



**Mark v Attorney General & 8 others (Civil Case 165 of 2008)
[2023] KEHC 23947 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23947 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL CASE 165 OF 2008
LM NJUGUNA, J
OCTOBER 17, 2023**

BETWEEN

ELIUD NJUE MARK APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT.. 2ND
RESPONDENT**

CHIEF LAND REGISTRAR 3RD RESPONDENT

**LAMECK GICHANGI (SUED AS REPRESENTATIVE OF THE NDITI CLAN,
MBEERE) 4TH RESPONDENT**

NYAGA CIATHATHI (CLAN OF MBEERE) 5TH RESPONDENT

MATTHEW MUGO NGARI 6TH RESPONDENT

ERASTUS IREI NJERU 7TH RESPONDENT

JAMLICK NJIRU NTHUINI 8TH RESPONDENT

JOHN MUTITU NGACHA 9TH RESPONDENT

RULING

1. The applicant has filed chamber summons dated 27th July 2023 through which he is seeking orders as follows:
 - a. Spent; and



- b. An order do issue that this honourable court remove the restriction placed against land parcel number Evurori/Nguthi/2310 in Nairobi HCCC No. 2509 of 1998 which is now Embu HCCC No. 165 of 2008 and finally Nyeri Court of Appeal Case No. 110 of 2011.
2. The application is based on the grounds set out in the supporting affidavit to the application. That the applicant is in urgent need of medical attention but cannot access the land parcel number Evurori/Nguthi/2310 so that he can sell a portion of it in order to raise money for medication. That there is an existing restriction on the land to last until finalization of Embu HCCC No. 165 of 2008. He averred that if the orders sought are not granted, he is bound to suffer as he is of ill health.
 3. The application is unopposed. The court directed that the application be canvassed by way of written submissions but none of the parties complied.
 4. The only issue for determination is whether or not the court can issue the orders as prayed.
 5. Land parcel number Evurori/Nguthi/2310 is part of properties that were the subject of litigation in Nairobi HCCC No. 2509 of 1998 which morphed into Embu HCCC No. 165 of 2008. This court, being differently constituted, delivered its judgment on 15th March 2011. The decision was the subject of an appeal in the Court of Appeal Case No. 110 of 2011 sitting in Nyeri where the appeal was dismissed *vide* judgment dated 10th October 2013.
 6. According to a copy of official search of Evurori/Nguthi/2310 dated 10th May 2023 annexed to the supporting affidavit to the application, the property is registered to the applicant and is encumbered with a restriction whose purpose is to be exhausted when Embu HCCC No. 165 of 2008 is finalised.
 7. From a perusal of the court's record, there is sufficient proof that the case indeed reached its logical conclusion and no further appeal has been preferred against the court of appeal's decision.
 8. Given that all matters have been finalized at this point in time, I have no choice but to allow the application herein for the simple reason that the determining factor for lifting the restriction has been exhausted.
 9. Consequently, the application is hereby allowed with no order as to costs.
 10. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 17TH DAY OF OCTOBER, 2023.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondents

