



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

MISC APPLICATION NO. 37 OF 2020

PAUL MBUGUA MUNGAI.....APPLICANT

VERSUS

THE LAND REGISTRAR, RUIRU.....1ST RESPONDENT

GITHUNGURI CONSTITUENCY RANCHING CO. LTD.....2ND RESPONDENT

HERMAN NJENGA RUHANGI..... INTERESTED PARTY

RULING

1. On or about 22/10/2020, **Paul Mbugua Mungai** brought a notice of motion dated 21/10/2020, seeking an order directing the Land Registrar, Ruiru, to remove the restrictions lodged against the land registers relating to the following five parcels: **(i) Ruiru Kiu Block 2/16842; (ii) Ruiru Kiu Block 2/16843; (iii) Ruiru Kiu Block 2/16844; (iv) Ruiru Kiu Block 2/16845; and (v) Ruiru Kiu Block 2/16846**. The application was expressed to be brought under **Order 51 rule 1** of the Civil Procedure Rules; **Section 78(2)** of the Land Registration Act 2012; and **Section 3** of the Environment and Land Court Act. It was supported by the applicant's affidavit sworn on 21/10/2020. The application was canvassed through written submissions dated 6/10/2021 filed by *Nyachoti & Co. Advocates*.

2. The case of the applicant was that he was the duly registered proprietor of land parcel number **Ruiru/Kiu Block 2 (Githunguri) /4367** measuring approximately 0.5000 hectares, which parcel of land he had subdivided into the above five parcels. He had discovered that the 2nd respondent, without any justification, prompted the 1st respondent to lodge restrictions against the land registers relating to the five subdivisions, thereby preventing him from gainfully dealing with the five parcels. On 7/9/2020, he wrote to the 2nd respondent seeking to know the reasons why it caused the restrictions to be placed on the said parcels but there was no response from the 2nd respondent. He added that there were no timelines specified in relation to the subsistence of the impugned restrictions.

3. It was the case of the applicant that the issue of ownership of land is a matter to be determined by the courts and if any one had a claim over the parcels, that person was entitled to approach the courts for appropriate reliefs. He added that he was not aware of any court proceedings initiated by the 2nd respondent relating to any interest in the parcels. He contended that the impugned restrictions were a breach of his proprietary rights over the suit properties. He added that he was neither notified nor invited for a hearing prior to nor after the placing of the restrictions.

4. The applicant subsequently filed an affidavit of service sworn on 10/11/2020 by one Peter Kyene, indicating that the application had been served on the two respondents and on the Attorney General. There was, however, no appearance by the 1st respondent. The 2nd respondent appeared through *Kanyi Kiruchi & Co Advocates*. Mr Kanyi subsequently attended court severally on behalf of the 1st respondent. On 10/11/2021, he informed the court that the dispute in the application was between the applicant and the interested party and that the 2nd respondent would not file a response or submissions on the application.

5. On or about 7/6/2021, the interested party brought a notice of motion dated 10/11/2020, seeking to be joined in the suit on the ground that he was the registered owner of parcel number **Ruiru/Ruiru Kiu Block 2/Githunguri 4367** out of which the five subdivisions were surveyed. He did not, however, exhibit any evidence of a registered title in his name. On 6/7/2021, the court [Gacheru J] allowed the application for joinder and gave directions on the disposal of the main application in the suit. The court gave the respondents and the interested party 14 days within which to file responses to the main application. None of them filed a response. Similarly, none of them filed written submissions. Consequently, the application dated 21/10/2021 is unopposed. The supporting affidavit of the applicant is uncontroverted. The written submissions filed by the applicant are unchallenged. Put differently, there are no serious issues to be answered in the application.

6. The court has considered the application alongside the supporting affidavit and the written submissions by the applicant's counsel. In the absence of a response to the application, the only question to be answered in this ruling is whether the applicant has demonstrated a proper

basis why the reliefs sought should be granted.

7. The applicant has demonstrated that he holds registered titles relating to the suit properties. Despite the respondents and the interested party being granted the opportunity to demonstrate why the restrictions were placed on the registers and why they should not be vacated, they have elected not to show cause. If there are legitimate reasons why the restrictions were placed against the registers, those reasons have not been disclosed to the court.

8. **Article 40** of the **Constitution** and **Sections 24** and **25** of the **Land Registration Act** protect the rights of a registered proprietor of land. In the absence of any explanation as to why the restrictions were placed against the parcel registers or why they should not be removed, the court will grant the plea sought in the application under consideration.

9. The result is that the notice of motion dated 21/10/2020 is allowed in terms of prayer 1. There will be no order as to costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 17TH DAY OF FEBRUARY 2022

B M EBOSO

JUDGE

In the Presence of: -

Ms Nyaga for the Applicant

Court Assistant: Lucy Muthoni