



Murigu v Kenya Commercial Bank Ltd (Environmental and Land Originating Summons E007 of 2023) [2024] KEELC 5318 (KLR) (11 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5318 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2023**

AA OMOLLO, J

JULY 11, 2024

**IN THE MATTER OF SECTIONS 73(1), 75 AND 78(2) OF THE
LAND REGISTRATION ACT, NO. 3 OF 2012**

**IN THE MATTER SEEKING REMOVAL OF CAUTION AND
RESTRICTION REGISTERED AGAINST TITLE NO. NAIROBI
BLOCK 134/1081**

BETWEEN

ERIC NJIIRI MURIGU PLAINTIFF

AND

KENYA COMMERCIAL BANK LTD DEFENDANT

RULING

1. The Applicant moved this court by way of originating summons dated 11th October, 2023 seeking for the following;
 1. That the Honourable Court be pleased to find and declare that the Restriction made as Entry 4 on 7th February, 2013 and the Caution made as Entry 5 on 26th March, 2013 restricting or prohibiting dealings in the Applicant's property Title No. Nairobi Block 134/1081 violated the rights of the Applicant to own and deal in the property for which reason an appropriate award of general damages be assessed to compensate the Applicant for the infringement.
 2. That the Honourable Court be pleased to Order the immediate and unconditional Discharge and removal of the Restriction made as Entry Number 4 on 7th February, 2013 And the Caution made as Entry Number 5 on 26th March, 2013 against the Applicant's Property Title No. Nairobi Block 134/1081.



3. That the Honourable Court be pleased to assess and award to the Applicant compensation on the footing of special damages to the tune of Kshs.1,866,248/= with interest thereon until payment in full.
 4. That the costs of this suit be borne by the Respondent.
2. The summons was supported by the grounds listed on the face and the affidavit of Erick Njiiri Murigi (the Applicant). The grounds pleaded inter alia;
- i. It transpired that the Respondent had placed or caused to be placed a Restriction and Caution on the property and the sale could not proceed despite the Applicant's willingness to complete the transaction.
 - ii. The Respondent did not inform the Applicant of the placement of both the restriction and caution on the Property and refused to remove the same.
 - iii. The Applicant and the Purchaser entered into an Agreement for the Termination of the Sale Agreement on 8th September, 2013 where the Applicant paid the Purchaser a total sum of Kshs.1,758,600/= for losses incurred.
 - iv. The Applicant has suffered a loss for the expenses incurred in the failed Transfer of the property as a result of the Restriction and Caution placed by the Respondent and therefore seeks compensation.
3. The Applicant deposed that on 4th September, 2012 he entered into a sale contract with Wilfred AmasaKha for the sale of L.R Nairobi/Block 134/1081 (the suit property). That during the transaction, he discovered the original title had gone missing. He therefore applied for a replacement title in October, 2012 and was issued with one on 15th January, 2013.
4. That when the transfer documents were presented for registration, the Land Registrar rejected them on account of a restriction and caution registered on behalf of the Respondent. The Applicant denied that he had given his property to secure the sum of Kshs.6,935,248 claimed by the Respondent.
5. He continued that the Respondent had filed a suit HCCC 45 of 2014 claiming the said sum of Kshs.6,935,248 but which was later withdrawn on 6th June, 2022 as per the annexed copy of the Notice of withdrawal. That the caution & restriction could not allow the sale to proceed and so he had to refund the purchaser the deposit money and expenses incurred totaling to Kshs.1,758,600. He wants the court to grant the orders sought.
6. The originating summons was opposed by the Respondent who filed grounds of opposition. The grounds pleaded thus;
- a. The Application is frivolous, abuse of the court process, and ought to be dismissed with costs to the Respondent.
 - b. That the application as framed and orders sought therein are defective as the Applicant seeks constitutional declarations to be made against the Respondent when the particulars of the alleged violations have been pleaded.
 - c. That the Respondent is not privy to any third-party agreements. The Applicant might have entered as such the Applicant should be stopped from seeking to enforce contractual obligations on the Respondent with respect to contracts and/or agreements the Applicant was not privy.



- d. The Claim for Kshs.1,758,600/- and Kshs.107,648/= and other alleged expenses attributed to the purported agreement dated 8th September, 2023 are denied in toto. Any resultant consequences that ensued are wholly attributable to the Applicant's willful breach which the Respondent was not privy to.
- e. The application is therefore misconceived and should be dismissed.
7. From the facts pleaded in the grounds of opposition, the Respondent is not opposing the withdrawal of the caution and restriction placed on the title NBI/BLOCK 134)
- For this reason, I shall grant the orders 2 & 3 of the Originating Motion.
8. In regard to the claim for special damages of Kshs.1,758,600 and Kshs.107,645 attributed to the agreement dated 8th September, 2023 the Respondent denied. It attributed the resulting consequences to the Applicant's willful breach which the Respondent was not party to. It is trite law that special damages must be specifically pleaded and specifically proved. In the case of *Habu v Singh* (1985) KLR 716, the Court of Appeal held that special damages must not only be specifically claimed (pleaded) but must also be strictly proved.
9. The Applicant chose to prosecute this summons by way of written submissions. It means that the wholly relies on the supporting affidavit to prove his claim. The Applicant has not annexed any evidence that he paid the sums of Kshs.1,758,600 to the person he was selling the land to. Neither has he annexed receipts for expenses incurred in the alleged repairs, renovations, stamp duty e.t.c
10. The Applicant has pleaded that the impugned restriction & caution was placed on as per the certificate of the official search. If the said Wilfred who was purchasing did conduct a search as is required of a diligent purchaser, he would have found that the property was encumbered before entering into the transaction. Consequently, I find no basis to shift blame on the Respondent who was not a party to the transaction and who had put the world on notice in respect to their interest in the suit property.
11. A withdrawal of suit in my view does not impute guilt on the part of the Respondent. Further Applicant has not annexed a discharge of charge in regard to the loan USD 63,000 for which he admits that the suit property was used to secure. This would have been evidence that he had authority to deal in the property.
12. As a consequence, I find no proof for the claim for special damages. The said prayer is dismissed. In conclusion, the originating motion succeeds in parts in terms of prayer 2 & 3. Prayer 4 is dismissed. The Applicant is grante costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JULY, 2024

A. OMOLLO

JUDGE

