



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

MISC APPLICATION NO. E004 OF 2021

SAMUEL MACHUA MBACHIA.....APPLICANT

VERSUS

LAND REGISTRAR, KIAMBU COUNTY.....RESPONDENT

RULING

Through a Notice of Motion Application dated **29th January 2021**, brought under **Article 50, 159, Sections 1A, 1B, 3A, 79G, 95 and 100** of the **Civil Procedure Act, Sections 68, 70, 76 & 78** of the **Land Registration Act 2012, Order 51** of the **Civil Procedure Rules**, the Applicant herein has sought for the following orders;

- 1. That the Restriction registered against Title Number Muguga Jet Scheme 2280 (the suit property) be lifted.**
- 2. Costs of this Application.**

The Application is grounded on the Supporting Affidavit of **Samuel Machua Mbachia**. He averred that he is the **registered proprietor of the property known as Muguga Jet Scheme 2280**, after purchasing it in the year **2002**, and he annexed a Copy of title deed as **SMM-1**. That when he applied for an official search to start the process of exchanging the suit property with **Geoffrey Gitau Muchiri**, he learned that there was an inhibition registered against the property. The Search and land exchange Agreement were annexed and marked as **SMM-3** and **2** respectively. He further averred that his Advocates wrote to the **Land Registrar**, requesting that the inhibition be lifted and was advised to obtain a Court Order, and he annexed copy of the said letter to the Land Registrar as **SMM-4**.

It was his contention that **HC Civil Suit No. 535 of 2003**, noted in the entry of the register does not exist in the records of **Kiambu High Court**, and that the restriction registered does not indicate parties to the case, but only case number. The letter requesting file perusal was annexed and marked as **SMM-5**

It was his further contention that the restriction was registered **18 years** ago, and he has never been notified of any ongoing claim against the ownership of the property or any fraud or impropriety in obtaining the title. That it is just and fair that the orders sought be issued to protect the integrity of the title to the parcel of land herein.

The Respondent did not file any response upon being duly served and the Court directed the Applicant to file written submissions, which were filed on **21st June 2021**, through the **Law Firm of Ndonga & Associates Advocates**. The Applicant in his submissions reiterated the contents of his Supporting Affidavit and urged the court to allow the instant Misc. Application.

The Court has considered the instant Misc. Application and the main question is *whether the Application is merited*.

Section 78(2) of the **Land Registration Act** provides that: -

“Upon application by 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”.

It is apparent that the Court has discretion to make an order for removal of any restriction placed on a title. However and as usual, the said discretion must be exercised judicially.

Further the Application is anchored upon **Section 3A** of the **Civil Procedure Act**, which gives the Court the inherent power to make such orders that are necessary in ensuring that the end of justice is met and prevent abuse of the Court process.

Bearing in mind the above provisions of law, the Court will consider the available evidence and determine whether the Applicant is deserving of the orders sought.

The Applicant alleged that he applied for an official search to start the process of exchanging the suit property with **Geoffrey Gitau Muchiri** and learned that there was an inhibition registered against his property. He attached copy of the title deed dated **4th July 2002**, registered in his name. Further, he attached a copy of certificate of official search dated **8th June 2020**, which shows that the suit land is registered in the name of the Applicant, but with restriction placed on **9th June 2003**. Also, the Applicant did annex a copy of the **Green Card**, which clearly shows that the said restriction was placed vide **Hcc Civil Suit No. 535 of 2003**.

Through various correspondences which the Court has seen, the Applicant had requested the **Land Registrar, Kiambu** to withdraw the said restriction to no avail. Indeed, Kiambu High Court registry wrote an email dated **18th December 2020**, at 15.43 to the effect that the case on the subject **HCCC No. 535 of 2003**, does not exist in their registry.

In the instant case, it is not in doubt that as per the title deed produced in evidence by the Applicant, his title deed was issued in **2002**. Therefore, at the time the restrictions was being registered, the Applicant was the registered owner of the suit property and therefore, he had a right to be informed of the registration of the restriction before it could be registered.

The Applicant has contended that he was never informed, and there is no evidence to show that he was ever informed or alerted before the said restriction were registered. In the Court's considered view, the Applicant rights at this point were violated and the Land Registrar did not follow the law as he failed to notify the owner of the suit property before placing the restrictions.

It is also evident from the provisions of law that restrictions are not supposed to endure indefinitely on a title. The restriction on the title herein indicate that restriction were issued vide **High Court Civil Suit No. 535 of 2003**, No reasons have been tendered as to why the restriction has endured for over a decade. Further, the Land Registrar did not attach the relevant parties to **HCCC No. 535 of 2003**, to enable the Applicant conduct due diligence of the entire case filed. Thus, no proper information was availed to the Applicant.

The Applicant has discharged his responsibilities and served the Land Registrar, and if there was any reason as to why the restrictions ought not to be removed, then the Land Registrar was the person to give such reasons.

This Court therefore finds no reason why the said restriction should remain and it further orders that the restriction placed on **Title Number Muguga Jet Scheme 2280**, should be removed forthwith.

Consequently, the Court finds that the Applicant's Notice of Motion Application dated **29th January 2021** is merited and the same is **allowed**. The Court allows the said application entirely with costs being in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THIS 29TH DAY OF JULY 2021

L. GACHERU

JUDGE

29/7/2021

Court Assistant – Dominic

ORDER

In view of the declaration of measures restricting Court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15th March 2020**, this **Ruling** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

With Consent of and virtual appearance via video conference – Microsoft Teams Platform

M/S Muthoni for the Applicant

No appearance for the Respondent

L. GACHERU

JUDGE

29/7/2021