



**Kaburi v Kaburi (Environment and Land Appeal 114 of 2014)
[2022] KEELC 12572 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 12572 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 114 OF 2014**

JO OLOLA, J

JUNE 9, 2022

BETWEEN

PETERSON NGUCHU KABURI APPELLANT

AND

JOSEPH THUKU KABURI RESPONDENT

(Appeal was dismissed on March 12, 2015 by the Honourable Lady Justice LN Waitbaka.)

RULING

1. By the notice of motion dated February 23, 2022 Peterson Nguchu Kaburi (the applicant) urges the court to be pleased to issue an order directing the land registrar, Laikipia county (the respondent) to cancel the registration of this court's order made on the November 28, 2011 and entered in the register of Land Title Number Nanyuki/Naibor Block 1/22 (Kariunga).
2. The application is supported by an affidavit sworn by the applicant and is based on the grounds that:
 - (i) Pursuant to an application dated September 28, 2011 made by the applicant, this court ordered a stay of execution of the judgment in Nanyuki Land Case No 2 of 2010 pending the outcome of the appeal;
 - (ii) The applicant lodged the order with the respondent and the same was entered in the register of the said parcel of land on November 30, 2011;
 - (iii) The suit herein which was the subject of the order has since been concluded with judgment being delivered on March 12, 2015;
 - (iv) The respondent has been furnished with the judgment and order of the court but has refused to cancel the order of November 28, 2011; and



- (v) The existence of the inhibition constituted by the order of November 28, 2021 against the title is unnecessarily inhibiting the exercise of the applicant's proprietorship rights over the subject parcel of land.
3. Despite service of the application upon the respondent, the respondent did not file any response to the claim.
 4. By the application before the court, the applicant urges the court to direct the respondent to cancel the registration of the court's order made on November 28, 2011 as entered in the register of the suit land – Nanyuki/Baibor Block 1/22 (Kanunga) on November 30, 2011.
 5. In his supporting affidavit to the application, the applicant has given an account of the circumstances under which the said order restricting any dealings on the land came to be registered on the title. From the said affidavit and the record herein, it is apparent that the applicant and one Joseph Thuku Kabure had a dispute over the suit land that went before the Laikipia East land disputes tribunal as Tribunal Case No 108 of 2007.
 6. It is also evident that the Tribunal awarded the property, to the applicant's opponent and ordered that the applicant's name be cancelled from the title. The award was adopted as an order of the Court in Nanyuki SPMCC Land Case No 2 of 2010. Aggrieved by the decision, the Applicant lodged an Appeal to this Court on August 19, 2011. In addition, the Applicant filed an application herein dated September 28, 2011 seeking a stay of execution of the judgment as adopted in Nanyuki SPMCC Land case No 2 of 2010.
 7. From the record, an order of stay of execution was issued herein by the honourable justice JK Sergon on November 14, 2011. It is those orders that were extracted and lodged in the register of the suit property on November 30, 2011.
 8. As it turned out, the applicants appeal was dismissed on March 12, 2015 by the Honourable Lady Justice LN Waithaka. Aggrieved by the said decision, the applicant lodged a second appeal being Nyeri Civil Appeal No 18 of 2015. The second appeal was successful and the applicant hence wrote to the respondent on April 30, 2016 seeking to have the restriction removed. The respondent has however to-date failed to remove the same.
 9. Section 78 of the *Land Registration Act* 2012 provides thus:

“78(1) The registrar may, at any time and on an application by any person interested or at the registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.

(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 otherwise order as it deems fit, and may make an order as to costs.”
 10. In the circumstances herein and having been notified of the conclusion of the said cases I was unable to find any basis for the respondent's refusal to remove the restriction. I am accordingly persuaded that there is merit in the motion date February 23, 2022 and I allow the same as prayed with no order as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 9TH DAY OF JUNE, 2022.

In the presence of:



Mr. Mwangi Kariuki for the Applicant

No appearance for the Respondent

Court assistant - Kendi

J. O. OLOLA

JUDGE

