



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

MISCELLANEOUS APP NO. E029 OF 2021

WESTWOOD PROPERTIES LIMITED.....PLAINTIFF

=VERSUS=

COUNTY GOVERNMENT OF KIAMBU.....1ST RESPONDENT

LAND REGISTRAR THIKA.....2ND RESPONDENT

JUDGMENT

1. The applicant, Westwood Properties Limited, initiated this suit as a miscellaneous application by way of a notice of motion dated 2/7/2021. They sought the following verbatim reliefs against the respondents:

a) That the declaration that the 1st respondent's action of placing a restriction on the applicant's property known as Thika Municipality Block 29/378 vide letter to the 2nd respondent dated 2013, without consultation of the applicant is illegal, null and void.

b) That the applicant be declared the bona fide registered owner of Thika Municipality Block 29/378.

c) That the raising orders do issue to order removal of restriction against Thika Municipality Block 29/378 by the Thika Land Registrar.

d) That costs of this application be provided for.

2. The application was supported by an affidavit sworn on 2/7/2021 by Neel Jinit Shah, a director of the applicant company. Further, the applicant filed written submissions dated 15/10/2021 through the firm of *Majau Maitethia & Associates*. Oral highlights of the submissions were made in the virtual court on 18/10/2021. In summary, the applicant's case was that they were the registered proprietors of Land Parcel Number Thika Municipality Block 29/378 (**the suit Property**), having purchased it in 2013. They held a certificate of lease issued to them by the Thika Lands Registry on 11/11/2013. The 2nd respondent, acting on a letter dated 27/11/2013 from the 1st respondent, registered a restriction on the parcel register relating to the suit property. The restriction forbade dealings in the suit property, pending determination of an undisclosed case that was in court. Despite requesting the 1st respondent to provide details of the pending case and to remove the restriction, the 1st respondent had ignored their requests. They wished to develop the suit property to recoup their investment. They were highly prejudiced by the respondents' failure to remove the restriction and/or give reasons for the restriction. They learnt about the restriction when they embarked on plans to develop the suit property.

3. Ms Mbugua, learned counsel for the 1st respondent, attended court on 22/9/2021 when the matter came up for hearing. She asked for an adjournment to enable her file and serve a response to the suit within seven (7) days. She also proposed that the application be canvassed through written submissions. The court granted her request and proposal and set down the matter for interpartes hearing on 18/10/2021. Neither of the respondents filed a response to the application. Similarly, neither of them filed written submissions. Further, neither of them attended the interpartes hearing on 18/10/2021. Consequently, the matter proceeded to hearing as an undefended cause on 18/10/2021 and now falls for determination.

4. At the hearing of the suit on 18/10/2021, the court inquired from counsel for the applicant why the applicant had elected to use a miscellaneous application to seek substantive declaratory orders. At that point, counsel for the applicant submitted that the applicant had abandoned prayers 1 and 2 of the motion and was only pursuing the removal of the restriction.

5. The court has considered the application together with the supporting affidavit and the evidential materials exhibited. The applicant has presented evidence to the effect that they are the registered proprietors of the suit property and they hold a registered lease relating to the suit property. Despite being accorded an opportunity to demonstrate why the relief sought by the applicant should not be granted, the

respondents have not done so.

6. Article 40 of the Constitution and Sections 25 and 26 of the Land Registration Act protect the right to property and the right to enjoy the benefits appurtenant to that right. The Act specifies the circumstances under which the title of a registered proprietor can be impeached. The Fair Administrative Action Act provides a framework on the due process that must be followed when the right of a registered proprietor is to be impeached. The respondents have failed to demonstrate why the applicant's rights under Article 40 of the Constitutions and Sections 25 and 26 of the Land Registration Act should not be protected despite being accorded the opportunity to do so.

7. Consequently, I find merit in prayer 3 of the notice of motion dated 2/7/2021 and grant the application in terms of prayer 3. Parties shall bear their respective costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 19TH DAY OF OCTOBER 2021

B M EBOSO

JUDGE

In the presence of: -

Mr Gitonga for the Applicant

No appearance for the Respondents

Court Assistant: Lucy Muthoni

B M EBOSO

JUDGE