



Kanana (Suing as the legal representative of the Estate of Joseph Gikunda M'Mugambi – Deceased) v Attorney General & another (Environment and Land Miscellaneous Application E020 of 2023) [2023] KEELC 19235 (KLR) (26 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19235 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E020 OF 2023**

**CK NZILI, J
JULY 26, 2023**

BETWEEN

MARY KANANA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOSEPH GIKUNDA M'MUGAMBI – DECEASED) APPLICANT

AND

THE HONOURABLE ATTORNEY GENERAL 1ST RESPONDENT

LAND REGISTRAR MERU CENTRAL 2ND RESPONDENT

RULING

1. By an application dated May 25, 2023, the court is asked to order the removal of an inhibition on L R No Abothuguchi/Katheri/159, issued in Meru RMCC No 39 of 1998 and Meru L DT No. 2 of 1995, which files were finalized and the order once granted to be served upon the respondents for compliance.
2. The application is based on the grounds on its face application and an affidavit sworn by Mary Kanana on May 25, 2023. As the legal representative of the estate of the late Joseph Gikunda M'Mugambi, the registered owner of the suit land, the applicant averred the grant cannot be confirmed by the court in Githongo PM Succession Case No E109 of 2021, due to the pendency of the inhibition orders. She has attached copies of the letters of administration, a copy of the summons for letters of the grant, an official search, a copy of the gazette notice for disposal of files, and a letter for leave and certificate of destruction; all marked as annexures No M.K. 1, 2, 3, 4 & 5(a) & (b) respectively.
3. Section 70 & 71 of the [Land Registration Act](#) grants the land registrar powers to register a restriction against a title to land to prevent any fraud or for a sufficient reason. A court is also mandated to order the imposition or lifting of such a restriction or inhibition until or after an occurrence of an event.
4. This file contains the restrictions imposed in Meru R M S Civil Suit No 39 of 1998 and L D T No 2 of 2005. The applicant says the court files were destroyed through a gazette notice dated February 11,



2019. The gazette notice covers HCI 1968, 1994, and H C A 1968 – 1994. The leave issued to destroy files did not cover files from the Chief Magistrate's Court. It was not a blanket leave under the *Records Disposal (Court) Rules* Cap 14 Laws of Kenya.

5. The Deputy Registrar of this court has not issued the applicant a certificate confirming that the two files under which the restrictions were imposed were destroyed during the exercise. There is no indication from the applicant if she was a party to those files and whether the two cases were finalized.
6. Further, there is no evidence attached by the applicant that the occurrence of the event contemplated under Sections 68, 70 & 78 of the *Land Registration Act* took place. The restrictions do not state that the disposal of the file was the occurrence. There must have been an outcome in the files. In this case, the applicant should have asked the Deputy Registrar if the file register exists so that she may establish the results in the two files. The upshot is that the application herein lacks merits and is due for dismissal with no order as to costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 26TH DAY OF JULY 2023

IN PRESENCE OF

C.A JOHN PAUL

MISS KOECH FOR MWITI FOR THE APPLICANT

MBAIKYATTA FOR 1ST & 2ND RESPONDENT

HON. CK NZILI

ELC JUDGE

