



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

MISC. APP. NO. 29 OF 2014.

TAIDORA TATA ERNESTAPPLICANT.

VERSUS

AFRICANIUS OKADA OMADEDE..... RESPONDENT.

R U L I N G.

TAIDORA TATA ERNEST, hereinafter referred to as the Applicant filed the Notice of Motion dated 18th March, 2014 through M/S. Ikapel & company Advocates for the following orders;-

- “ 1. The restriction registered against land parcel No. South Teso/Apokor/758 on 21.01.2014 at the instance of the Respondent herein be removed.
2. Costs of this application be provided for.”

The application is based on four grounds set out on the face of the application paraphrased as follows;-

1. That the Applicant is registered with the suit land for her benefit and that of her co-wife.
2. That Respondent filed a restriction over the suit land claiming purchaser's interests based on a sale agreement that was null and void.
3. That the restriction should be removed to restore the proprietor's rights and duties to the Applicant to enable her distribute the estate.

Africanus Okada Omadede, hereinafter referred to as the Respondent, filed a replying affidavit sworn on 2nd April, 2014 through M/S. Balongo & company Advocates opposing the application primarily on the basis that the Applicant intends to transfer the land to other parties without giving him the portion he had bought.

During the hearing, Mr. Ikapel and Mr. Jumba appeared for the Applicant and Respondent respectively and made their submissions.

I have considered the supporting and further affidavits, the replying affidavit the grounds on the application and counsel submissions and find as follows;-

1. That the evidence affidavit availed shows that the Applicant and the Respondent had a land sale agreement whose terms, on for example, date of the agreement(s), size of the land being sold under the agreement, the purchase price, completion date, amount of the purchase price paid and outstanding are definitely in dispute. The court can only determine such disputed issues on receiving evidence in a suit.

2. That though the restriction entered on 21.01.2014 was pursuant to the Chief's letter of the same date, the entry clearly shows the person in whose favour the restriction was made was Africanus Okada Omadede who is the Respondent herein.
3. That the Applicant has not availed any evidence to show whether the Land Registrar had been given notice of the intention to have the restriction removed as required under section 78 (2) of the Land Registration Act before or after the filing of this application. The importance of parties being required to first try to sort out such issues with the Land Registrar before coming to the court cannot be gainsaid as it guards against initiating unnecessary cases in court leading to congestion and unnecessary costs.
4. That the filing of restriction on the title followed by filing of application to lift such restriction will not sort out the dispute that apparently exist between the Applicant and the Respondent. This is because a party can always file another restriction ones the first one is lifted and the circle will continue until the issues are canvassed in a proper suit, if no agreement is reached, and appropriate court order issued after hearing the parties.

For reasons shown above, I find no merit with the Applicant's application dated 18th March, 2014 and the same is dismissed with no orders as to costs.

It is so ordered.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 3rd DAY OF JULY, 2014.

IN THE PRESENCE OF; Respondent, Mr. Ikapel for Applicant and Mr. Jumba for respondent.

JUDGE.