



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L APPEAL NO. 5 OF 2017

[FORMERLY ELDORET HCCC APPEAL NO. 80 OF 2006]

JOHN NDERITU MUNYORI.....APPELLANT

VERSUS

STEPHEN KIHARA KAROBIO.....RESPONDENT

RULING

[NOTICE OF MOTION DATED 14TH JULY, 2020]

1. The Respondent moved the Court through the application dated the 14th July, 2020 seeking for an order directing the Land Registrar, Uasin Gishu to remove the Caution dated the 23rd April, 1998 and restrictions dated the 15th August, 2003 and 30th October, 2010 on the proprietorship section of the Respondent's parcel of land known as **Eldoret Municipality/Block 11/809**. The application is based on the 15 (**fifteen**) grounds on its face, and the supporting affidavit sworn by **Stephen Kihara Karobio**, the Respondent on the 14th July, 2020. It is the Respondent's case that he is the registered proprietor of Eldoret Municipality/Block 11/809, the suit land, having bought it from **Ibrahim Nyaga Kingora** and **David Kingora Mwangi** in 1994. That he obtained the certificate of lease on the 8th April, 1998 and the certificate of official search dated 14th January, 2020 confirms he is the registered owner. That the Appellant had lodged a claim over the suit land prompting the Respondent to sue him in **Eldoret Senior Principal Magistrate's Court Civil Case No. 631 of 1998** in which he was successful. That the Appellant filed this appeal which he lost vide the judgment delivered on the 17th October, 2019. That the Caution and restrictions filed against the title to the suit land have no basis as the issue of the land's ownership has been resolved through the court decisions referred to above.

2. The Court gave directions on the application on the 20th July 2020, 21st October 2020, 19th November 2020 and 27th January, 2021. That during the last mention on the 3rd March 2021, the court was informed by Counsel for the Respondent that the Appellant had not filed or served a reply or submissions. The learned Counsel for the Respondent further informed the Court that they had filed and served their submissions dated the 17th November, 2020.

3. The following are the issues for the Court's determinations;

(a) Whether the Respondent has made a case for the Caution and restrictions filed against the suit land to be lifted.

(b) Who pays the costs of the application?

4. The Court has carefully considered the grounds on the Notice of Motion, Respondent's affidavit evidence, the learned Counsel's written submissions, the Superior Court's decisions cited thereon and come to the following determinations;

(a) That from the judgment dated 8th October, 2019 and delivered on the 17th October 2019, that is attached to the supporting affidavit, it is apparent the Respondent had sued the Appellant in **Eldoret SPMC Civil Case No. 631 of 1998 "claiming to be the registered owner of all that land known as L. R. Eldoret Municipality/Block 11/809..."**, the suit land. That the Respondent had sought for the Appellant to be evicted from the suit land among others. The trial court found that the Respondent was the registered owner of the suit land, and therefore enjoyed all rights and privileges appertaining to the land.

(b) That the Respondent's ownership of the suit land having been confirmed through the trial court's decision and upheld by this court on appeal, then the court agrees with the learned Counsel's submissions that this court has jurisdiction to deal with the application for lifting of the Caution and restrictions filed against the title to the suit land, especially so, as the Appellant has not raised any opposition.

(c) That the certificate of official search on the suit land register attached to the supporting affidavit shows that the Caution was filed by the Appellant on the 23rd April, 1998 claiming purchaser's interest. That claim has now been resolved through the **Eldoret SPMC Civil Case No. 631 of 1998** and upheld by this court's decision on appeal. That there is therefore no basis of retaining the Caution. That the restriction entered on the 15th August, 2003 is indicated to have been due to a dispute on ownership, while that dated 30th October, 2010 is shown to have been due to some pending investigations. That as pointed out earlier, the issue of ownership of the suit land as between the Appellant and Respondent has been resolved by the Court in favour of the Respondent. That there is no evidence of any pending appeal or any other legal challenge on the Respondent's ownership of the suit land that would warrant the restrictions being allowed to subsist. That the Court is obligated under **Sections 26 of the Land Registration Act No. 3 of 2012** to take the Respondent as the absolute and indefeasible owner of the suit land, and therefore entitled to the interests and rights of over the said land in terms of **Sections 24** and **25** of the said Act. The Court therefore finds the application to lift the Caution and restrictions is merited as they are curtailing his enjoyment and use of the land.

(c) That as the Caution was filed by the Appellant and it probably led to the two restrictions being filed thereafter, the Respondent is entitled to costs of the application under **Section 27 of the Civil Procedure Act Chapter 21 of Laws of Kenya**.

5. That flowing from the foregoing, the Court finds merit in the Respondent's Notice of Motion dated 14th July, 2020 which is hereby allowed in terms of prayers 2 and 3 with costs.

Orders accordingly.

DELIVERED VIRTUALLY AND DATED AT ELDORET THIS 28TH DAY OF APRIL, 2021.

S. M. KIBUNJA

JUDGE

In the presence of:

Appellant: Absent.

Respondent: Absent.

Counsel: M/s Chesoo for Respondent.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.