



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Leseru Tebeson Farmers Society v Chief Registrar of Titles Nairobi (Environment and Land Miscellaneous Application 3 of 2020) [2022] KEELC 2266 (KLR) (18 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2266 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 3 OF 2020**

SM KIBUNJA, J

MAY 18, 2022

**IN THE MATTER OF AN APPLICATION COMPELLING AN OFFICIAL
SEARCH IN L.R. NO. 27206/3 (I.R. 194659) AND L.R. NO. 27206/4(I.R. 194660)**

AND

IN THE MATTER OF THE LAND REGISTRATION ACT OF 2012

BETWEEN

LESERU TEBESON FARMERS SOCIETY APPLICANT

AND

CHIEF REGISTRAR OF TITLES NAIROBI RESPONDENT

RULING

1. The Applicant approached the court by way of the Notice of Motion dated the 20th January, 2020 brought under sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 51 Rules 1 of the [Civil Procedure Rules](#) and section 78(2) of the [Land Registration Act](#), 2012 seeking orders that:

- a. Spent
- b. Raising orders do issue compelling the Chief Registrar of titles in Nairobi to issue an official search in respect of L.R. No. 27206/3 and L.R. No. 27206/4 all situated in North West of Eldoret municipality in Uasin Gishu.
- c. Costs of this application be provided for.

The application is based on the seven (7) grounds on its face, inter alia that the applicant is the registered and legitimate title holder of the suit parcel; that it had come across copies of title documents purporting its titles had been cancelled; that its attempts to ascertain the status of the titles has been met with resistance by the respondent, who has declined to issue it with certificates of official search; that its rights to take steps to protect its interests over



the said parcels has been prejudiced, and the court should find that the respondent's refusal to issue the certificates of official search was not justified and grant the order compelling a certificate of search be provided in order to protect its property interests. The application is supported by the affidavit sworn on the 20th January, 2020, by Miriam Kubai, a representative of the Applicant, under a power of attorney. She reiterated the applicant's claim to the two properties and attached two certificates of title for the properties. She deposed that sometime in September 2018, a restriction was registered on the property by the Registrar of Titles without basis, which restriction was removed vide orders sought through Eldoret Misc. Appl. No. 37 of 2019. She further deposed that the applicant's attempt to have the orders registered has been met with resistance being informed to obtain an official search to accompany the application for registering the order. She produced the last of such applications dated 25th October, 2019. She reiterated the applicant's apprehension of mischief in the acts of the Chief Registrar of Titles and the anxiety this caused to the applicant.

2. The application is opposed by the Respondent through the four (4) grounds of opposition dated the 21st July, 2020, inter alia that;
 - a. "The Notice of Motion is incompetent, frivolous and devoid of merits and affidavits in support are full of falsehoods and misrepresentations of facts and law tailored to hoodwink this court.
 - b. That this court in the instant forum cannot grant the orders sought and jurisdiction is therefore devoid of merit and vehemently denied.
 - c. That the Notice of Motion is an empty shell and filled in vacuo and the relief sought are unknown in private law and the reliefs sought are unknown in private law arena and cannot be granted in the circumstances.
 - d. That annexures 'MK1c', 'MK2a', 'MK2b', 'MK4a' and 'MK4b' are bad in law, not admissible in evidence and contravene Articles 31, 35 and 50(4) of *the Constitution* as well as sections 79, 80 and 81 of the *Evidence Act* Cap 80 Laws of Kenya and section 7 to 13 of the *Access to Information Act*, 2016."
3. The court gave directions on the filing and exchanging of submissions on the 5th May 2020, 22nd July 2020, 9th March, 2021, and 8th February, 2022, but none was filed.
4. I find that the issues for determination are: -
 - a. Whether this court has jurisdiction over the matter;
 - b. Whether the Respondent's challenges to the evidence tendered by the Applicant are with merit;
 - c. Whether the reliefs sought should be granted.
5. That having carefully considered the grounds on the application, grounds of opposition, and the affidavit evidence, the court finds as follows;
 - a. That the certificates of title marked as MK 2 a, and b, and attached to the applicant's affidavit, are in respect of the suit properties. They do confirm that the Applicant indeed obtained title to both L.R. No. 2706/3 (I.R. No. 194659) measuring 708.9 Ha, and to L.R. No. 2706/4 (I.R. No. 194660) measuring 734.5 Ha on 1st January 2006. Notably, the two certificates of title to the suit properties were issued on the 23rd February 2018, under the framework of the Land Act, No. 6 of 2012 and the *Land Registration Act* No. 3 of 2012, by the Registrar of Titles whose name is indicated as 'B. F. Atieno, 208'.



- b. That I have also perused the copies of the application for official search as regards L.R. No. 2706/3 (I.R. No. 19459), and L.R. 27206/4 (I.R. No.194660), both dated the 25th January 2019 and I.R. No 19183 dated 23rd February 2017. The first two supports the applicant’s assertion that indeed it had applied for certificates of official searches for the suit properties on the date indicated thereon. That the said applications bear the stamp of the Eldoret Land Registry and is dated the 28th January, 2019. The relevance of the application in respect of I.R. No. 19183 is however not apparent to the court.
- c. That I have also perused the order issued in Eldoret Misc. Appl. No. 37 of 2019 on the 24th October 2019, and it is clear it is over the same suit properties. The order is about the removal of restriction over the suit properties, and was issued by Hon Lady Justice M. A. Odeny, as follows;

“It Is Hereby Ordered

1. That the restriction registered against L. R. No. 2706/3 and L.R. No. 2706/4 all situate in North West of Eldoret Municipality in Uasin Gishu County be and is hereby lifted.
 2. That raising orders do issue to order the removal of restriction in L.R No. 2706/3 and L.R. No. 2706/4 all situated in North West of Eldoret Municipality in Uasin Gishu County by Chief Land Registrar Nairobi.”
- d. The respondent’s grounds of opposition included inter alia, one on the court’s jurisdiction. The issue of whether or not the court is with jurisdiction to deal with this matter must be dealt with at the earliest, in view of the decision in the case of *Owners of the Motor Vessel Lillian S v Caltex Oil (Kenya) Ltd* (1989) wherein the court expressed itself stating:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

The court’s jurisdiction is clearly spelt out under Article 162 (2) b of *the Constitution* 2010, and section 13 of the *Environment and Land Court Act* No. Of 2011 to include “use and occupation of, and title to, land”. That applicant’s prayer of seeking to compel the Chief Registrar of Titles, Nairobi to issue it with official search certificates in respect of the two suit properties cannot be divorced from the question of title to the said parcels, which has an inference on entitlement to use and occupation of the same. That accordingly the court finds it is with jurisdiction to hear and determine the issues herein.

- e. That though the Respondent does not appear to dispute or question the court order obtained in Eldoret Misc. Appl. No. 37 of 2019 on the 24th October 2019, that is attached to the applicant’s affidavit and marked “MK3”, the court has no way of confirming whether it was complied with, in the absence of a certificate of official search over the suit properties concerned. The Respondent has raised an evidentiary challenge over the applications for the



certificates of searches marked MK 4 a, and b but without tendering any substantiations. As noted above in my analysis of the annexure, it bears the stamp of the Eldoret Land Registry dated 2January 8, 2019. For all intents and purposes, this renders it an official record as applications for searches are usually filled in several copies, with at least one copy retained by the Land Registry. That unless the Respondent was disowning the stamp, which they did not do, the documents are indeed public records.

- f. That Section 38 of the [Evidence Act](#), chapter 80 of Laws of Kenya, provides for admissibility of public records as follows;

“An entry in any public or other official book, register or record, stating a fact in issue or a relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself admissible.”

The court therefore finds the two annexures MK 4 a, and b are admissible, and supports the assertion that the Applicant had made a formal application for certificates of official search, but the Respondent had not supplied the same. That in the absence of a substantive allegation of fraud in the creation and production of the document, and a demonstration of the same, the Respondent’s claim of inadmissibility is without basis and must fail.

- g. That even if the two documents were disregarded as a public record, this court takes note of section 35(1)(a) of the [Evidence Act](#) that provides that: -

“35. Admissibility of documentary evidence as to facts in issue

(1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say—

- (a) if the maker of the statement either—
(i) had personal knowledge of the matters dealt with by the statement;”

And as the documents were filled by Miriam Kubai, the deponent of the Applicant’s affidavit in support of their notice of motion, then they contain her evidence on the face of it. Clearly, their contents support her assertion that the Respondent had frustrated the Applicant by among others, failing or declining to effect the orders issued in Eldoret Misc. Appl. No. 37 of 2019.

- h. The Applicant moved this court under section 78(2) of the [Land Registration Act](#) which provides: -

“



“(2) Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs.”

This section empowers a court to make orders that this court may deem fit as regards restrictions on dealing with land. Clearly, the orders sought herein fall within the contemplation of this section. Therefore, the opposition in the first three grounds must be dismissed as baseless.

- i. On the second issue for determination, the respondent has challenged the various annexures produced by the Applicant. These are the documents attached to the applicant’s affidavit and ‘MK1c’, ‘MK2a’, ‘MK2b’, ‘MK4a’ and ‘MK4b’. I have already addressed the challenge to annexures ‘MK4a’ and ‘MK4b’ and found the challenge as baseless. What remains is the challenge to annexure ‘MK1c’, which is a letter from the office of the Attorney General dated the 14th March, 2014 to the Secretary, Leseru Tebeson Farmers Society, confirming the office bearers of the Applicant society; and ‘MK2a’ and “MK2b” which are the certificates of title pertaining to L.R No. 27206/3 (I.R. No. 19659), and L.R. No. 27206/4 (I.R. No. 19660). As regards ‘MK1c’, it is dated 14th March 2014 and among others, confirms the persons executing the power of attorney in favor of the deponent, to sue for the applicant are office bearers in the Applicant society. Again, this is an official record within the meaning of section 38 of the *Evidence Act* Chapter 80 of Laws of Kenya. Without a substantive challenge over its authenticity, the court is inclined to treat the Respondent’s opposition to its admissibility as unsubstantiated assertion.
- j. That as regards ‘MK2a and MK2b’, it is hard to understand the basis of the challenge to their admissibility as they are certificates of title to the two parcels of land subject matter in this matter. In fact, the numbers on the certificate are sequential in two registers. The first being the land register which shows one as L.R. No. 27206/3 and the other L.R. No. 27206/4. The second, being the index registry which shows one as I.R. No. 19659 and the other I.R. No. 19660. That Section 119 of the *Evidence Act* allows the court to presume certain facts. The provision states;

“

“119. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

That in the absence of evidence that the said documents were not issued by the named government office, the court find all the challenges of admissibility of the attached annexures as baseless.
- k. On the third issue of determination, I have already established section 78(2) of the *Land Registration Act* allows the court to grant orders it may deem fit with regards to lifting of restrictions. That the Applicant has deposed at paragraph 8 of the affidavit in support of the notice of motion that the Respondent demanded a court order be availed before issuing a certificate of official search. That though that demand or requirement is not among the requirements in the above section, which section however allows the court to grant orders as it may deem fit with regards to lifting of restrictions, and it being apparent the Respondent has



been unwilling to provide the Applicant with the certificates sought, justice of this case will be served if the order prayed for is issued.

1. That as this court is aware of other pending litigations over the same parcels of land; each party will bear its own costs of the application, notwithstanding the provision of section 27 of the [Civil Procedure Act](#) chapter 21 of Laws of Kenya.
6. That flowing from the foregoing, the court finds merit in the application dated the 20th January, 2020. The application is allowed as prayed with each party bearing its own costs.

It is so ordered.

DATED AND VIRTUALLY DELIVERED THIS 18th DAY OF MAY, 2022

S.M.KIBUNJA,J.

ELC ELDORET.

IN THE VIRTUAL PRESENCE OF;

APPLICANT: Absent

RESPONDENTS: Absent

COUNSEL: Mr. Odongo for Respondent

COURT ASSISTANT: *ONIALA*

S.M.Kibunja,J.

ELC ELDORET

