



Kiore v Chief Registrar of Titles (Environment & Land Miscellaneous Case E005 of 2023) [2024] KEELC 564 (KLR) (6 February 2024) (Ruling)

Neutral citation: [2024] KEELC 564 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E005 OF 2023
OA ANGOTE, J
FEBRUARY 6, 2024**

BETWEEN

SOLOMON NJOROGE KIORE APPLICANT

AND

CHIEF REGISTRAR OF TITLES RESPONDENT

RULING

1. The Applicant has filed this application dated 16th January 2023 seeking the following orders:
 - a. Spent
 - b. That the charge/ encumbrances registered against the title to the applicant's land parcel no. Dagoretti/Ruthimitu/552 and now Dagoretti/Ruthimitu/232 in favour of Post Bank Credit Limited for Kshs. 1 Million be discharged as it was discharged by this Hon. Court on 20th May 2008.
 - c. That the Applicant be allowed to execute the court order dated 20th May 2008 as the effect of the said order is that there is no recourse to either party.
 - d. That an order do issue directing the Chief Land Registrar to unconditionally discharge the charge/ encumbrances registered against land parcel no. Dagoretti/Ruthimitu/552 and now new no. Dagoretti/Ruthimitu/232 and a new title to be issued to the registered owner Solomon Njoroge Kiore forthwith.
 - e. That costs of this application be provided for.
2. The grounds of the application, as stated on its face and in the Affidavit sworn in support by Solomon Njoroge Kiore, are that the Applicant is the registered owner of the suit property and that the Applicant is 76 years old and has a medical condition and he needs to make a will.



3. The Applicant averred that the property was charged in favor of Post Bank Credit Limited for a loan of Kshs. 1,000,000 (One million shillings) and that during the pendency of the facility, a dispute arose between the parties as the Bank demanded more money than that owed by the Applicant.
4. The Applicant deponed that in 1991, Post Bank Credit Limited filed a suit against Furncon Limited and the Applicant, being Civil Suit No.84 of 1999; that the Plaintiff abandoned its claim and the court on its own motion dismissed the entire suit for want of prosecution on 20th May 2008.
5. It is the Applicant's case that on 27th November 2021, he wrote to the Registrar of Titles, forwarding an affidavit which was received on 29th November 2021, requesting the registrar to vacate the charge and issue him with a new title number 232 in accordance with the Kenya Gazette Notice dated 23rd February 2021 and that the Registrar of Titles has however taken too long or refused to act, hence it is necessary for this court to intervene for him to execute the judgement of the court.
6. The Applicant has prayed that the court do direct the Chief Land Registrar to discharge the charge for him to enjoy the fruit of the Ruling delivered 14 years ago. He deponed that any claim by any party thereof is barred by operation of the *Limitation of Actions Act*.
7. The Respondent filed Grounds of Opposition dated 19th July 2023, where it sought to oppose the application on grounds that the Applicant has failed to enjoin Postbank Credit Limited to this suit, in which it has sought discharge of a charge securing a facility extended by the lender, offending section 85 of the *Land Act* 2012; that there is no substratum to the application as no suit has been filed vide a Plaint or Summons; and that the application is scandalous, frivolous and an abuse of court process.
8. In a Further Affidavit dated 23rd February 2023, the Applicant averred that this court on 26th January 2023 had directed that he serves upon the Postbank appointed Liquidator and that they were informed by the court process server that service was rejected.

Submissions

9. Counsel for the Applicant filed Submissions dated 3rd October 2023. Counsel submitted that this application has been brought under section 78(2) of the *Land Registration Act* 2012 and section 3A of the *Civil Procedure Act*.
10. According to Counsel, courts have held that such an application must be first made to the registrar, and the person or entity that placed the restriction is also required to have been notified of the request to remove the restriction.
11. Counsel submitted that the annexures to the Applicant's affidavit clearly show that a request was made to the registrar, and that despite the request to remove the restriction, the registrar has neither removed the restriction nor initiated a hearing as to whether the restriction ought to be removed.
12. It was deposed that PostBank Credit Limited cannot be said to have been unaware of the Applicant's protests to the restriction and request for its removal, following the dismissal of the Civil Suit No. 84 of 1999. Counsel urged that this court has the discretion to make an order for removal of any restriction placed on a title under Section 3A of the *Civil Procedure Act*, which grants this court inherent powers to make such orders as are necessary to ensure the ends of justice are met.

Analysis and Determination

13. The application herein seeks for an order compelling the Chief Land Registrar to discharge a charge registered in favour of Postbank Credit Limited with respect to a loan facility of one million shillings issued to Solomon Njoroge Kiore by the lender.



14. The Applicant avers that a dispute arose between the parties during the pendency of the facility leading to the filing of Civil Suit No. 84 of 1999. This suit, he avers, was dismissed for want of prosecution on 20th May 2008.
15. The Applicant depones that despite a request to the Registrar of Lands to vacate the charge dated 27th November 2021 and received on 29th November 2021, the Registrar of Titles has however taken too long or refused to act, hence it is necessary for this court to intervene for him to execute the judgement of the court.
16. This suit has been brought under Section 78(2) of the *Land Registration Act*, which provides that the court may order the Registrar to remove a restriction, upon an application and due notice to the Registrar:
 - “(1) 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 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 order as it deems fit, and may make an order as to costs.”
17. The Applicant has also sought that this court exercise its inherent powers under section 3A of the *Civil Procedure Act*.
18. While the Applicant has sought to rely on section 78(2) of the *Land Registration Act*, which provides for removal of restrictions, it is notable that the subject matter herein does not concern the removal of a restriction, but rather, the discharge of a charge.
19. A restriction is imposed under section 76 of the *Land Registration Act* by the Registrar for the purpose of restricting any dealings of any land, charge or lease. A charge, as defined in section 2 of the *Land Act* 2012, is an interest in land securing the payment of money or money’s worth or the fulfillment of any condition, and includes a sub-charge and the instrument creating a charge. The process for removal of a restriction is therefore distinct from the process of discharging a charge.
20. The Applicant has annexed a copy of the order of the court issued in Civil Suit No. 84 of 1999 on 20th May 2008, wherein the court dismissed the suit pursuant to Order 16 Rule 6 of the Civil Procedure Rules. This suit was not determined on its merits, and was dismissed for want of prosecution. It is this decision that the Applicant seeks to enforce.
21. It is clear that the said order is a negative order. It neither requires any party to take an action nor does it require any party to refrain from any action. It is therefore incapable of execution as sought by the Applicant.
22. The right to discharge a charge is prescribed under section 85 of the *Land Act*, as a right that can be exercised by the chargor upon the payment of all money secured by a charge and the performance of all other conditions and obligations under the charge. The process of discharging a charge is thus subject to the fulfillment of the terms and conditions in the charge.
23. In this case, it is not clear whether indeed the Applicant paid the one million shillings secured by the charge, and performed all obligations under the charge. The Applicant has in any case failed to establish that the discharge process has been commenced in any way or form.



24. This court must then conclude that the charge is still subsisting. This being a continuing charge, the cause of action with respect to the discharge of charge can therefore not be said to be limited by effluxion of time. In any event, any decision that was given 14 years ago, if at all, cannot be enforced. The same will be time barred.
25. However, as already pointed out above, there is no Judgment or Ruling of this court that discharged the suit property as claimed by the Applicant.
26. In conclusion, the application herein is unmerited. The application is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED IN NAIROBI VIRTUALLY THIS 6TH DAY OF FEBRUARY, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Mwangi for Applicant

No appearance for Respondent

Court Assistant - Tracy

