



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAKAMEGA
ELCC NO. 266 OF 2015

JOSEPHINE MUENI PLAINTIFF

VERSUS

PATRICK IHACHI.....DEFENDANT

RULING

1. Judgment was delivered in this matter on 18th September 2018 in favour of the plaintiff as follows:

1. That the defendant either by himself, his agents, employees, heirs and/or assigns is to vacate the suit parcel L.R. NO. KAKAMEGA/SHIVAKALA/2052 within the next 3 (three) months from the dated of this judgement and in default eviction order to issue forthwith.

2. Each party to bear their own costs.

2. Subsequently, following an application by the plaintiff, the court ordered, vide a ruling delivered on 26th November 2019, eviction of the defendant, his family and or agents from the suit property and that the O.C.S. Malaika Police Station provides security during the eviction.

3. The plaintiff later filed Notice of Motion dated 15th March 2021, seeking the following orders:

1. [Spent]

2. This Honourable court be pleased to enjoin the Land Registrar, Kakamega County as a second Respondent for purposes of this application only.

3. The Restriction made by the Land Registrar on L.R. No. KAKAMEGA/SHIVAKALA/2052 be removed forthwith.

4. The costs of this application be provided for.

4. This ruling is in respect of Notice of Motion dated 15th March 2021. The application is supported by an affidavit sworn by the plaintiff. She deposed that pursuant to the decree herein, the defendant voluntarily vacated the suit property. She added that the Land Registrar registered a restriction against the suit property on 20th September 2011 at the behest of the defendant prior to the filing of this case.

5. The plaintiff went on to depose that on 9th November 2020, her advocates wrote to the land registrar seeking removal of the restriction and that a certificate of search dated 2nd March 2021 confirmed that the registrar had not acted on the request. She further deposed that her plans to dispose the suit property to her children as well as for her upkeep have been hindered by the restriction.

6. Although served with the application, neither the defendant nor the land registrar responded to it. Similarly, they did not file any submissions.

7. In her submissions, the plaintiff argued that she is the registered proprietor and that restriction ought to be removed following the determination of this suit.

8. I have considered the application and the submissions. The law relating to removal of restrictions by the court is found at **Section 78 (2) of the Land Registration Act, 2012** which provides:

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. From the certificate of official search availed by the applicant, it is manifest that she is the registered proprietor of the suit property and that a restriction with particulars "No dealings on this parcel until family matters are resolved" was registered against the suit property on 20th September 2011 as entry number 7 in the encumbrances section. The restriction remained in force as at 2nd March 2021.

10. Similarly, the applicant has demonstrated that her advocates wrote to the land registrar a letter dated 9th November 2020 seeking removal of the restriction. The land registrar acknowledged receipt of the letter by stamping it. Neither the land registrar nor the defendant have opposed the present application.

11. In view of the foregoing, I find that prayer 3 of the application is merited. I do not consider it necessary to make the land registrar a party to this suit since this is a concluded matter and further taking into account that he has been given a chance to be heard.

12. In the end, I make the following orders:

a. The restriction registered as entry number 7 on 20th September 2011 against L.R. No. Kakamega/Shivakala/2052 be removed forthwith.

b. Since the application was not opposed, I order that each party bears own costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 14TH DAY OF DECEMBER, 2021

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Amasakha for the Plaintiff

No appearance for the Defendant

Court Assistant: E. Juma