



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL CASE NO. 44 OF 2010

PHILIP KIPRONO

CHEBOSIR PLAINTIFF

VERSUS

**THE CHIEF LAND REGISTRAR.....1ST
DEFENDANT**

**THE ATTORNEY GENERAL.....2ND
DEFENDANT**

RULING

The suit herein is pending. It was commenced on 7th July, 2010 by **Philip Kiprono Chebosir** as Plaintiff against the **Chief Land Registrar** and the **Attorney General** as the 1st and 2nd Defendants respectively. The Plaintiff avers in the suit that he is registered as proprietor as lessee from the Government of the Republic of Kenya for a term of 99 years from 1st August, 1996 in respect of the parcels of land tabulated in paragraph 6 of the Plaint and in prayer(a) of the Plaint. The Plaintiff alleges that on 8th August, 2000 the 1st Defendant caused to be registered against the titles to the said parcels of land restrictions to the effect that **“no dealings without the consent of the Chief Land Registrar –see his letter No. KCO/A/12/Vol. II/228 of 2nd August, 2000”**. It is on account of this that the Plaintiff seeks in the suit an order directing the Chief Land Registrar and Kericho District Land Registrar to remove the said restrictions.

The Attorney General went on record in this suit on 1st September, 2010 when he filed a Memorandum of appearance dated 18th August, 2010 signed by Muthoni Kimani, Senior Deputy Solicitor General.

The Plaintiff now seeks in his application dated 7th July, 2010 an order directing the Chief Land Registrar to remove the said restrictions. If the order is granted, it will effectively dispose of the suit before the suit is set down for trial. As the Defendants have indicated their intention to defend, should the court grant the order sought in the application which proceeded ex parte? The Attorney General was served on 13th August, 2010 with the application but filed neither grounds of opposition nor a replying affidavit.

Because the order sought in the application is not interlocutory, but rather a final order such as is sought in the suit which is yet to be heard, I decline to grant it. I direct that steps be taken to set down the suit for hearing. The application is dismissed. I make no order as to costs.

DATED at **KERICHO** this 8th day of December 2010

G.B.M. KARIUKI, SC

RESIDENT JUDGE

COUNSEL APPEARING

Mr. Oboso Advocate for the Plaintiff/Applicant

N/A by the Attorney General

Court Clerk – Mr. Bett