



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 213 OF 2007

IN THE MATTER OF THE ESTATE OF MURIIRA KIGUARU-(DECEASED)

WILLIAM MWENDA M'RINGERA .....PETITIONER/APPLICANT

RULING

The petitioner/applicant in his application dated 2<sup>nd</sup> July, 2010 seeks the following orders:-

“ (b) *The restriction, caution and/or inhibition placed over land parcel No.Ntima/Igoki/ 638 be ordered lifted.*

(c) *The court do make such further orders as may meet the ends of justice in this matter”.*

The application is based on the following grounds:-

“ (1). *The restriction order placed over parcel No.Ntima/Igoki/638 vide HCCC No.178/1989(O.S) has been overtaken by events as the suit has abated both parties having died.*

(ii) *The applicant is desirous of entering into a contract with Safaricom Ltd over a small portion of this land which contract shall benefit the entire family.*

(iii) *The said company has indicated that it will not enter such a contract over a piece of land that has a restriction on it”.*

The application is further supported by the supporting affidavit of the applicant dated 2<sup>nd</sup> July, 2010. The applicant in his affidavit states that the estate to which this case relates to belong to his deceased grandfather and comprises land parcel Ntima/Igoki/638. The attached certificate of official search show that Ntima/igoki/638 is registered in the name of Murira Kiguaru. That grant of letters of Administration intestate was issued on 9<sup>th</sup> November, 2007 to the applicant.

I have perused both the Abstract of Title and official certificate of search which shows that restriction was registered on 21/08/1989 as entry No.3 restricting dealings until HCCC No.178 of 1989(O.S) at Meru is finalized. The proprietor of the land is said to have died in 1967.

The HCCC NO.178 of 1989(O.S) is said not to have been heard and on 20.03.2002 was stood over generally after counsel for defendant indicated that the defendant had died on 01/11/2001. The plaintiff is said to have died in 1994.

The Advocate for applicant did not annex any copy in support of the alleged death of the parties in HCCC 178/1989(O.S) and asked court to call for HCCC 178/1989(O.S) M'Muchiri M'Mungania – VS – M'Ringera M'Murira & Another in which counsel claimed court record showed when parties passed on.

The Advocate claimed HCCC 178 of 1989(O.S) had abated one year after the defendant died on 01/11/2001 and that the restriction over Ntima/Igoki/638 ought to be removed.

Order 24 Rule 3 of Civil Procedure Rules provides:-

“ (3) *Where within one year no application is made under sub rule (1); the suit shall abate as against the deceased defendant”*

I have perused HCCC 178 of 1989(O.S) and note there is no indication as to whether the plaintiff is dead or not. The defendant in HCCC 178 of 1989(O.S) is shown to have died on 01.11.2002.

I note no substitution application has been made and it is now over 9 years since the defendant died without substitution. The suit against the defendant abated within a year against the deceased defendant, that is to say by 01.11.2003.

Under Section 133(1) of the Registered Land Act it is provided:-

“ (1) *A caution may be withdrawn by the cautioner or removed by an order of the court or, subject to subsection*

(2) *by an order of the Registrar”.*

Having gone through the High Court record in HCCC 178/1989 (O.S) I am satisfied the defendant died on 01.11.2003 by which time the suit had not been fully heard and determined. The suit against the defendant abated way back on 01.11.2003.

I find the Applicant's application merited and I do order the restriction, caution and/or inhibition placed over parcel No.Ntima/Igoki/638 be lifted forthwith.

There will be no order as to costs.

DATED AND DELIVERED AT MERU THIS 29<sup>th</sup> DAY OF NOVEMBER,2011

**J. A. MAKAU**  
**JUDGE**

Delivered in open court in the presence of:

1. M. Kariuki for Miss Mwangi for the applicant.