013, O. Azougagh, 2015, p. 47).

**Immediate Effect:** Fulfillment of these criteria establishes interim proceedings as the default procedural avenue. Conversely, orders issued on application (Article 148) are reserved for cases of extraordinary urgency where adversarial proceedings would defeat the very purpose of the measure- for example, imminent dispossession.

#### Safeguards Against Abuse: Security and Coercive Measures

To deter misuse, the court may condition inscription or removal of a pre-notation on the provision of a security deposit, capped at 10% of the estimated market value of the property. Alternatively, the court may impose a daily, adjustable coercive fine (astreinte) for non-compliance.

**Table 4 : Comparative Law: An Enlightening Mirror**

Country	Legal Instrument	Duration of Pre-notation	Recourse/Remedy	Special Features
France	Judicial Provisional Mortgage (Art. 2123, Civil Code)	3 years	Interim Relief (Art. 145, Code of Civil Procedure)	Possibility of subsequent adversarial proceedings (see Piedelièvre J. and S., La publicité foncière, Defrénois 2014, no. 291; Roche P., RTD civ. 1965, p. 22)
Tunisia	Pre-notation (Law of 1995)	2 years	Interim Relief before the President of the Court of First Instance	Right to initiate regularization proceedings within 60 days

This table indicates that Morocco, with a decision timeframe of three months, falls within the lower range of the spectrum; there is thus no impediment to establishing a reinforced summary judicial review without disadvantaging holders of nascent property rights.



### **3.1.2 Enhanced Powers of the Summary Judge in Removing Pre-Registrations: Towards a More Efficient Judicial System**

The expansion of prerogatives granted to the summary judge- specifically concerning the deletion of pre-registrations, as a result of the amended Article 86 of the Dahir on Land Registration introduced by Law 14-07- reflects the Moroccan legislature's intention to accelerate real estate transactions by swiftly eliminating obstacles posed by unjustified or legally irregular pre-registrations. Henceforth, the President of the Court of First Instance, acting as a summary judge, may order, by summary order, the removal of any pre-registration found to be without merit or tainted by irregularity (TPI Rabat Judgment No. 278 of 21/08/1984). This breaks with the traditional approach, which required a final judgment with *res judicata* effect for judicial removal. This reform grants the summary judge both flexibility and authority, establishing an exceptional regime characterized by speed, simplified procedures, and the concurrent protection of property rights and transaction security. The exceptional jurisdiction conferred upon the summary judge thus provides a rapid remedy whenever urgency demands and the persistence of a pre-registration would disproportionately infringe on property rights or unduly block a real estate operation (M.M. Benis, 1998, p. 49). At the same time, scrutiny of the legitimacy and regularity of the grounds invoked—whether based on a genuine property right, a personal right with future in rem effect, or, conversely, a purely personal right unsuitable for registration (H. Belmeki, 2016, p. 125)- ensures that removal occurs only in cases of demonstrated abuse or manifest illegality, thereby preserving the balance between protecting the registered owner, safeguarding the interests of the claimant to the disputed right, and meeting the needs of the real estate economy for clear, reliable, and up-to-date publicity of land rights (O. Azougagh, 2015, p. 307).

### **3.2 The Summary Judge and the Imperatives of Digital Immediacy: Reconciling Promptness and the Law**

The Moroccan summary judge, traditionally the guarantor of provisional and urgent protection of fundamental rights, draws its legal foundation from the Code of Civil Procedure and the organic laws governing administrative courts. Historically vested with authority to issue protective and safeguarding orders in cases of urgency, without prejudice to the merits, this judicial function is undergoing significant transformation as a result of the progressive digitization of Moroccan public administration.

The advent of administrative digitization, notably demonstrated by Decree No. 2.18.181 of December 10, 2018, on the conditions and procedures for the electronic management of land registration operations, marks a new era in the exercise of urgent judicial powers. This regulatory evolution goes beyond mere procedural modernization; it redefines the nature of judicial intervention within a digitized administrative environment.

The emergence of what might be termed the “digital urgency judge” stems from the need to adapt judicial powers to the temporal and technical imperatives of electronic administration (S. Renard, 2017, p. 11). The digitization of land registers, the automation of administrative notifications, and the digitalization of property titles (through systems such as “LOGCF” and “Mouhafadati”) now place the summary judge at the critical intersection of digitized administrative action and the immediate safeguarding of property rights (Report on

Digitalization of the Steering Committee for the Estates General of Justice, 2022, p. 144). In this strategic position, the judge assumes a role of instant regulation over information flows and automated decision-making processes, transcending the traditional role of provisional custodian of rights.

The inherent speed of electronic communication demands a judicial response from the summary judge that matches administrative velocity (F. Ost, 2000, p. 10). This new requirement compels the magistrate to develop intervention capabilities that encompass not only the swift identification of infringements or threats to real estate rights, but also the prescription of corrective measures tailored to the digitized environment (D. Kwizera et al., 2024, p. 246). The judge may thus be called upon to order electronic suspension of a land registration, the temporary halting of a digitized administrative procedure, or the restoration of a previous state within the land administration's information systems.

This evolution entails a fundamental shift of urgent litigation from the physical to the virtual realm. Whereas summary judicial intervention traditionally relied on physical documents and tangible acts, it now operates within a universe of digital evidence, authentication codes, and electronic signatures generated by administrative platforms (D. Cholet, 2006, p. 105). This transformation redefines the very substance of urgent legal review and entrusts the judge with a new mission: to ensure the virtually instant restitution of violated rights within the digital administrative ecosystem.

The architecture of this digitized urgent justice rests on a renewed dialectic between judicial and administrative temporalities (Draft Budget Law 2025, p. 142). The effective protection of property rights now depends on the judge's ability to intervene within timeframes comparable to those governing the automated processes of electronic administration (ibid. p. 123). This temporal synchronization embodies the essence of this new form of urgent jurisdiction, situating the summary judge as the central actor in a system of digital immediacy (F. Ost, 2000, p. 13).

### **3.3 Reflections on Contemporary Challenges in Judicial Oversight by the Summary Proceedings Judge**

The rise of digitalization has profoundly transformed administrative dynamics, significantly enhancing the efficiency of procedures. Nevertheless, this major evolution also confronts judicial review- particularly as exercised by the summary proceedings judge- with novel and complex challenges (Report on Digitalization, Steering Committee of the Estates General of Justice, p. 59). The transient nature and traceability of digital acts constitute a primary difficulty; actions taken on digital platforms may be instantly created, modified, or deleted. This compels the judge to calibrate the promptness of ordered measures to the urgency of digital threats (O. Vibert, 2011), sometimes necessitating the issuance of discreet interim measures, such as freezing a procedure or transaction within an information system. In the context of automation, an error- whether human or software-related- can have substantial repercussions on the property rights of third parties, requiring swift judicial intervention to reconstruct the digital chronology of events.

A second challenge lies in the demand for new forms of expertise. The summary proceedings judge must now assess the validity, integrity, and evidentiary weight of digital evidence, moving beyond the traditional examination of physical documents. This task may

require the support of information security or digital systems audit experts to identify the incident or risk at its source (DGSSI, FAQ, 2023, pp. 6–7). This situation blurs the boundary between judicial competence and technical administration, potentially giving rise to unprecedented jurisdictional conflicts.

Finally, the scope of oversight has expanded considerably. No longer confined to the conventional review of the legality of an act, the judge now examines the entirety of the digital process: registration, authentication, data access, electronic notification, and the digital execution of decisions. In doing so, the judge effectively ensures real-time oversight of the entire digitized administrative chain.

#### **4. Discussion**

The emergence of digital disputes challenges the traditional classifications of civil procedure and prompts a reconsideration of temporary protective measures in the context of dematerialized transactions. The summary proceedings (*référé*), traditionally regarded as a form of swift and summary justice (K. Lemerrier, 2022, p. 42), now face a dual challenge: preserving their essential foundations while adapting to the digitalization of interactions and the speed inherent in the digital environment. In this regard, the mechanism of pre-notification- which addresses the need to mitigate legal risks through the temporary and revocable registration of a marker in official records or registration systems- provides a particularly relevant analytical framework for examining the transition toward innovative management of digital flows.

##### **1. The adversarial principle tested by digital immediacy**

The introduction of digital technologies into litigation initially raised legitimate concerns about a potential weakening of defence rights, notably the adversarial principle. However, far from undermining its effectiveness, the dematerialisation of exchanges and hearings has prompted a functional redefinition. Rather than being diminished, the adversarial process becomes more flexible and better adapted to new procedural timeframes. In some instances, it takes the form of an accelerated adversarial exchange, thanks to remote hearings by videoconference or electronic communication, enabling the court to rule swiftly while ensuring the parties' full opportunity to be heard (D. Kwizera, 2024, p. 248). This speed, which responds to the imperative of urgency, must not be confused with summary justice, since it presupposes procedural organisation that maintains a constant balance between speed and rigour. In other situations- particularly in the context of provisional measures, such as suspending a contested pre-notification- the adversarial exchange may be deferred but remains legally circumscribed, in that it is exceptionally possible to decide provisionally without immediately hearing the opposing party, provided that an adversarial debate is opened within a defined timeframe. In this respect, the traceability of electronic communications, the instantaneous notification of decisions, and the automated recording of time limits render such deferral compatible with the fundamental requirements of the defence. Finally, dematerialisation confers a new dimension of legal security on the adversarial process through the use of authenticated platforms, certified messaging, and qualified electronic signature systems, which ensure not only the integrity of exchanges but also the probative value of notifications (P. D. Goyon, 2013, pp. 121–124). Thus, digital adversarial proceedings are not a mere dematerialised replication of past practice: they

evolve into a reliable, verifiable, and documented process that strengthens litigants' confidence in the fair exercise of their rights of defence in the digital age.

## **2. Proportionality as the Key to Regulating Digital Interim Measures**

The increasing use of digital tools in resolving urgent disputes has brought the principle of proportionality to the forefront- a principle already central to interim relief, yet whose scope has expanded significantly in an environment marked by vast and sensitive data flows. Proportionality acts as a vital regulatory mechanism, requiring judges to carefully tailor their interventions according to three complementary criteria.

First, assessing the intensity of the intervention calls for targeted and limited measures to avoid any excessive impact. For instance, in the case of a contested annotation, the court's decision should focus on neutralizing the disputed entry without disrupting the entire land registry system. Second, proportionality demands careful consideration of the decision's scope, which must remain strictly aligned with the specific issue at hand. A dispute concerning a single transaction should not compromise the validity of other entries within the same digital system. This restraint is essential for maintaining the continuity and reliability of the overall registration framework, which underpins legal certainty and economic stability. Third, proportionality is reflected in the technical requirement for reversibility: judicial measures must be implemented in a way that allows- if necessary- a return to the previous state of the data, without loss or alteration, through mechanisms such as traceability, controlled deletion, and certified restoration.

## **3. Toward a Functional Digitalization of Procedural Safeguards**

Practical experience with digital litigation shows that major procedural safeguards- particularly adversarial principles and proportionality- do not vanish in the process of digital transformation but instead undergo a functional evolution. These protections retain their core value while becoming more adaptive and modular in nature, adjusting to the technical constraints of digital platforms and the specific demands for speed, fluidity, and efficiency in decision-making (A. Garapon, J. Lassègue, 2018, p. 364). In this context, digital interim relief should not be viewed merely as a straightforward transposition of traditional mechanisms into an online environment. Rather, it represents a conceptual shift: functional justice gains a new role, with judges no longer limited to upholding compliance with the law in a formal sense but also becoming regulators of digital workflows.

The contemporary judge's duties now include ensuring that the provisional protection of rights occurs within a framework that balances procedural speed, technological reliability, and oversight of reversibility. This transformation is particularly clear in areas such as land registration, where provisional judicial intervention- including the management of registration holds- no longer merely serves to preserve disputed rights. Instead, it now operates within the internal logic of electronic registers, system-wide consistency, and the security of entries. The digitalization of procedural safeguards thus does not lead to a weakening of legal protection, but rather to a redefinition that empowers judicial oversight and defense mechanisms with a new effectiveness, adapted to the realities of the digital, instant-access economy.

In this context, proportionality serves as a balanced regulatory tool for digital interim measures. It does not limit judicial authority but rather guides its exercise, ensuring that immediate effectiveness is consistently balanced with the long-term preservation of legal integrity.

#### **4. Clarification of Skills and Procedural Transparency**

The interplay between single-party orders (“ordonnance sur requête”) and summary proceedings (“référé”) continues to introduce significant uncertainty within judicial practice, particularly in digital contexts where the rapid pace of information flows can complicate procedural choices.

French case law has repeatedly emphasized the need to delineate these procedural avenues with precision. For instance, the commercial chamber of the Cour de Cassation overturned an appellate decision by reiterating the obligation to ascertain whether the requested measure entails an exception to the adversarial principle, thereby confirming the subsidiary nature of *ex parte* proceedings (Cass. com, 2002). Likewise, the second civil chamber clarified that the judge reviewing such orders must assess at the time of ruling, whether circumstances justifying the absence of adversarial debate persist, thus reinforcing the foundational status of the adversarial principle in French law (Civ. 2, 11 Feb. 2010, n° 09-11.342).

To address these challenges, scholars propose a clear and practical distinction: summary proceedings (“référé”) should be considered the standard approach, given their compatibility with both the adversarial principle and proportionality, whereas single-party orders (“ordonnance sur requête”) should be strictly reserved for exceptional cases of objective, extreme urgency—such as the imminent risk of irreversible digital harm or fraudulent appropriation. This bipartite allocation gains legitimacy when supported by a rigorous framework of reasoning (Articles 494 and 495 of the French Code of Civil Procedure), incorporating the traditional criteria of urgency, a *prima facie* case, and proportionality. These criteria should be further refined in digital contexts by specific considerations: traceability of operations, data integrity, and the modalities of automated execution. Such refinements are essential to enhance predictability and coherence in the exercise of judicial authority within a dematerialized environment.

#### **• Effective Decision-Making Practices for a Digitalized Justice System**

In the context of a digitalized justice system, adopting sound decision-making practices is crucial to strengthening land security and mitigating risks of abuse, while balancing technological efficiency with the requirements of legality and procedural fairness. Digital prenotations must therefore be grounded in objective and verifiable criteria, such as authenticated documentary evidence, with extensions permitted only when strictly justified to avoid unnecessarily immobilizing property. Immediate removal of registrations should be mandated in cases of clear abuse—such as fraudulent or unfounded entries, thereby ensuring the fluidity of real estate transactions without compromising the protection of legitimate rights.

Algorithmic execution of judicial decisions gains precision when court orders explicitly specify the required technical operations—whether a targeted freeze of a disputed entry, a



temporary annotation to flag pending litigation, or the controlled deletion of incorrect data—while incorporating strict enforceable deadlines. This approach guarantees both swift and traceable implementation, aligning digital urgency with the principles of proportionality and reversibility.

To prevent potential abuses, the use of surety bonds or penalties should be modulated according to the economic value of the property at stake and the scale of the risk involved. These deterrent mechanisms must be proportionately calibrated to discourage delaying tactics without unduly burdening proceedings for parties acting in good faith.

Finally, enhanced institutional cooperation is essential, manifested through secure communication channels between courts and the National Agency for Land Conservation, Cadastre, and Mapping (ANCFCC). This should be complemented by a shared electronic evidentiary framework to standardize digital evidence, as well as a dedicated protocol for managing technical incidents—such as system failures or cyber threats—to ensure overall system resilience and uphold public trust in an increasingly dematerialized land governance framework.

## 6. Limitations and Perspectives

The analysis of the limitations and prospects of the interim measures' jurisdiction regarding property pre-registrations in the era of judicial digitalization highlights the necessity for a comprehensive reconsideration of the adaptability of judicial institutions in the face of ongoing technological change. Current constraints primarily concern insufficient training among judicial actors, including judges, court clerks, and legal assistants—specifically in relation to digital tools and protocols for securing electronic evidence. This gap carries a twofold risk: it may deepen disparities in access to justice between professionals skilled in digital technologies and those who are less familiar with them, as well as erode public trust in the system if the protection of personal data or the reliability of procedural operations is compromised (S. Laaboudi, N. Larhrissi, 2025, p. 18).

However, these present challenges also open the door to significant opportunities. First, there is a need to develop new procedural standards tailored to the realities of digital content—standards that would systematically incorporate technical criteria such as traceability, data integrity, and the verifiability of dematerialized acts. Second, the gradual integration of artificial intelligence could streamline the handling of pre-registration applications, for example by facilitating the identification of urgent cases, automating certain compliance checks, and improving the clarity of judicial decisions. Finally, the prospect of fully digitalizing land disputes ushers in a new era, in which all procedures related to pre-registration and registration would be conducted entirely on secure platforms, thereby reducing processing times and enhancing the transparency of operations.

As a result, the interim measures jurisdiction in the field of pre-registration must go beyond current limitations, which stem largely from training needs and practical adaptation. The challenge is now to position this area of justice within an innovative framework—one that fully embraces technological tools. Such integration must ensure both the security of legal positions and more efficient case management. Ultimately, the emergence of a technologically grounded justice system is now seen as an essential prerequisite for modernizing and improving the effectiveness of pre-registration litigation.



## Conclusion

The preceding analysis demonstrates that the digitization of real estate registration procedures in Morocco signals a structural transformation of land justice. Traditionally, the interim relief judge's role was limited to the provisional safeguarding of rights; now, this judge is entrusted with the dynamic regulation of digital processes that now govern the transfer and protection of property rights. This evolution compels the judiciary to reconsider its intervention methods, as it confronts data volatility, widespread traceability, and the increasing automation of administrative processes.

It is therefore important to emphasize that the central challenge striking a balance between the speed of digital procedures, unwavering respect for fundamental guarantees, and the security of the land title system. In this regard, the thesis advanced in this study is that the effectiveness of rights protection in a dematerialized environment depends on expanding the functional powers of the interim relief judge. Indeed, recent case law illustrates a synergy between rapid intervention and rigorous proportionality checks on ordered measures, thereby ensuring the coherence and security of the land system.

Key findings from this study include the following. First, clarifying procedural avenues now requires prioritizing summary proceedings as the main legal pathway, reserving *ex parte* orders for situations of demonstrated extreme urgency. Second, adapting the traditional trio of urgency, *prima facie* case, and proportionality to the digital realm necessitates integrating technical criteria to guarantee the authenticity, integrity, and traceability of dematerialized acts. Third, expanding the judge's power to strike entries from the register enables a prompt response to abusive registrations, while ensuring the reversibility of such operations. Fourth, reconfiguring the principle of adversarial proceedings, facilitated by remote hearings and electronic notification of decisions, strengthens procedural security. Fifth, reviewing international best practices confirms that swift and rigorous judicial oversight does not undermine the solidity of rights, but rather contributes to their consolidation in the context of accelerated transactions.

From a normative perspective, judicial reasoning must now systematically incorporate verification of digital chains, the reliability of electronic signatures, the preservation of audit trails, and the possibility of restoring previous states of the register. Proportionality remains the cardinal filter for any provisional measure, so as to avoid excessive disruption of the land cycle while ensuring effective protection of individual rights. In essence, the interim relief judge has become the indispensable arbiter of real estate transaction security in a digital environment.

Looking ahead, three priority initiatives stand out. First, the formalization of up-to-date decision-making guides, developed in consultation between legal professionals and technology specialists, is essential to ensure the transparency and security of dematerialized procedures. Second, empirical evaluation of the actual effects of digitization on litigation timelines, the detection of dilatory tactics, and the confidence of economic actors will provide the data needed to fine-tune existing mechanisms. Third, the creation of a shared electronic evidentiary framework, coupled with a secure system for exchanges between courts and the land administration, will form the foundation of a land justice system that is responsive, reliable, and trustworthy.

In conclusion, the digitization of land procedures should not be reduced to mere technical modernization. It demands a profound transformation of the very function of interim relief justice, which is now called upon to play a central role in the regulation, security, and fluidity of the real estate market. This shift requires ongoing adaptation of professional practices, renewed institutional dialogue, and heightened vigilance in balancing digital efficiency, respect for fundamental rights, and procedural fairness. In this way, Moroccan land justice can meet the challenges of the 21st century by reconciling technical innovation with the requirement of legal certainty—an indispensable guarantee of public confidence and economic performance.

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