



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 299 OF 2018(O.S)

IN THE MATTER OF; THE LAND REGISTRATION ACT NO. 3 OF 2012 LAWS OF KENYA

AND

IN THE MATTER OF; THE LAND REGISTRATION OF TITLE NO. KIAMBA/RUAKA/5991,5992,5993,5994,5995,5996 AND 5997

BETWEEN

SHERRIF PATRICK N. MUNYUI.....1ST APPLICANT

PETER WARARI MUNYUI.....2ND APPLICANT

VERSUS

HON. PAUL KOINANGE.....1ST RESPONDENT

LAND REGISTRAR KIAMBU.....2ND RESPONDENT

JUDGMENT

The matter for determination is the Originating Summons dated 7th December 2018 by the Applicants seeking for the following orders against the Respondents;

- 1. That it be ordered that the Respondents herein be restrained from interfering with the quiet possession of property Kiambaa/Ruaka 5991, 5992, 5993, 5994, 5995, 5996, 5997.*
- 2. The caution registered on parcels Kiambaa/Ruaka 5991, 5992, 5993, 5994, 5995, 5996, 5997 be revoked and/ or removed.*
- 3. Costs of this suit be provided for.*

The Originating Summons is premised on the grounds that the Respondents are strangers to the Applicants who are the registered owners of the suit property. That the Applicants will stand prejudiced if the Honourable Court will not revoke and/ or remove the caution as the Respondents are attempting entry into their land without any legal capacity and interest, but to just frustrate the Applicant from enjoying their rights.

In their supporting Affidavit sworn on 7th December 2018, the Applicants averred that they are the registered owners of the suit properties with 5991 registered in the name of Sherriff Patrick Munyui and Peter Warari Munyui, 5992, Mary Wairimu Munyui, 5993, Sherriff Patrick Munyui, 5994 Sherriff Munyui & Peter Warari Munyui, 5995, Peter Warari Munyui, 5996, Sherriff Patrick Munyui, 5997 Sherriff Patrick Munyui. That on 25th June 2015, the Court in Succession Cause No. 1189 of 2005 issued a Certificate of Confirmation of grant, wherein the Applicants were confirmed as the Administrators in charge of the Estate of their late mother together with the distribution of her Estate. Further that Ibrahim Kinyanjui and Esther Wanjiku Kinyanjui, being dissatisfied with the Order of the Court filed the summons for rectification of the grant dated 23rd June 2016, and the same was dismissed in January 2017.

That in September 2017, the Applicants wanted to make changes to L.R 5991, which had inadvertently been registered in the joint name of Sherriff Patrick Munyui and Peter Warari Munyui as opposed to Warari Munyui only. That is when they discovered that a restriction had been placed on the said property by the 1st Respondent. Further that on conducting searches, they discovered that the Respondents had registered a restriction in respect of all the suit properties on false allegations that the land belonged to their deceased's brother's step children who claimed that the Applicant had irregularly acquired Court Ruling in their favour.

It was contended that a Court order was issued in **January 2017**, dismissing an Application by the alleged beneficiaries to revoke the Confirmation of Grant. That despite requests made by the Applicants Advocates to the 2nd Respondent to remove the caution, the 2nd Respondent has refused to comply. Further that the 2nd Respondent has neglected to furnish the Applicants with a copy of the letter by the 1st Respondent used to place the restriction. It was contended that there is no justifiable reason as to why the Respondents have refused to remove the said encumbrance and yet the Applicants legally own the land and there has been no appeal or review of the ruling and orders emanating from the said Ruling.

It was further averred that after numerous visits to the County Commissioner and the Assistant County Commissioner, the applicant were informed that they could not get consent to transfer land as the property had an encumbrance. That when their Advocate wrote to the Land Registrar, demanding that the restriction be lifted, they were advised to obtain a Court order to lift the restriction though their letter was not responded to. Further that the issue of the rightful beneficiaries was determined by a Court of law and any dissatisfied person should have appealed or reviewed the same. They further averred that they are unable to deal with the suit properties as they are encumbered and it is thus important for the same to be lifted, because they have identified buyers, but the said buyers are skeptical because of the encumbrance. It was their contention that unless the Court allows the instant Application, the Applicant will continue to suffer.

Despite being served with the Originating Summons, the 1st Respondent **Hon Paul Koinange**, did not enter appearance nor file his response to this application. The 2nd Respondent entered Appearance and on **23rd July 2019**, **Ms. Nyawira** from the Attorney General's office attended Court on behalf of the 2nd Respondent and stated that they did not have any objection to the removal of the caution. The Court directed the Applicant to file brief **written submissions**, to support their claim which they filed on **26th May 2020** and submitted that the Caution which was put by the area Member of Parliament was done maliciously without any reasons valid in law.

This Court has now carefully considered the instant application and the annexures thereto. The Court has also considered the written submissions, the cited authorities and the relevant provisions of law and makes the following rendition:-

There is no doubt that the suit properties herein are registered in the name of the Applicants and that the Applicants acquired the said suit properties upon Confirmation of Grant to the Estate of their Late Mother. There is also no doubt that as per the **official searches** dated **22nd September 2017**, and **22nd November 2018** on the various suit properties, there is in existence **restrictions** on the titles of the suit properties registered on **5th April 2017**, wherein it is indicated that **"Restriction Vide HON. Paul Koinange letter dated 3th April 2017."**

The Applicants being the registered owners have averred that they did not know why the restrictions have been placed on the titles. Further the Court notes that though the Applicants have sought for a reason for the basis upon which the restrictions were placed and that the Applicants have written a letter seeking for the reasons the same has not been forthcoming. Though duly served the 1st Respondent did not appear in Court to give an explanation as to why the restrictions had been placed on the said titles. The 2nd Respondent who placed the restriction has stated that it did not have an objection to the restriction being removed.

*It is not in doubt that the purpose upon which restrictions are placed on a title to land is to **prevent any fraud or improper dealing**. There is no reason that has been advanced to this court as to why the restriction is in place or even why the restriction was put in the first place **Section 76(2) of the Land Restriction** states that:-*

"Restrictions may endure for:

- a. A particular period***
- b. Until the occurrence of a particular event or***
- c. Until the making of further orders.***

It is evident that restrictions are not supposed to endure indefinitely on a title. The restriction on the titles herein indicate that **'restriction vide Hon. Paul Koinange letter dated 3rd April 2017'**. The Applicants are the registered owners of the suit properties. No evidence has been tendered as to why the restriction was put in place as the letter is even missing. There has been no evidence of any interest by the 1st Respondent over the suit properties to enable him put the said restrictions. Even that the 2nd Respondent is amenable to the restriction being removed, it would only mean that the restrictions remaining in place serves no purpose, but only serves to bar the Applicants from enjoying their rights and privileges over the suit properties.

The Applicants have alleged that even after applying to the Land Registrar to remove the restriction, the said Land Registrar has failed to do so and thus the filing of this application as provided by **Section 78(2) of the Land Registration Act**, 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".

It is evident from the above provisions of law that the Court has power to remove any restriction on a title to land. The 1st Respondent did not appear in Court to explain why the restriction should not be removed and has no interest over the suit property. The 2nd Respondent is amenable to the restrictions being removed. This **Court therefore finds no reason why the said restrictions should remain** on the said titles and consequently, it finds and holds that **the Applicants Originating Summons dated 7th December 2018 is merited**. The Court allows the said Originating Summons entirely with costs.

It is so ordered.

Dated, signed and Delivered atThika this 30thday of July, 2020.

L. GACHERU

30/7/2020

JUDGE

Court Assistant – Lucy

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15th March 2020**, this **Judgment** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

With consent of:

No Consent for the 1stApplicant

No Consent for the 2ndApplicant

No Consent for the 1stRespondent

No Consent for the 2nd Respondent

L. GACHERU

30/7/2020

JUDGE