



**In re Estate of Itirithia Mbogori alias M'Itirithia M'Mbotoki (Deceased)
(Succession Cause 280 of 2006) [2024] KEHC 5855 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5855 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 280 OF 2006
EM MURIITHI, J
MAY 23, 2024**

BETWEEN

LYDIA MWARANIA ADMINISTRATRIX

AND

MIRIAM NJINE ADMINISTRATRIX

RULING

1. By Summons dated 18th September 2023 pursuant to Section 78 of the *Land Registration Act*, Order 51 Rule 1 of the Civil Procedure Rules and section 3A of the *Civil Procedure Act*, the applicant seeks removal of all restrictions, inhibitions and/or cautions lodged against L.R No. Ntima/Igoki/235 to enable implementation of the grant.
2. In her affidavit in support of her application, the applicant avers that the restriction orders were placed on L.R No. Ntima/Igoki/235 (henceforth called the estate property) pending compulsory acquisition of the land for purposes of construction of a bypass which has since been concluded. The matters of compensation following the acquisition are being handled by the relevant Government department and the same will be paid based on whose developments were affected by the acquisition. The issue of payment of compensation is different from the implementation of the grant and the same cannot be used to delay the implementation of the grant. The estate property has already been subdivided on the ground and each beneficiary is occupying their respective portions. This application is merited and it has been brought in utmost good faith and the respondent will not suffer any prejudice if the prayers sought are granted.
3. The respondent swore a replying affidavit on 15/11/2023 in opposition to the application. She avers that from the onset, the orders of inhibition were pegged on condition that the issue of compulsory acquisition be settled but to date no compensation has been done and as such there is no justifiable reason for the orders to be vacated. The restrictions were not placed by her and she is thus not privy to the proceedings leading to their placement. She accuses the applicant of seeking to have the funds from



the compulsory acquisition released solely to her whereas at the time of the compulsory acquisition, the estate property was not registered in her name. The acreage of the whole estate was affected by the compulsory acquisition and it is a misrepresentation of facts for the applicant to allude that the funds for the compulsory acquisition should only be based on whose developments were affected by the acquisition. From the foregoing, it is only justifiable and fair that the orders of inhibition continue subsisting until the issues revolving around the estate property are determined.

Submissions

4. The applicant urges that the restriction was to endure until the compulsory acquisition was completed and cites *Grace Wambui Njambuya v John Waweru Wamai* [2019] eKLR and *In Re RMM* (Environment and Land Miscellaneous Application E003 of 2022) [2022] KEELC 2584 (KLR) (6 July 2022). She urges that since the acquisition has been completed, the restriction serves no purpose, and it is prudent that the same is removed to facilitate the long awaited implementation of the grant.
5. The respondent urges that the restriction was to subsist until the settlement of the compulsory acquisition which has not been done to date, and cites *Mwangi Rukwaro & another v Land Registrar, Nyeri* (2019) eKLR. She urges that the restriction was placed by the land registrar who is not a party to these proceedings. She prays for the dismissal of the application as it offends the laid down procedure set out under section 78 of the *Land Registration Act*.

Analysis and determination

6. The sole issue for determination is whether the application is merited.
7. Section 76 of the *Land Registration Act* provides that;
 - “(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge. (2) A restriction may be expressed to endure— (a) for a particular period; (b) until the occurrence of a particular event; or (c) until a further order is made, and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register. (2A) A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions. (3) The Registrar shall make a restriction in any case where it appears that the power of the proprietor to deal with the land, lease or charge is restricted.”
8. Section 78 of the *Land Registration Act* provides that;
 - “(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.”



9. Whereas the applicant contends that the restriction was to endure until the completion of the compulsory acquisition, the respondent is adamant that compensation for the compulsory acquisition ought to be undertaken before the restriction can be removed.
10. It appears that the only reason the respondent is opposed to the removal of the restriction is her apprehension that the applicant might misappropriate the compensation funds to her detriment. That quagmire was resolved by the court (F. Gikonyo J) in its judgment on distribution of the estate property dated 6/12/2028, as follows;

“I however wish to advert to issues inextricable to this cause. First, parties were concerned about compensation for compulsory acquisition of the estate property. Such compensation will be paid to the person whose land is so acquired. If the entire land is compulsorily acquired, the two parties herein will receive compensation and share it equally. In any other case, the person entitled will be determined and the survey identifies the portion for each one of them. In the meantime, the compensation shall be paid into an estate account to be opened in the joint names of these two parties.”
11. The court notes the letter dated 6/6/2022 by the County Surveyor, Meru where it is recommended that, “The parties/honorable court to uplift the caution at Meru central Registry to enable title deed processing and other dealings on the land parcel. The subdivision is based on remaining area after compulsory acquisition. Both parties are advised to maintain their common boundaries to curb future boundaries disputes or land claim.”
12. It is clear from the foregoing that the compulsory acquisition was successfully undertaken and completed.
13. This court finds that the applicant has proved on a balance of probabilities that the circumstances that led to the lodging of the restriction have since ceased to exist, to justify grant of the orders sought.

Orders

14. Accordingly, for the reasons set out above, this court finds that the application dated 18/9/2023 is merited and it is hereby allowed in the following terms:
 1. The restrictions, inhibitions and/or cautions lodged against L.R No. Ntima/Igoki/235 are hereby removed to enable the implementation of the Grant herein.
 2. Each party shall bear its own costs.

Order accordingly.

DATED AND DELIVERED THIS 23RD DAY OF MAY, 2024.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Ms. Masamba for Mr. Kirimi for the 1st Administratrix/Applicant.

Mr. Batista Mwirigi for the 2nd Administratrix/Respondent.

