

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 500 OF 1989

PATRICK NDUNGU KIHU.....PLAINTIFF/
APPLICANT

V E R S U S

BARCLAYS BANK OF KENYA LIMITED NYAHURURU
BRANCH.....DEFENDANT/RESPONDENT

RULING

1. Patrick Ndungu Kihiu, the Plaintiff/Applicant herein took out the motion dated 9th February 2016 in which he sought for the following orders:

1. *THAT the matter be certified urgent and heard ex-parte, service of the same be dispensed with in the first instance.*
2. *THAT a specific order be made to set aside the temporary order of injunction issued on 27/2/1989 in civil suit no. 500/1989 against the parcel number. Ndeiya/Makutano/89 together with the suit herein.*
3. *THAT an order do issue to the chief registrar of land Kiambu to lift the caution registered on 2/6/1989.*

2. The motion is supported by the affidavit sworn by the Plaintiff/Applicant. The affidavit of service of Mr. Tyson Murungi sworn on 18th February 2016 shows that the motion was served upon **Barclays (K) Bank Ltd, Nyahururu Branch**, the Defendant/ Respondent but the same did not attract any response. When the application came up for interpartes hearing, the Applicant successfully applied for leave to proceed exparte with the hearing of motion.

3. I have carefully considered the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit.

4. It is the submission of the Plaintiff/Applicant that he is the bonafide administrator and beneficiary of the estate of John Kihiu Ngumi, deceased and has letters of administration. It was pointed out that orders of injunction were previously issued, served and registered at the lands registry on 2nd February 2/6/1989. The Plaintiff has informed this court that the registry has demanded to be given an order discharging the aforesaid orders so that the property can be fully accessed. I have looked at the grounds argued at the interpartes hearing of the motion. It is apparent from the averments made in the supporting affidavit that on 27/2/1989, the Plaintiff moved this court and successfully obtained a temporary order of injunction to restrain the Defendant from interfering with the subject matter of this suit since the charge had been registered in favour of the Defendant as shown in the official search.

5. The order was registered against **L.R. No. Ndeiya/Makutano/89 on 2.6.1989**. The Plaintiff now wishes to have the aforesaid order lifted and discharged. The motion is not opposed. I find the same to be meritorious. It is allowed as prayed with no order as to costs.

Dated, Signed and Delivered in open court this 27th day of May, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant