



Nguyo v Land Registrar, Nyandarua Lands Office (Environment & Land Case E008 of 2022) [2023] KEELC 16565 (KLR) (28 March 2023) (Judgment)

Neutral citation: [2023] KEELC 16565 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE E008 OF 2022**

**YM ANGIMA, J
MARCH 28, 2023**

BETWEEN

JAMES MURIGU NGUYO PLAINTIFF

AND

THE LAND REGISTRAR, NYANDARUA LANDS OFFICE DEFENDANT

JUDGMENT

A. The Plaintiff's Claim

1. By a plaint dated May 19, 2022 the Plaintiff sought the following reliefs against the Defendant:
 - a. An order directing the Defendant to remove the restrictions registered on August 23, 2000 against Title Number Nyandarua/Ol Joro Orok West/200 and Nyandarua/Ol Joro Orok West/49
 - b. An order directing the Defendant to issue to the Plaintiff new titles in respect of Title Number Nyandarua/Ol Joro Orok West/200 and Title Number Nyandarua/Ol Joro Orok West/49.
 - c. Costs of the suit.
 - d. Any other order or relief the honourable court may deem fit to grant.
2. The Plaintiff pleaded on or about August 23, 2000 the Defendant entered restrictions against his Title Nos. Nyandarua/Ol Joro-orok/West/49 and 200 (the suit properties) at the instance of Apollo Karimi and Geoffrey Kairu acting on behalf of Ol Joro-Orok West Farmers Co-operative Society (the Society). The restrictions were said to have been entered on account of a dispute in relation to a dam and cattle dip located on the suit properties.



3. The Plaintiff pleaded that the society was no longer in existence and that the two officials who had caused the registration of the restrictions were deceased. It was further pleaded that despite written request and demand for removal of the restrictions the Defendant had refused to oblige without a court order to that effect.

B. The Defendant's Defence

4. The Defendant filed a defence dated August 22, 2022 denying liability for the Plaintiff's claim. The Defendant admitted the Plaintiff's ownership of the suit properties and the entry of the restrictions but denied knowledge of the nature of the dispute between the Plaintiff and the society. The Defendant also denied knowledge of the de-registration of the society and of the demise of the two officials who caused the registration of the restriction.
5. The Defendant further pleaded that the said restrictions could only be removed pursuant to a court order as provided for under Section 78(2) of the *Land Registration Act, 2012*. The Defendant, therefore, prayed for dismissal of the Plaintiff's suit.

C. The Plaintiff's Reply

6. There was no reply to the Defendant's defence hence there was a joinder of issue on the defence under the provisions of Order 2 rule 12 of the *Civil Procedure Rules, 2010*.

D. Summary of Evidence at the Trial

The Plaintiff's Evidence

7. The Plaintiff testified at the trial on his own behalf as the sole witness. He adopted the contents of his witness statement dated April 20, 2022 as his evidence in-chief. He also produced the documents contained in his list of documents dated May 19, 2022 as exhibits. He abandoned prayer (b) of the plaint because he had already recovered his original title deeds which he thought were lost. The gist of his evidence was that there was no legitimate reason to maintain the restrictions on the suit properties since the complainants were no longer in existence. He, therefore, prayed for the reliefs sought in the plaint save for prayer (b) thereof.

The Defendant's Evidence

8. The Defendant did not call any witness at the trial despite having filed a defence denying liability for the Plaintiff's claim and having prayed for dismissal of the suit. The Plaintiff's evidence was also not challenged at the trial since he was not cross-examined on his evidence.

E. The Issues for Determination

9. It is evident from the material on record that the parties did not file an agreed statement of issues for determination. In fact, no issues were filed by either side. Consequently, the court shall frame the issues for determination as provided for under Order 15 rule 2 of the *Civil Procedure Rules, 2010*.
10. The court has perused the pleadings, documents and evidence on record in this matter. The court is of the opinion that the following issues arise for determination herein:
 - a. Whether the Plaintiff has proved his case against the Defendant to the required standard.
 - b. Whether the Plaintiff is entitled to the reliefs sought.



- c. Who shall bear costs of the suit.

F. Analysis and Determination

Whether the Plaintiff has proved his case against the Defendant to the required standard

11. There is no doubt from the material on record that the Plaintiff is the registered proprietor of the suit properties. There is also no doubt that the restrictions were entered in the land register at the instigation of the society and its officials. There is uncontroverted evidence on record to the effect that the society's registration was cancelled in 1994 by the Commissioner for Co-operative Development. The two officials of the society who caused the registration of the restrictions were said to have died and there was no evidence at the trial to the contrary. Moreover, there was no evidence to demonstrate that they had pursued resolutions of the dispute between the society and the Plaintiff for the 12 years or so the restrictions had been in place.
12. Section 76 of the [Land Registration Act, 2012](#) on the entry of restrictions stipulates as follows:
 1. For the purposes of compulsory acquisition the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge
 2. A restriction may be expressed to endure:-
 - a. or a particular period;
 - b. until the occurrence of a particular event; or
 - c. until a further order is made, and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.
 3. A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions
 4. The Registrar shall make a restriction in any case where it appears that the power of the proprietor to deal with the land, lease or charge is restricted
13. On the other hand, Section 78 of the said [Act](#) on removal of restrictions stipulates as follows:
 1. The Registrar may, at anytime and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction
 2. Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs



14. It is evident from Section 76 of the Act that a restriction is not intended to last indefinitely or forever. It is not an end in itself. It is merely intended to be a temporary encumbrance to preserve the property pending resolution of any dispute or issue regarding the property. The material on record shows that the restrictions were entered against the suit properties on 23.08.2000, that is, more than 12 years ago. There is no evidence on record to demonstrate that the society or its officials ever took steps towards resolution of the alleged dispute with the Plaintiff through any lawful means. Moreover, the material on record shows that by the time the restrictions were entered the society's registration had already been cancelled under the *Co-operative Societies Act* (Cap. 490).
15. The court is thus of the opinion that there was no lawful justification or excuse for the Defendant to maintain the said restrictions for over 12 years without any evidence to demonstrate that the complainants had taken steps towards resolution of the dispute with the Plaintiff. If the Defendant had taken the steps provided for under Section 78(1) of the Act by issuing a notice to the society and its officials, he would have probably discovered that it was no longer in existence and that no steps had been taken towards resolution of the alleged dispute. The court is, therefore, of the view that the Defendant clearly abdicated his statutory duty of issuing a notice and undertaking the inquiry contemplated under Section 78(1) of the Act. The consequence of this dereliction of duty was that the Plaintiff has incurred needless expense in filing suit for removal of the restriction whereas the Attorney General has incurred needless expense in defending the suit.
16. The court is thus satisfied that the Plaintiff has proved his claim against the Defendant to the required standard. There is absolutely no lawful justification for the continued maintenance of the restrictions which fly in the face of the provisions of Article 47 of the *Constitution of Kenya, 2010* and the provisions of the *Fair Administrative Action Act, 2015*.

Whether the Plaintiff is entitled to the reliefs sought

17. The court has already found and held that the Plaintiff has proved his claim against the Defendant to the required standard. It would, therefore, follow that the Plaintiff is entitled to the reliefs sought save for prayer (b) which was abandoned at the trial.

Who shall bear costs of the suit

18. 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 -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. Although the Plaintiff is the successful party, the court has noted that the suit was not defended at the trial. In the circumstances, the court is of the opinion that each party should have bear his own costs.

G. Conclusion and Disposal

19. The upshot of the foregoing is that the court finds and holds that the Plaintiff has proved his case against the Defendant on a balance of probabilities. Consequently, judgment is hereby entered for the Plaintiff against the Defendant in the following terms:
 - a. An order be and is hereby made directing the Defendant to unconditionally remove the restrictions entered against Title Nos. Nyandarua/Ol Joro-Orok West/200 and Nyandarua/Ol Joro-Orok West/49 forthwith.
 - b. Each party shall bear his own costs.



It is so decided.

JUDGMENT DATED AND SIGNED AT NYAHURURU THIS 28TH DAY OF MARCH, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mr. Oyoo for the Plaintiff

Ms. Nyambura for the Attorney General for the Defendant

C/A - Carol

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Y. M. ANGIMA

JUDGE

