



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**MISC CIVIL APPL. NO. 56 OF 2016**

**JOSEPH KATHURIMA M'IBIRI.....APPLICANT**

**VERSUS**

**PARAGON PROPERTY CONSULTANTS LTD.....RESPONDENT**

**R U L I N G**

1. The Notice of Motion dated 7th June, 2016 seeks the following orders:-

1. That this Honourable Court be pleased to remove and or lift the restriction placed against land parcel No. Ntima/Igoki/7353 on 11.12.2014.
2. That the respondent do bear the costs of this application.

2. The application is based on the grounds that:-

- a. The subject matter herein belongs to the applicant absolutely.
- b. The Respondent has no claim against the applicant and the said restriction had been in force since 11th of December, 2012 that is over 3 years and no action taken.
- c. The said restriction is greatly prejudicing and affecting the respondent's proprietary right.

3. The Application is supported by the Affidavit of JOSEPH KATHURIMA M'IBIRI sworn on 7th June, 2016 had has the following grounds:-

1. The he is the applicant herein thus competent to make and swear this affidavit.
2. That he is the registered sole proprietor of all that parcel of land known as NTIMA/IGOKI/7353 measuring 0.15 hectares.
3. The he recently learnt that his land herein has been registered and he consequently obtained a search from the land office and found that the respondent herein had caused a restriction to be placed against applicant's land on 11:12:2012 through a letter to the Land Registrar, *annexed is a copy of the search marked "JKM1"*.
4. That the respondents have no basis to challenge his proprietary right to this land and cannot therefore under any circumstance cause his land to be restricted.
5. That the respondent have no legal basis to cause restriction to be placed against applicant's land

and the same is illegal and unwarranted.

6. That the intention of restricting a land by any party is a temporary relief so that the affected party can pursue the matter to conclusion but up to date no such action has been taken by the respondent and as a result of the actions of the respondent he is suffering great loss and damage.

7. That he seeks that this Honourable Court do lift or remove the restriction placed against his land , since it has been there for more that 3 years and no action has been taken.

4. The application has been served upon the Respondent as well as upon the District Land Registrar Meru Central and there is no response from either of the two.

5. Annexure JKM1, a Search Certificate shows that the Restriction was entered on 11: 12: 12 and that the basis of the Restriction was a letter from Respondent to the Commissioner of lands. The proprietorship section shows that applicant is the owner of the land parcel No. NTIMA/IGOKI/7353.

6. There is no evidence to show that the Respondent and or the land Registrar have any justification to have the restriction in place.

7. S. 78 (2) of the land Registration Act of 2012 stipulates that

**“ 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 grant other orders as it deems fit”.**

8. I therefore, find that the application of 20:06:16 has merits. The restriction placed on Land Parcel No. NTIMA/IGOKI/ 7353 is to be lifted forthwith.

9. Costs in the cause.

**DELIVERED IN OPEN COURT AT MERU THIS 10TH DAY OF MAY, 2017 IN THE PRESENCE OF :-**

CA: Janet

Muthamia h/b for Ondari for Applicant Present

**HON. L.N. MBUGUA**

**JUDGE**