



Kanga'ra v County Criminal Investigations Officer Machakos County & 2 others; Makenzi (Suing as personal representative of the Estate of the Late Makenzi Watuka) (Interested Party) (Environment & Land Petition E003 of 2024) [2025] KEELC 494 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEELC 494 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND PETITION E003 OF 2024
CA OCHIENG, J
FEBRUARY 6, 2025
IN THE MATTER OF ARTICLES 19, 20, 21, 22, 23, 24, 25,
27, 28, 31, 35, 40, 48, 50 & 159 (2), (A) & (B) OF THE
CONSTITUTION
AND
IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
RIGHT TO ACCESS INFORMATION AND PROTECTION TO
PROPERTY UNDER ARTICLE 35 & 40 OF THE
CONSTITUTION OF KENYA

BETWEEN

MARTIN MUTHII KANGA'RA PETITIONER

AND

COUNTY CRIMINAL INVESTIGATIONS OFFICER MACHAKOS
COUNTY 1ST RESPONDENT
LAND REGISTRAR MACHAKOS COUNTY 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT

AND

JOSHUA MUSYOKI MAKENZI (Suing as personal representative of
THE ESTATE OF THE LATE MAKENZI WATUKA) INTERESTED PARTY



RULING

1. What is before Court for determination is the Petitioner's Notice of Motion application dated the 31st January, 2024 brought pursuant to sections 1A, 1B & 3A of the Civil Procedure Act, Order 51 Rule of the Civil Procedure Rules including Articles 2, 20, 21, 22, 23, 40, 42, 47, 48, 50 and 75 of the Constitution as well as sections 76, 77 & 78 of the Land Registration Act. The Petitioner seeks the following Orders:
 1. Spent
 2. That pending the hearing and determination of this Application this Honourable Court be pleased to issue an order removing the Restriction placed by the 1st Respondent on all those parcels of land registered as Mavoko Town Block 12/ 12630 to 12665.
 3. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue an Order barring 1st and 2nd Respondents from interfering, investigating and/ or in any other way dealing with all those parcels of land registered as Mavoko Town Block 12/12630 to 12665.
 4. That pending the hearing and determination of this Petition, this Honourable Court be pleased to issue an Order barring 1st and 2nd Respondents from interfering, investigation and/ or in any other way dealing with all that land registered as Mavoko Town Block 12/ 12630 to 12665.
 5. That the cost of this application be paid by the Respondents.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Martin Muthii Kangara where he deposes that he purchased land parcel number Mavoko Town Block 12/408 from one Mithamo Karubio for Kshs.4,250,000/=, vide a Sale Agreement dated the 13th October, 2017. He confirms having been issued with a title deed after which he subdivided Mavoko Town Block 12/408 into thirty-six plots to wit Mavoko Town Block 12/12630 to 12665. Further, that he has already sold some of the resultant subdivisions to third parties, with some title deeds having been processed. He claims the 2nd Respondent without his knowledge proceeded to register a restriction on all the thirty plots. Further, upon enquiry, he was informed that the restrictions were registered pursuant to instructions issued by the 1st Respondent, pending alleged ongoing investigations. He avers that the 1st Respondent through one of his junior offices called Peter Kimani summoned him to their offices but instead of informing him of the nature of the complaint being investigated, issued threats to him and his business partner Daniel Nthiga. He reiterates that to date he has not been informed of the nature of the complaint.
3. The Respondents opposed the instant application by filing a replying affidavit sworn by Peter Kinyanjui Kimani No. 233825, a Criminal Investigations Officer attached to DCI Machakos County. He deposes that the instant Notice of Motion application is incurably defective, incompetent, frivolous and devoid of substance. Further, that the supporting affidavit and documents is laden with falsehoods and misrepresentations tailored to mislead the court. He confirms that in October, 2023, their office received an escalated complaint from Muungano Police Station lodged by one John Nthuli Makenzi regarding fraudulent transfer and subdivision of land parcel No. Mavoko Block 12/408, which was recorded as OB No. 29/14/9/2023. Further, that it was the Complainant's contention that despite the subject parcel of land belonging to his deceased's father, Makenzi Watuka, the same had



been fraudulently transferred and registered by the Petitioner to his name. He avers that he commenced investigations to the allegations by the Complainant and established that the deceased Makenzi Watuka was member No. 162 of Drumvale Farmers Cooperative Society, and was allocated Mavoko Town Block 12/408. Further, that the deceased passed away in 1984 and Drumvale Farmers' Cooperative Society begun issuance of titles in 1997 but the deceased's beneficiaries could not obtain the title since the Court had not appointed an Administrator.

4. He explains that Drumvale Farmers Cooperative Society went into liquidation in 2008 and a Liquidator was appointed to manage the affairs of the Society. Further, in 2012, the beneficiaries of the deceased's estate instituted Machakos High Court Succession Cause No. 1187 of 2012, wherein one Joshua Makenzi was proposed to be appointed as the legal administrator of the said estate. He contends that on 3rd July, the Liquidator of Drumvale Farmers' Cooperative Society issued Joshua Makenzi with an introduction letter in relation to LR No. Mavoko Town Block 12/408 addressed to the 2nd Respondent to facilitate him, in acquiring a title deed to the said property. Further, on 28th April, 2023, the trial Court issued a Certificate of Confirmation of Grant, which appointed Joshua Musyoki Makenzi as the administrator of the deceased estate and LR No. Mavoko Town Block 12/408 was listed in the Schedule of Assets as one available for distribution to the deceased beneficiaries. He insists that the Sale Agreement dated the 13th October, 2017 between the Petitioner and one Mithamo Karubio over LR No. Mavoko Town Block 12/408 is nullity. He further confirms that LR No. Mavoko Town Block 12/408 has since been subdivided by the Petitioner to thirty-six (36) plots. He reiterates that there is no evidence confirming that the deceased transferred LR No. Mavoko Town Block 12/408 to the Petitioner. Further, that the sale, transfer and subdivision of LR No. Mavoko Town Block 12/408 is illegal, irregular and fraudulent. He denies harassing the Petitioner and avers that it is the Petitioner who has been evasive and refused to cooperate with the ongoing investigations.
5. The Interested Party opposed the instant application by filing a replying affidavit sworn by Joshua Musyoki Makenzi where he deposes that LR No. Mavoko Town Block 12/408, which has been subdivided to LR Nos. Mavoko Town Block 12/ 12630 to 12665 belongs to the estate of his late father. He contends that his late father never sold the said parcels of land to anybody. Further, that the deceased beneficiaries have never sold the said land to any third party. He confirms that, when he discovered that the suit land had been fraudulently transferred, he made a report to the Muungano Police Station. He argues that the 2nd Respondent is mandated by law to enter a restriction on land, while the 1st Respondent is legally allowed to carry out investigations. He insists that the Petitioner acquired the suit land fraudulently and has not provided reasons why the 1st Respondent should be barred from undertaking investigations over the suit land.
6. The application was canvassed by way of written submissions.

Analysis and Determination

7. Upon consideration of the instant Notice of Motion application including the respective affidavits, annexures thereon and rivaling submissions, the only issue for determination is whether the restriction placed on LR Nos. MAVOKO TOWN BLOCK 12/ 12630 to 12665 should be lifted and the 1st and 2nd Respondents barred from interfering or in any way dealing with the said parcels of land, pending the outcome of the Petition.
8. On registration and removal of restrictions, Section 76 of the *Land Registration Act* provides that:
 - (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to



be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge. (2) A restriction may be expressed to endure - (a) for a particular period; (b) until the occurrence of a particular event; or (c) until a further order is made, (2) and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.'

9. While Section 78 (1) of the *Land Registration Act* provides that:

The Registrar may, at anytime and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order that the removal or variation of a restriction. (2) Upon the 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 other orders as it deems fit, and may make an order as to costs.'

10. In the current scenario the Petitioner has sought for the lifting of the restriction over the aforementioned parcel of land as well as an order barring the 1st and 2nd Respondents from interfering or investigating the said parcels of land. From the averments in the respective affidavits, the Petitioner has not denied that the deceased was the original proprietor of LR No. Mavoko Town Block 12/408. The Petitioner claimed he was being harassed by the DCI over the aforementioned parcel of land, which he has since subdivided into thirty-six plots and disposed of some of the plots. I note the Respondents furnished court with the Certificate of Confirmation of Grant and Document from Drumvale Cooperative Society, which confirmed the mother title was initially owned by the deceased.

11. In *Matoya Vs Standard Chartered Bank (K) LTD & Others (2003) I EA 140*, it was held that;

“A restriction is ordered to prevent any fraud or improper dealing with a given parcel of land and the land registrar does this whether on its own motion or if so asked by way of an application by the person interested in that land but before ordering the restriction the registrar is bound by law to make inquiries, send out notices and hear all those other people he may think fit first and he is not to move by whim, caprice or whatever influence personal or otherwise just to impose a restriction since he has a duty to inquire and be satisfied that his duty to order restriction is not hurting a person who was not heard and that indeed the restriction is in general good that frauds and other improper dealings are prevented”.

12. While in *David Macharia Kinyuru v District Land Registrar, Naivasha & another [2017] eKLR*, the Court held that:

“it will be noted from the above, that the purpose of a restriction is aimed essentially at stemming fraud or improper dealings over land. The Land Registrar may also place a restriction where there is other sufficient cause. Restrictions are to endure for a particular time, or until the occurrence of an event, or the making of a further order. It is not the purpose of this section of the law to have restrictions remain indefinitely. The reasoning is that a restriction should only hold a property in abeyance, as the underlying issue leading to the restriction is being resolved, since a restriction by itself does not solve a dispute.”

13. Based on the facts as presented and the legal provisions I have cited as well as associating myself with the quoted decisions, I opine that since there is already an existing Certificate of Confirmation of Grant



dated the 22nd March, 2023 confirming that LR No. Mavoko Town Block 12/408, which has since been subdivided into thirty six plots, belongs to the estate of Makenzi Watuka (deceased) and noting that a vide letter dated the 3rd July, 2019 from the Liquidator Drumvale Farmers' Cooperative Society Limited, which confirmed that the said land belongs to the late Makenzi Watuka, I opine that it is pertinent for an investigation to be undertaken, on how the said land was disposed to the Petitioner. Further, in the interest of justice, it is my considered view that a restriction should subsist on all the resultant subdivisions being LR Nos LR No. Mavoko Town Block 12/ 12630 to 12665, so as to protect the substratum of the Petition.

14. It is against the foregoing that I find the Notice of Motion application dated the 31st January, 2024 unmerited and will dismiss it.
15. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6TH DAY OF FEBRUARY, 2025.

CHRISTINE OCHIENG

JUDGE

