



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO. 13 OF 2006

CHURCH COMMISSIONERS FOR KENYA1ST PLAINTIFF
FORTUNATUS KARENJU MUGWIMI.....2ND PLAINTIFF
RUTHANJI & NJIRUINI COMPANY.....3RD PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL 1ST DEFENDANT
COMMISSIONER OF LANDS.....2ND DEFENDANT
SUNDOWN PROPERTIES.....3RD DEFENDANT

RULING

1. The application is dated the 12th June, 2015 and is brought under the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act and Order 50 of the Civil Procedure Rules. The applicant seeks the following orders;
 - i. That this Honourable Court be pleased to lift the court order/prohibition registered on 9th May, 2006 on Nyeri/Municipality/ Block 1/29 and Nyeri/Municipality/Block 1/214.
 - ii. That the costs of this application be borne by the respondents.
2. The applicant places reliance on the grounds on the face of the application and on the Supporting Affidavit made on the same date by **AGNES MUTHONI MUGO** who depones that she is a Director of the applicant company and is duly authorized to make the affidavit.
3. A short preview of the facts is that the ownership of **NYERI/MUNICIPALITY/BLOCK 1/29** and **NYERI/MUNICIPALITY/BLOCK 1/214** was the subject matter of the dispute between the parties herein. An interim court order was obtained by the Plaintiff/ Respondents which was then registered against the aforementioned properties prohibiting and restraining the transfer or charging of the suit properties pending the hearing and determination of the main suit.
4. On the 23rd August, 2013 the suit was dismissed. The applicant now seeks removal of the existing restriction to enable it to enjoy its title without hindrance.
5. At the hearing of the application only Counsel for the 1st Plaintiff/ Respondent was present but did not make any submissions as he stated that he had not received any instructions from his client. He therefore left it to the court to make its determination.
6. None of the other Respondents were in attendance on the date fixed for hearing despite having been duly notified and served accordingly. In essence the matter then proceeded unopposed.

7. After hearing the submissions made by Counsel for the applicant, which are controverted and unchallenged, the only issue framed for determination is; whether this is a suitable case for this court to exercise its inherent discretionary powers and to allow the application for the removal of the restriction placed against the Titles.
8. The application is made under Section 3A of the Civil Procedure Act which means that there is no clear provision of the law and therefore the applicant seeks leave of the court that it exercises its inherent discretionary power and in exercise of these powers the court must act judiciously and on the material placed before.
9. The applicant deponed that there is a restriction/ prohibition placed on the suit properties pursuant to a court order. The suit herein was heard and determined as it was dismissed on the 23rd August, 2013 and any restrictions were to subsist until the hearing and determination of the suit. No stay of execution nor appeal have been filed and therefore there are no pending issues as between the parties herein.
10. Counsel urged the court to allow the application and to remove the restrictions so as to enable the applicant to enjoy its property without hindrance.
11. I have had the occasion to peruse the annexure referred to as 'AMM1' and the contents of the restrictions placed on both titles read as follows;

'Court Order: Judgment Debtor prohibited and restricted from transfer or charging the property vide Civil Suit No. 13/06 of 3.5.06'

12. From the above wording, this court notes that the nature of the restriction relates to a judgment debtor and also notes that the civil suit number stated does not specify whether it relates to the High Court or a subordinate court.
13. This court is at pains in trying to analyze whether the restrictions the applicant seeks to remove relate to this instant suit. To assist the court in making its determination it would have been prudent for the applicant to have had the court order relating to the restriction/prohibition extracted and annexed to the application.
14. This court has taken the liberty to peruse the court record at length and the letter dated 16th April, 2008 from the Land Registrar addressed to the PCIO, Central Province, this letter is the applicant's saving grace as it confirms the placing of a restraint pursuant to an Order of this court in HCCC No.13/06.
15. In the light of the foregoing this court is satisfied that this is a suitable case in which it can exercise its discretion in favour of the applicant.
16. The application is hereby allowed. The restrictions placed on **NYERI/MUNICIPALITY/BLOCK1/29** and **NYERI/MUNICIPALITY/BLOCK 1/214** are hereby lifted.
17. There shall be no order as to costs.

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 30th day of November 2015.

HON. A. MSHILA

JUDGE