



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**MISC. APPLICATION NO. 24 OF 2019**

**DANIEL GITAU KURIA.....APPLICANT**

**VERSUS**

**DISTRICT LAND REGISTRAR, THIKA.....1<sup>ST</sup> RESPONDENT**

**DCIO, JUJA POLICE DIVISION.....2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

The matter for determination is the **Notice of Motion Application** dated **17<sup>th</sup> April 2019**, brought by the applicant herein **Daniel Gitau Kuria**. The orders sought are:-

***(b) That the ruling and the order issued in ELC Misc. Application No. 76 of 2017 (Thika) by Hon. Lady Justice L. Gacheru on 26<sup>th</sup> October, 2018 be adopted in this application.***

***(c) That this Honourable Court be pleased to order the 1<sup>st</sup> Respondent to forthwith remove the restrictions placed by the 1<sup>st</sup> Respondent on the instigation of the 2<sup>nd</sup> Respondent, over the applicant's land parcel known as Ruiru East/Juja East Block 2/843 (the mother title) that was mutated and registered in Ruiru East Juja East Block 2/18373, Ruiru East Juja East Block 2/18374, Ruiru East Juja East Block 2/18381, Ruiru East Juja East Block 2/18382, Ruiru East Juja East Block 2/18383, Ruiru East Juja East Block 2/18388, Ruiru East Juja East Block 2/18394, Ruiru East Juja East Block 2/18400, Ruiru East Juja East Block 2/18401, and Ruiru East Juja East Block 2/18402.***

***(d) That the costs of this application be provided hereof.***

The Application is supported by the affidavit of **Daniel Gitau Kuria** which was sworn on **17<sup>th</sup> April 2019**, and grounds set out on the face of the application.

The applicant has averred that he is the legal proprietor of the suit properties known as **Ruiru East/Juja East Block 2/843** (the mother title) and the resultant subdivisions. Further that there are restrictions lodged on the titles of the said subdivisions without notice and the same are unlawful in respect of the said premises by Respondents. That the Respondents are claiming that investigations were carried out in respect of the said premises. The applicant urged the court to remove the said restriction as the applicant is the owner of the suit land having purchased the same from one **Moses Muniu Ndia**, vide a sale agreement entered into on the **10<sup>th</sup> December 2013**. It was also averred that the applicant has lawful title deedS in respect of the said suit premises. That he was never summoned to appear before the **District Land officer** over the said restrictions or formerly informed of the same. Further that despite the numerous promises to commence the removal process, the 1<sup>st</sup> Respondent has not done so.

It was also averred that the applicant is not facing any criminal case in respect of the said suit premises and that the 2<sup>nd</sup> Respondent who placed the said restrictions has no valid reasons to do so. That the Respondents action are aimed at frustrating the proprietary interests of the applicant herein.

In his Supporting affidavit, the applicant averred that prior to the purchase of the suit land, he had conducted an official search and the 1<sup>st</sup> Respondent had cleared the said land as available for transfer. Thereafter, the 1<sup>st</sup> Respondent lawfully and received and effected transfer of the said premises in favour of the applicant and several title deeds were issued to him. Further that though the 2<sup>nd</sup> Respondent had purported to charge him with an offence of altering false document, he was duly acquitted by the court. Therefore, the 2<sup>nd</sup> Respondents who placed the restrictions had no valid reason to do so.

The office of the **Attorney General** entered appearance for the Respondents on **23<sup>rd</sup> July 2019**, and filed grounds of opposition to the effect that:-

- 1) The Applicant has not attached current searches to prove who the registered proprietors of the suit properties are.**
- 2) That the Applicant has failed to enjoin the necessary party who prompted the DCIO to instruct the Land Registrar to place the restrictions.**
- 3) That the Applicant has not enjoined the parties who stand to be affected if the orders sought are granted.**

The Court directed the parties to canvass the application by way of written submissions. The Applicant through the **Law Firm of Kurauka & Company Advocates** complied with the said directions and filed the said written submissions. The applicant attached the ruling in **ELC Misc Application No. 76 of 2017**, delivered at Thika ELC wherein he urged the court to adopt the said Ruling and orders issued thereon in this matter.

The office of the Attorney General did not file its written submissions as directed by the Court.

The court has considered the instant application and annexure thereto. The court too has considered the written submissions and the relevant provisions of law. The court renders itself as follows:-

In respect of **prayer No. (b)**, wherein the applicant has urged the court to adopt the Ruling and the Orders issued in **ELC Misc. Application No. 76 of 2017 (Thika)** and issue the said order herein, the court finds that the prayer is not tenable. It is trite that cases are decided on their own merit and the applicant herein has to satisfy to the required standard that he is deserving of the orders sought.

In respect of **prayer No. (c)** of the removal of restriction, is it merited?

The Application herein is anchored under **section 78(2)** of the **Land Registration Act** and **Section 3** of the **ELC Act**. Section 78(2) reads as follows:-

***“Upon the Application of a proprietor affected by 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 cost.”***

It is clear from the above provisions of law that wherein a restriction has been placed on a proprietor’s parcel of land, the said proprietor needs to give **Notice** to the **Registrar** seeking removal of the same. Failure to do so, the said proprietor **may** apply to Court for such removal and the Court has discretion to order for removal of the said restriction. Of course the said discretion must be exercised judiciously.

It is evident that restrictions are place on parcels of land to prevent **fraud** on **improper** dealing. The same is government by **Section 76(1)** of **Land Registration Act** which provides:-

***“For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.”***

From the above provisions of law, the **Land Registrar** has discretion to cause restrictions to be placed on a proprietor’s parcel of land or lease for purpose of prevention of **fraud, improper** dealing or for any other sufficient reasons.

The applicant herein has alleged that the 1<sup>st</sup> Respondent on instructions of the 2<sup>nd</sup> Respondent placed restrictions on several parcels of land which are identified in his prayer (c) and which parcels are subdivisions of the mother title **Ruiru East/Juja East Block 2/843**. He alleged that the 2<sup>nd</sup> Respondent had no justification to apply for placing of restrictions on the suit properties.

For the Court to exercise its discretion and direct and/or order removal or restrictions, there must be evidence of existence of the said restrictions; **Notice** to the Registrar to remove the same and then on Application by the Proprietor for removal of the same.

The Court has considered the annexures attached to the instant Application. This Court has only seen an order issued in **ELC Misc No. 76 of 2017 (Thika)**, which was a distinct matter from this one, Application for registration of the said order in **ELC Misc No. 76 of 2017** and the Ruling of this Court delivered on **26<sup>th</sup> October 2018**.

The other documents are the sale agreement, purported subdivisions of the mother title **Ruiru East/Juja East Block 2/843**. Further there are title deeds in favour of the Applicant and various other proprietors being **Joseph Kuria Gitau** and **Wanjiku Kuria**. The said various title deeds were issued between **2014 and 2017**. However, there were no recent searches attached to the said titles to show that there are restrictions on the said parcels of land and that the said restrictions were placed on instigation or application of the 2<sup>nd</sup> Respondent. Further not all the attached title deeds are in the name of the Applicant herein. Some of the title deeds are also in favour of **Joseph Kuria Gitau** and others in the name of **Wanjiku Gitau**. The two proprietors are not Applicants herein.

The Court does not issue orders in vain. There is no evidence that restrictions have been placed on the mentioned titles herein. There is also no evidence that the proprietors did give a Notice to the Registrar to remove the said Restrictions and the Registrar failed to do so.

As the court stated earlier, each case is decided on its own merit. The decision in **ELC Misc No. 76 of 2017**, was arrived after careful consideration of the available evidence in that case. The said orders cannot be applied as blanket orders in other cases, especially where no evidence of restrictions on the proprietor's titles is availed.

For the above reasons, the Court finds the Applicant's instant Application dated **17<sup>th</sup> April 2019** is not merited. The same is dismissed entirely with costs to the Respondents.

It is so ordered.

***Dated, signed and Delivered at Thika this 24<sup>th</sup> day of September, 2020***

**L. GACHERU**

**JUDGE**

**24/9/2020**

**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 **15<sup>th</sup> March 2020**, this **Judgement** 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 and virtual appearance via video conference**

**Mr. Kurauka for the Applicant**

**No appearance for the Respondents**

**L. GACHERU**

**JUDGE**

**24/9/2020**