



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 43 OF 2008

CATHERINE NKIROTE PLAINTIFF

VERSUS

STEPHEN MARETE 1ST DEFENDANT

JOSEPH MURITHI M'MARETE..... 2ND DEFENDANT

RULING

1. By an application dated 7.7.2021 the court is asked under **Section 70 & 73** of the **Land Registration Act** and **Section 3A** of the **Civil Procedure Act** to issue orders for the removal of inhibition, caution and other restrictions lodged and registered against the 2nd defendant's **Parcel L.R. Nkuene/Kathera/726** and that the **Land Registrar Meru Central** be ordered to remove the said restrictions.
2. The application is supported by affidavit of Joseph Murithi M'Marete sworn on 7.7.2021.
3. The grounds of the application are that on 22.5.2019 this suit was dismissed with costs to the defendants and no appeal has been preferred against the said dismissal.
4. Further it is averred the plaintiff who is now deceased had caused restriction to be registered. Given the suit is finalized, the applicant takes the view the restrictions serve no purpose and hence should be lifted.
5. In support of the application the applicant has attached copies of a certificate of official search and death certificate of the plaintiff who passed on **9.5.2013**.
6. With leave the applicant filed written submissions dated 12.10.2021. He submits the restrictions were placed on 27.3.2006. The court record shows the deceased was substituted by Joseph Gikunda Kirigia vide an application dated 5.5.2014 who proceeded to participate in the suit up to judgment.
7. After the matter was finalized the applicant took out a notice to show cause as well as warrants of attachment.
8. The court ordered the application be served upon the respondent but unfortunately there is no affidavit of service as to whether the said Joseph Gikunda Kirigia was served with this application.
9. Looking at annexure marked JMM1, there are two restrictions placed on 27.3.2006 and 14.9.2010. The first restriction was placed by the C.I.D. officers who apparently appear to have been undertaking some investigations. There is no evidence if those investigations have been finalized.
10. Further there is no evidence that the restrictions were registered on account of a court order arising out of this suit.
11. The supporting affidavit has not clarified the above issues for this court to make a finding as to whether or not the restrictions have been overtaken by events.
12. The court has gone through the court record and it is apparent there were other cases such as Meru High Court Civil Appeal No. 19 of 2016. The applicant in his affidavit in support is silent on the outcome of these previous proceedings.
13. In absence of any clarifications and service upon the rightful respondent, the court is unable to find any merits in this application. The same is dismissed with no order as to cost.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 1ST DAY OF DECEMBER, 2021

In presence of:

No appearance for parties

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE