



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CIVIL APPEAL NO. 13 OF 2010**

**AUGUSTINE MUTURI MAIRANI**

**ANTONY NYAGA MAIRANI**

**JOHN NJAGI MAIRANI.....APPLICANTS**

**VERSUS**

**CHARLES NDWIGA KANYERIA.....RESPONDENT**

**R U L I N G**

This is a ruling on application dated 13/06/2018 seeking for the following orders:

1. *THAT all cautions, restrictions and/or prohibitory order lodged over land parcel number KYENI/MUFU/4210 do be lifted.*
2. *THAT the Land Registrar, Embu, do be ordered to include the names of AUGUSTINE MUTURI MAIRANI, ANTONY NYAGA MAIRANI and JOHN NJAGI MAIRANI in the register for Land Parcel No. KYENI/MUFU/4210.*
3. *THAT the Land Registrar, Embu, do be ordered to issue a title deed in the joint names of AUGUSTINE MUTURI MAIRANI, ANTONY NYAGA MAIRANI and JOHN NJAGI MAIRANI.*

The affidavit of the applicant Augustine Muturi Mairani supports the application. Other grounds are contained on the face of the application. It is deposed that in the court's judgment delivered on 18/12/2012 the land parcel LR. NO.KYENI/MUFU/4210 was decreed to the applicant jointly with the respondent. The Land Registrar has refused/neglected to execute the court's order, that is to have the registration of the land in the respondent's name cancelled and substituted with the joint names of the parties.

The applicant has paid all the requisite fees to the land's office. However, the prohibitory orders, restrictions and cautions lodged/registered against the title need to be lifted before registration can be done in the joint names. The applicant therefore prays for lifting of the said orders.

The respondent opposed the application on grounds that the application is incompetent. That the supporting affidavit was not sworn by the applicant because he is of poor health and is incapacitated both physically and mentally.

The respondent further states that this application is similar to the one dated 07/09/2016 which was heard and determined by the court.

It is important to first determine whether this application is similar to the earlier one dated 07/09/2016 which was determined by the court in its ruling delivered on 03/08/2017.

This application in prayers 2 and 3 seeks for Orders that the Land Registrar, Embu be ordered to include the names of *AUGUSTINE MUTURI MAIRANI, ANTONY NYAGA MAIRANI and JOHN NJAGI MAIRANI in the register for Land Parcel No. KYENI/MUFU/4210.*

These prayers were contained in the application dated 07/09/2016. The court granted the Orders sought in its ruling dated on 03/08/2017. I find the two prayers is *res judicata* and are hereby struck out.

The first prayer is for lifting the prohibitory orders, restrictions and cautions on LR.NO.KYENI/MUFU/4210. This prayer was not included in the earlier application. It saves this application being declared *res judicata*.

The respondent in his replying affidavit has not given a single reason why the prayer for lifting the said prohibitory orders, restrictions and cautions should not be allowed. During the hearing of the application, the respondent orally told the court that he applied that his application to appeal out of time be re-heard by the full Court of Appeal Bench. It had been dismissed by one Judge earlier.

The respondent did not produce any document to show that he had made such an application for re-hearing. If he had done so, he would have included this information in his replying affidavit.

Judgment decreeing the land to three persons named in this application was delivered about six (6) years ago. The applicant has denied the applicant's the benefits of their judgments by filing application after application all of which he has lost. An Appeal does not operate as stay, let alone an application to appeal out of time. The applicant has not obtained any stay and has failed to convince this court that there is anything pending before the Court of Appeal.

I find prayer 1 of the application merited and it is hereby allowed as prayed.

It is hereby so ordered.

**DATED, SIGNED AND DELIVERED AT EMBU THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2018.**

**F. MUCHEMI**

**JUDGE**