



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Succession Cause 250 of 1999**

**IN THE MATTER OF THE ESTATE OF JOSEPH MUNGAI NJOROGE (DECEASED)**

**HELLEN W. MUNGAI.....APPLICANT/PETITIONER**  
**VERSUS**  
**HUMPREY N. MUNGAI.....RESPONDENT/BENEFICIARY**

**RULING**

The respondent has registered a restriction on parcel of land No.NAKURU/MUNICIPALITY BLOCK 29/1545 (RONDA) which parcel is registered in the name of the applicant.

The applicant seeks in the instant application that the restriction be lifted.

The respondent has insisted that the property in question is registered in the name of the applicant to hold in trust for him and others. The respondent has also stated that the applicant intends to secure a loan with the suit property. The respondent further seeks that the applicant renders an account of the estate of the deceased in this cause. It is therefore apparent that the restriction by the respondent has been registered on the property on account of the above matters. Under **Part VIII** of the **Registered Land Act**, three restrains on the disposition of land are provided, namely inhibitions, cautions and restrictions. The respondent has registered a restriction on the suit property to the effect that there should be;

**"No dealings without the consent of Humphrey Njoroge Mungai."**

Humphrey Njoroge Mungai is the respondent.

In terms of **section 136** of the **Registered Land Act**, it is the Registrar, who on application or on his own motion may order the registration of restrictions.

According to **section 138** of the **Registered Land Act**, a restriction can be removed either by the Registrar or the court. **Section 138(2)** aforesaid provides that:

**"Upon the application of any proprietor affected by a restriction and upon notice thereof to the Registrar, the court may order a restriction to be removed or varied, or make such other order as it thinks fit, and may make an order as to costs."**

There was no proof that the Registrar was served. However, it is my considered view that such service will only be necessary where the restriction is registered by the Registrar on own motion.

From the respondent's replying affidavit, it is alleged that the suit property is held by the applicant in trust for him and other beneficiaries of the deceased.

Indeed in a judgment arising from an objection, filed by Monica Ngendo in this cause, Rimita, J found for the applicant herein, Hellen Wanjiku and appointed her the administratrix of the estate of the deceased but ordered that she would hold the estate as a trustee of the deceased person's children. That was on 13<sup>th</sup> March, 2000. Seven years later, on 12<sup>th</sup> November, 2007, the respondent in this application together with three others brought an Originating Summons in H.C.C.C.NO.246/2007 (O.S.) for a declaration that they are entitled to receive rent from NAKURU MUNICIPALITY BLOCK 29/1546(RONDA), a permanent injunction to restrain the applicant herein from receiving rent from the above property and an order to the applicant to give account of rent received from the suit property.

I have called for and perused H.C.C.C. Suit No.246/2007 (O.S.). That matter was compromised and the parties recorded a consent on 28<sup>th</sup> July, 2008 to the effect that the applicants in the originating summons, including the respondent herein, would have no claim from the applicant, Hellen Wanjiku in respect of the estate of the deceased in this cause (Succession Cause No.250 of 1999) apart from NAKURU MUNICIPALITY BLOCK 29/1546 (RONDA).

Having recorded a settlement in those clear terms, it was mischievous for the respondent to sneak a restriction on the suit land one year later. Exercising my discretion under **section 138(2)** of the **Registered Land Act**, it is ordered that the restriction registered on 24<sup>th</sup> June, 2009 be and is hereby removed.

The respondent will bear the costs of this application.

Dated, Signed and Delivered at Nakuru this 2<sup>nd</sup> day of June, 2010.

**W. OUKO**  
**JUDGE**