



**Mathenge v Githinji (Environment & Land Case 52 of 2017)
[2022] KEELC 13476 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13476 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 52 OF 2017**

JG KEMEI, J

OCTOBER 6, 2022

BETWEEN

MARTIN WAINAINA MATHENGE APPLICANT

AND

NGANGA THAARA GITHINJI RESPONDENT

RULING

1. The plaintiff filed an application on the March 29, 2022 seeking the following orders;
 - a. That this application be certified as urgent in the first instance and service of the same be dispensed with.
 - b. That this Honourable Court be pleased to grant orders raising, removing or vacating the restriction by Deputy County Commissioner, Kiambu reference number KBA/ILND/1/6/4/ VOL XIV/237 registered as entry number 4 on 2nd March 2010 and reflected in the green card relating to LR No Kiambaa Waguthu/4258.
 - c. That upon grant of prayer 1, this Honourable Court be pleased to grant orders directing the District Land Registrar, Kiambu to raise, remove or vacate the restriction by Deputy County Commissioner, Kiambu Reference Number KBA/ILND/1/6/4/ VOL XIV/237 registered as entry No 3 on February 10, 2010 and court order registered as entry number 4 on March 2, 2010 and reflected in the green card relating to LR No Kiambaa Waguthu/4258.
 - d. That this honourable court be pleased to grant any other or alternative orders all circumstances of this case considered.
 - e. That the costs of this application be provided for.
2. The application is based on the grounds set out and annexed thereto and the supporting affidavit of the applicant where he deposed that he was in the process of execution of the courts decree issued on the



February 10, 2002 which decree he avers could not be registered because of the subsisting restriction Ref No KBA/ILND/1/6/4/VOL XIV/237 registered as entry no 3 on the February 10, 2010 and the Court order registered as entry No 4 on the March 2, 2010 on the suit land being LR No Kiambaa Waguthu/4258.

3. That for the said encumbrances to be removed he was advised that a court order was necessary, necessitating the filing of this application. That unless the orders prayed for in this application are granted, the amended decree issued by the court on the February 10, 2021 shall be rendered nugatory.
4. Despite service of the application having been made, the respondent did not oppose the application.
5. The applicant filed written submissions which I have read and considered.
6. I have perused the application which on the face of it is not opposed. That said the court shall consider the same on its merits.
7. Section 76 of the [Land Registration Act](#) provides for the registration of a restriction. [Blacks Law Dictionary](#) defines a restriction as a limitation placed on the use or enjoyment of a property.
8. The general rule is that restrictions are registered for purposes of prevention of fraud or improper dealings or doe any other sufficient cause for which the land registrar either suo moto or on application by any person interested in the land lease or charge. Before restricting any dealing on the land the land registrar is mandated in law to give notice to the affected parties and carry out a quasi inquiry. A restriction may be expressed to endure for a particular period, until the occurrence of a particular event, or until further order is made.
9. Section 78 of the [Land Registration Act](#) provides for two ways in which a restriction may be removed and or varied; the first is by the registrar may either on his own or on application by an interested party and after giving the parties the opportunity to be heard on the said removal or variation of the restriction. Secondly upon application of a proprietor affected by a restriction and upon notice to the registrar the court may order a restriction to be removed varied or make such other orders as it deems fit.
10. According to the search dated the December 1, 2020 there are two entries which are the subject of this application. The first one is dated the February 10, 2010 which is worded as follows;

“Restriction no dealing vide D.O’s letter ref No KBA/LND/A/6/4/VOLXIV/237 dated the January 1, 2010.”

11. According to the record the letter dated the January 1, 2010 addressed to the District Land Registrar and it stated as follows;

District Officer,

Kiambaa Division,

Box 250,

Karuri

January 25, 2010

The District Land Registrar,

Kiambu East

RE: Restrict On Lr Kiambaa/waguthu/5180

The above parcel of land is registered under the names of one Nganga Thaara Githinji.



The same was transferred to one Martin Wainaina Mathenge vide this office consent No LCR 35/10/2009 of October 6, 2009.

However, the parcel numbers were to be changed on surrender of the title deeds issued by your office. The registered proprietor refused to surrender his title deed for rectification and instead have found a new buyer according to reliable sources.

Kindly restrict the parcel from any transactions until the consent issued by this office is fully executed.

Patrick K Ngoru

District Officer

Kiambaa.

12. The issue of ownership of the suit land was settled by this court vide the Judgement delivered on the May 2, 2019 where the applicant was adjudged the proprietor of the land. The gist of the restriction was to preserve the suit land pending the transfer of the same by the defendant to the plaintiff. The Judgement having been delivered ordering the defendant to transfer the land to the plaintiff the matter in my considered view is now spent.
13. The second entry dated March 2, 2010 on the title is an order prohibiting any dealings pending interpartes hearing vide suit No 52 of 2010, Kiambu. For purposes of clarity this case was filed in Kiambu SPMCC No 52 of 2010 and later it was transferred to this court and given the current number ELC 52/2017 upon transfer to this court in 2017. According to the records the Court issued the following orders on the February 23, 2010;

“It is hereby ordered that;

 - a. The application is certified as urgent and service of the same dispensed with and heard ex parte in the first instance.
 - b. An order of injunction and or caveat prohibiting any dealing with LR No Kiambaa/ Waguthu/5180 is hereby granted pending interpartes hearing on the March 18, 2010.
14. My reading of the import of the said orders is that with the pronouncement of the Judgement the same are now spent.
15. Applying the provisions of the law above cited and the facts as adduced by the applicant, I am satisfied that both the restriction and the prohibition are spent and are ripe for removal by the court. This is because the rights of the parties have been settled by the said Judgement which has not been reviewed / appealed against and the said restrictions have been overtaken by events and no longer serve any useful purpose.
16. In the end the application is merited. It is allowed with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 6TH DAY OF OCTOBER, 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

plaintiff - Absent



defendant - Absent

Court Assistant – Phyllis Mwangi

