



Ibacho Trading Company Limited v Land Registrar, Kisii County (Land Case E021 of 2024) [2025] KEELC 3733 (KLR) (7 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3733 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
LAND CASE E021 OF 2024**

M SILA, J

MAY 7, 2025

BETWEEN

IBACHO TRADING COMPANY LIMITED PLAINTIFF

AND

LAND REGISTRAR, KISII COUNTY DEFENDANT

(Application for removal of a caution; applicant contending to be a limited liability company and the registered owner of the suit land; further that the restrictions were placed by two of her deceased members; title indicating that the suit land is owned by five persons and not the applicant; applicant not demonstrating any ownership of the suit property nor even her existence as a limited liability company; in any event the persons who placed the restrictions not sued; application dismissed)

RULING

1. Before me is a Notice of Motion dated 9 December 2024 and said to be brought pursuant inter alia to the provisions of Section 73 (1) and 78 (1) of the [Land Registration Act](#). The substantive prayer sought in the application is for an order for the Land Registrar, Kisii County, to remove a restriction entered on 6 August 1991 in the register of the land parcel Kisii Town/Block IXI/1X0.
2. I observe that the suit herein was commenced through a plaint which was filed together with the motion now before me. In the plaint, it is pleaded that the applicant is a company incorporated under the provisions of the [Companies Act](#), Cap 486, Laws of Kenya. It is pleaded that the applicant is the legal owner and proprietor of the land parcel Kisii Town/Block III/1X0 (the suit property). It is pleaded that the lease expired a long time ago. It is further pleaded that the applicant has discovered some restrictions placed on the suit property by two of its members, namely Johnson Areba and Mokua Maroro who have since died. It is pleaded that despite attempts to have the defendant, the Land Registrar, Kisii, to remove the restriction, the defendant has refused to do so. In the plaint, the applicant seeks the following orders :



- a. A declaration that the people who placed the restriction have since died;
 - b. A permanent order instructing the Land Registrar, Kisii County, to remove the restrictions placed on 6 August 1991;
 - c. An order of removal of the restrictions placed on 6 August 1991;
 - d. Costs of the suit;
 - e. Any such other or further relief that the court may deem just and expedient.
3. The motion is based on the grounds that the applicant is the registered proprietor of the land parcel Kisii Town/Block III/1X0; that the lease of the said land parcel Kisii Town/Block III/1X0 has expired; that the members who placed the restriction have since died before removing the restriction; that it will be in the interests of justice that the restriction be removed and the applicant be allowed to use her land as she wishes.
 4. The motion is supported by the affidavit of Benard Isaac Chweya, the secretary of the applicant. He has deposed that members of the applicant held a Special General Meeting on 18 April 2023 and passed a resolution to consider selling the land parcel Kisii Town/Block III/1X0 (the suit property) and appointed M/s Onguti & Company Advocates to sell it. That the said law firm applied for a search which showed that the lease expired in 2007 i.e 17 years ago. That it was further discovered that there was a restriction placed by two shareholders of the applicant namely Johnson Areba and Mokua Maroro on 6 August 1991. That on 15 November 2024, their advocates wrote to the Land Registrar to remove the restriction placed but the Land Registrar advised them to get a court order hence the filing of the instant application. He has deposed that the two persons who placed the restriction are deceased and he has attached copies of their Death Certificates. He has stated that their families have no objection. He has added that the restrictions have caused the applicant irreparable loss and damage as it has been unable to sell the property to a willing buyer. To his affidavit, he has annexed a copy of the Certificate of Lease, a letter dated 15 November 2024 addressed to the Land Registrar requesting him to remove the caution, Certificates of Death of Johnson Areba Omwenga and Maroro Maroro.
 5. So far nothing has been filed by the respondent to oppose the suit and nothing was filed to oppose the application. I have given the application due consideration.
 6. The applicant has described herself as a company incorporated under the [Companies Act](#). She has averred to be the owner of the suit property. She has further contended on 6 August 1991, two of her members, who are now deceased, registered a caution in the suit property. She has averred that in the Special General Meeting of 18 April 2023, it was resolved to sell the suit property. She now wants the restrictions removed as they hinder her utilization of the suit property.
 7. At the outset, I have nothing to demonstrate to me that the applicant is an incorporated company under the [Companies Act](#), Cap 486, as she claims. There is no certificate of incorporation or any Memorandum and/or Articles of Association. There is also nothing before me to suggest that the deponent of the affidavit is the Secretary of the plaintiff as he claims. In the same vein, there is nothing before me confirming that the applicant is or was the registered proprietor of the suit property or has any interest in it. There is no current search and no white card annexed by the applicant to demonstrate the present proprietorship of the suit property. What I see annexed is a copy of a Certificate of Lease for the suit property. A look at the proprietorship section indicates that the leasehold title is held by Andrew Atika, Itomoyo Mugoya, Samwel Obonyo, William Aminga and Havison Arasa trading as Ibacho Trading Company. That description, to me, appears to be one of five partners trading as Ibacho Trading Company and it does not conform to a description of the plaintiff as a limited liability



company holding title to the suit property. I also see that the leasehold title is for a term of 33 years from 1 January 1974 which means that it expired in the year 2007. I have no evidence of whether the lease was renewed to the original proprietors or to somebody else. In the copy of the Certificate of Lease attached, I have seen an entry of a restriction by Johnson Areba and Mokuia Maroro who say that they are 'unregistered lessees'. I would imagine that this is an interest in the parcel of land and if the entry is meant to be removed, then it is necessary to sue the persons who registered it, or their legal representatives in the event that they are deceased. I have not seen any of them sued in this case.

8. Even if the applicant had shown an interest in the suit property, and for the avoidance of doubt, I have not seen any such interest, this court would not order the Land Registrar to remove the restrictions without the persons who placed the same being sued.
9. Given the foregoing, it is apparent that I see no substance in this application and it is hereby dismissed. The applicant will need to prove her case in the normal manner before obtaining the orders that she seeks. Since the application was not opposed, I make no orders as to costs.
10. Orders accordingly.

DATED AND DELIVERED THIS 7 DAY OF MAY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of:-

Mr. Migiro for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistant: David Ochieng'

