



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HIGH COURT CIVIL CASE NO. 165 OF 2001**

**FREDRICK M'ITHINJI ..... 1<sup>ST</sup> PLAINTIFF**  
**JOSPHAT KIRIGIA ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MERU BAKERS COMPANY LTD ..... DEFENDANT**

**RULING**

The Chamber Summons dated 15<sup>th</sup> December 2009 is brought by the plaintiffs who seek an order that the inhibition, caution and restriction registered upon L.R. *Meru/Municipality Block II/51* (suit property) be removed. The background to this matter is that after the plaintiff filed this action seeking for an order to transfer to themselves the suit property which then belong to the defendant. A director of the defendant company entered an appearance and filed a defence on admission. By that defence, the defendant admitted the plaintiff's claim. Following that admission, judgment was entered in favour of the plaintiff by consent of the parties and by further consent or inhibitions, cautions and restrictions on the suit property were removed. Those consents enabled the plaintiff to be registered as the owners of the suit property. Four shareholders of the defendant's company filed an application for an order to be joined as parties in this case and for an order that the defence of admission be struck out. Kasanga Mulwa J. (*as he then was*) on 18<sup>th</sup> October 2002 dismissed that application. The shareholders filed an application in the Court of Appeal being Civil Application No. NAI 356 of 2002 (Nyr. 170 of 2002) in which file the Court of appeal recorded the following order:-

***“Pending the hearing and determination of Civil Appeal No. 16 of 2003 the first and second respondents are restrained from transferring, charging or alienating the suit property to any one at all. We direct that the said Civil Appeal be listed for hearing at Nyeri during this court's October sessions.”***

The Civil Appeal Case No. 16 of 2003 mentioned in that order was withdrawn by the shareholders on 10<sup>th</sup> May 2007. The certificate of the official search of the suit property shows that the certificate of lease was issued to the plaintiffs on 20<sup>th</sup> December 2002. On 23<sup>rd</sup> December 2002, an inhibition was registered on the suit property which is in the following terms:-

***“No dealing until Appeal Civil Case Application NAI 356 of 2002 (Nyr. 170 of 2002) at Court of Appeal at Nairobi is finalized.”***

The certificate of official search shows that on 26<sup>th</sup> May 2003 the following was registered against the

title, that is,

***“(Court order) The 1<sup>st</sup> and 2<sup>nd</sup> respondents are restricted from transferring, charging or alienating the suit property to anyone at all until Civil Application No. 356 of 2002 Nyr. 170 of 2002 is finalized.”***

Those are the inhibition and restriction that the plaintiffs seek their removal by their application. The application is opposed by the chairman of the board of the defendant’s company. He deponed in his replying affidavit that not all cases between the plaintiffs and the defendants are concluded. The deponent referred to a pending appeal by the defendant company against a ruling delivered by Lenaola J. dated 28<sup>th</sup> January 2008. By that ruling, the learned judge rejected the defendant’s prayer for review of the consent which consent had enabled the plaintiffs to be registered as owners of the suit property. I have found in my perusal of this file that the defendants filed a Notice of Appeal against that ruling on 8<sup>th</sup> February 2008. The defendant applied by a letter filed in court on 18<sup>th</sup> February 2008 for certified proceedings and rulings. The defendant made payment for the same. Again, in my perusal of this file, I found that the proceedings are typed. In the letter of the defendant’s advocates dated 18<sup>th</sup> February 2008, there is a hand written note which states:-

***“Rcd by Nancy for Kiautha on 3<sup>rd</sup>.11.10”***

By that inscription, it is clear that the defendant’s counsel Kiautha Arithi & Co. Advocates through their agent Nancy received the typed proceedings on 3<sup>rd</sup> November 2010. There is no explanation given why if the proceedings were collected on 3<sup>rd</sup> November 2010 on behalf of the defendant’s counsel the appeal has not yet been filed. But besides that, it is clear from the inhibition and restriction reproduced above in this ruling that those inhibitions and restrictions were registered on the strength of the existence of Civil Appeal Application No. 356 of 2002 (Nyr. 170 of 2002) and Civil Appeal No. 16 of 2003 in Court of Appeal. Both of those two are as of now concluded. There is therefore no basis for retaining the inhibition and restriction on the suit property. It is for that reason that I will allow the Chamber Summons dated 15<sup>th</sup> December 2009 and grant the following orders:-

***1. That the inhibition cautions, and restrictions registered on L.R. Meru Municipality Block II/51 registered against that parcel on 23<sup>rd</sup> December 2002 and 26<sup>th</sup> May 2003 or any other date are hereby removed.***

***2. The defendant shall pay the plaintiff’s costs for the Chamber Summons dated 15<sup>th</sup> December 2009.***

**Dated, signed and delivered at Meru this 18<sup>th</sup> day of May 2011.**

**MARY KASANGO  
JUDGE**