

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 172 OF 1996

JOSEPH NJIRAINI MURUGA.....PLAINTIFF

VERSUS

MARY WAMWITHA KIAI.....DEFENDANT

RULING

Pursuant to the provisions of *Section 138 (2)* of the Registered Land Act, **Mary Wamwitha Kiai**, the Defendant herein, took out the Motion dated 30th November 2009, in which she applied for the removal of the restriction order lodged against **L.R. NO. MUTIRA/KAGUYU/1636** being the suit land herein. The Defendant swore an affidavit she filed in support of the Motion. The Motion proceeded for hearing *exparte* when it became apparent that Joseph Njiraini Muruga had failed to file a response despite having been served with the Motion.

The main ground raised and argued in support of the Motion is that the restriction registered against **L.R. NO. MUTIRA/KAGUYU/1636** was to subsist until this suit is heard and determined. It is argued that since this suit has now been determined, the restriction should be removed. I have looked at the copy of the register relating to the suit land and it is clear that a restriction was registered on 10.03.1988 pending the hearing and determination of a case of transfer. Though the case number is not indicated, I can infer that the suit referred in the register is this case because the same is seeking for the determination of ownership and transfer of **L.R. NO. MUTIRA/KAGUYU/1636**. This suit was heard and determined on 23rd February 2009 in which Mr. Justice Makhandia dismissed the suit. There is no evidence on record to show that the Plaintiff has appealed. For the above reasons, I am convinced the Motion has merit. The restriction was to subsist until this suit is determined. Since the suit has been heard and determined, the subsistence of the restriction is no longer tenable. The Motion dated 30th November 2009 is allowed as prayed with no order as to costs.

Dated and delivered at Nyeri this 23rd day of September 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mary Wamwitha Kiai.