



**Bwanaadi & another v Registered Trustees of the National Council  
of Churches of Kenya & 2 others (Environment & Land Case  
511 of 1999) [2022] KEELC 13743 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13743 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 511 OF 1999  
NA MATHEKA, J  
OCTOBER 26, 2022**

**BETWEEN**

**MOHAMED BWANA BWANAADI ..... 1<sup>ST</sup> PLAINTIFF**

**ABDULRAZAK KHALIFA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**REGISTERED TRUSTEES OF THE NATIONAL COUNCIL OF CHURCHES OF  
KENYA ..... 1<sup>ST</sup> DEFENDANT**

**REGISTRAR OF TITLES ..... 2<sup>ND</sup> DEFENDANT**

**COMMISSIONER OF LANDS ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application is dated 7<sup>th</sup> March 2022 and is brought under Section 3 and 3A of the [Civil Procedure Act](#), Section 73 (2) of the [Land Registration Act](#), Order 51 of the Civil Procedure Rules seeking the following orders;
  1. That the application be certified urgent and service be dispensed with in the first instance.
  2. That the restriction placed on the suit property (Plot no. 196/111/MN) vide Court Order dated 27<sup>th</sup> June 2013 be removed.
  3. That the orders issued herein be served upon the Land Registrar, Mombasa for compliance.
  4. That the costs of this application be in the cause.
2. It is based on the grounds that there is an encumbrance placed on the suit property (Plot No. 196/111/MN) vide Court order issued on the 27<sup>th</sup> June 2013. That as a result of a Court Order registered against the suit property the Applicant has been unable to enjoy its proprietary rights. That the Applicant will



be prejudiced if the orders sought are not granted since it has been denied the right to salient enjoyment of its property over a long period of time.

3. The Respondents opposed the application and stated that the order was registered against the title to inter alia, give effect to the otherwise anomalous entry No. 16 showing that the Applicants were registered as owners of the entire plot 196/111/MN while they had registered against the title an instrument of transfer showing they had purchased only 28/128 undivided Shares of the suit land from Ahmed Saljm (deceased). The order of court is binding on the Registrar and he cannot require another court to expunge entry No. 17 without distorting the register and record kept by his office relative to plot 196/111/MN. The order cannot prevent NCKK from dealing with the suit land as they please, and the advice of the County Land Registrar is an attempt to unmake the consent of parties by a side wind. There is no evidence that the consent order is an encumbrance, or the presence of the requisite factors necessary to set aside a contact. The consent order of 27<sup>th</sup> June 2013 is not a restriction.
4. This court has considered the application and submissions therein. The Applicant stated that the sale and purchase of the suit property was made vide a consent order filed and adopted in court on the 4<sup>th</sup> June 2013 which is attached and marked BO-1. That after the registration of the title in the name of the Applicant the court order continues to be cited as an encumbrance and or restriction against the title despite its effect having been served and the Applicants are now the owners of plot 196/111/MN a copy of the postal search BO-2 was attached. It is not disputed that the Applicant is now the registered owner of the suit land. The Respondents opposed the application and stated that the order was registered against the title to inter alia, give effect to the otherwise anomalous entry No. 16 showing that the applicants were registered as owners of the entire plot 196/111/MN while they had registered against the title an instrument of transfer showing they had purchased only 28/128 undivided Shares of the suit land from Ahmed Saljm (deceased). The order of court is binding on the Registrar and he cannot require another court to expunge entry No. 17 without distorting the register and record kept by his office relative to plot 196/111/MN. The order cannot prevent NCKK from dealing with the suit land as they please. They state that the matter was finalized and there is no room for affidavit evidence to explain orders or the ensuing decree. That the restriction was not ordered by the court and its registration was done by the County Registrar who does not need a court order to remove it. I have perused the annexures and indeed the Applicant is now the registered owner. The sale is complete and this is not in dispute. I see no reason why the encumbrance registered should continue to be on the record. The Respondents as it stands have no existing claim against the Applicant. I find this application is merited and I grant the application as prayed with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26<sup>TH</sup> DAY OF OCTOBER, 2022.**

**N.A. MATHEKA**

**JUDGE**

