



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**CIVIL MISC APPLICATION NO. 34 OF 2008**

**IBRAHIM MURIITHI KARIUKI.....APPLICANT**

***VERSUS***

**JAMES NJIRU.....RESPONDENT**

**RULING**

1. This is an application seeking an order of this court directing the removal of a restriction placed on land parcel No. Gaturi/Nembure/10912 by the respondent. The application is anchored in the applicant's 6 paragraph supporting affidavit. The applicant has deponed that the respondent has placed restrictions on his said parcel of land without any right and is an intruder, a matter in respect of which he has annexed a search certificate marked "IMK 1", as evidence that he is the owner. He has further deponed that the restriction has been pending since 2008, which he deponed has caused him damage and loss. Finally, he has deponed that the respondent is reluctant to finalize this matter which has been pending in court.

2. The proceedings were conducted in the absence of the respondent. The applicant filed an affidavit of service dated 4<sup>th</sup> October 2016. According to that affidavit, the respondent was served on 28<sup>th</sup> September 2016. The respondent did not file any replying affidavit and did not attend court. I was satisfied that he was properly served and had adequate notice of the hearing date.

3. In the light of the affidavit evidence of the applicant, I find that he is the registered owner of the said parcel of land. I further find that there is no justification to warrant the continued restriction being placed on his land.

4. I therefore allow the applicant's application in terms of prayer 1 of his notice of motion dated 7<sup>th</sup> September 2016 with no orders to costs.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **8<sup>th</sup>** day of December **2016**

In the presence of the applicant and in the absence of the respondent

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**08.12.16**