



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISC. APPLICATION NO. 174 OF 2012

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

AND

**IN THE MATTER OF SECTION 78 OF THE LAND REGISTRATION ACT, NO 3 OF 2012,
LAWS OF KENYA**

BETWEEN

JOSEPH KIRAGU MBATIA

(suing on behalf of the estate of Ann Waithira Mbatia (deceased)).....APPLICANT

AND

DISTRICT LAND REGISTRAR (NYANDARUA).....RESPONDENT

RULING

1. By an application by way of Notice of Motion brought under **Order 51 of the Civil Procedure Rules, Section 78 of the Land Registration Act, 2012** and **Section 3A of the Civil Procedure Act** dated **12th June, 2012**, the applicant moved the court seeking the following orders:

- a) **That the Court be pleased to order the District Land Registrar (Nyandarua) to remove the restriction over the property known as L.R. No. Nyandarua/Silanga/468 ("the suit property")**
- b) **That the costs of this application be provided for.**

2. The application is premised on the grounds on its face and supported by the affidavit of the applicant, which can be summarized as follows: that there exists a restriction lodged indefinitely on the suit property which belongs to the late **Ann Waithira Mbatia** lodged irregularly and unlawfully. This restriction has hampered the administration of her estate.

3. An affidavit of service was filed on **15th May, 2013** by **George Okemwa**, a process server of this honourable court, that on **21st September, 2012** he served upon the District Land Registrar Nyandarua west, one **Mr Githaiya** a notice of motion application dated **12th June, 2012** who accepted service of the same by retaining his copy but declined to sign it stating that the restriction was placed by the District Criminal investigating officer.

4. Despite service the respondent did not enter appearance or respond to the application.

5. A hearing date for the application was taken in the registry on **17th January, 2014** for hearing of the application on **20th May 2014**. On **9th May, 2014 Nicholas Openda** a process server, served the hearing notice upon the office of the Attorney General's, Nakuru who acknowledged receipt.

6. Whereas, a hearing notice was served upon the office of the Attorney General, Nakuru, the Attorney General had not entered appearance to act for the District Land Registrar, Nyandarua. The hearing notice should also have been served upon the District Land Registrar, Nyandarua in person as it is a fundamental principle of natural justice that one must not be condemned unheard. For that reason, I find that the hearing notice was not properly served.

7. In the interests of justice, I order that another hearing date be taken for hearing of the application and the hearing notice be served upon the District Land Registrar Nyandarua.

Dated and delivered at Nakuru this 3rd day of October 2014

L N WAITHAKA

JUDGE

PRESENT

Mr Ogoro for the Applicant

N/A for the respondent

Emmanuel Maelo : Court Assistant

L N WAITHAKA

JUDGE