



NO. 14/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISC. APPLICATION NO. 225 OF 2011

PETER NZUKI KATHYAKA..... APPLICANT/RESPONDENT

VERSUS

PAUL MATHEKA RESPONDENT/APPLICANT

R U L I N G

1. The matter is for a ruling on a Motion dated 20th August 2014 which seeks the orders for the removal of restrictions registered against parcels of land **Mavoko Town Block 3/11539, 11543 and 11542**.
2. The application is premised on **Orders 51 Rule 1, 4 and 10 (2) Civil Procedure Rule, Section 3A, 1A, and 1B Civil Procedure Act Cap 21 and Section 78 (2) Land Registration Act No. 3 of 2012** and it is based on the grounds on the face of the Motion **Nos. 1, 2, 3, 4, 5 and 6**.
3. The application is supported by the Affidavit of **Paul Matheka** sworn on the 20th August 2014 and annexures thereto.
4. The application was served but the Respondent has not filed any grounds of opposition or Replying Affidavit nor did he attend court to oppose the same.
5. The Applicant's case is set out in the Affidavit sworn by the Applicant as follows:
 - a. That he filed suit before this Honourable Court against the Applicant/Respondent herein being HCCC No. 141 of 2008 on 15th September 2008 vide annexed documents (Annexed and marked PM1 is a copy of the Plaintiff)
 - b. That the Applicant/Respondent never entered appearance nor filed defence and judgment was entered as prayed in the Plaintiff after his advocate on record requested for the same (Annexed and marked PM2 is a copy of the Request of Judgment)
 - c. That decree was drawn accordingly and he was awarded the property in dispute being **Mavoko Town Block 3/2125** (Annexed and marked PM3 is a copy of the Decree).
6. That after the property was awarded to him, he subdivided it into three portions **Mavoko Town Block 3/115543, 11539 and 11542** and gave the same to his two sons **Joshua Mbaluto Matheka, Joseph Nzioki Matheka** and the third portion was registered in his name **Paul Matheka**.

7. That immediately thereafter the court file went missing and the Applicant/Respondent's advocate filed an application seeking leave to reconstruct a skeleton file which was allowed accordingly. (Annexed and marked PM4 are copies of the Application and Order).

8. That after the Applicant/Respondent's advocate filed the application to reconstruct a skeleton file, she wrote a letter to District Land Registrar Machakos requesting that the three lands **Mavoko Town Block 3/11543, 11539 and 11542** which are subject matter to be restricted until the application is heard and finalized (Annexed and marked PM5 is a copy of Restriction letter).

9. That the District Land Registrar Machakos registered the said restriction against the three parcels of land on strength of the said letter accordingly (Annexed and marked PM6 are copies of Certificate of official search).

10. That, now that the Civil Misc. Application No. 225 of 2011 together with the initial suit HCCC No. 141 of 2008 are finalized, he requests this Honourable Court to issue an Order directing the District Land Registrar Machakos to lift and/or remove the said restriction.

11. The court finds that in absence of the opposition to the application and in line with the provisions of **Section 78 (2), Land Registration Act of 2012**, the application will be considered without any opposition.

Section 78 (2) of the said Act is to the following effect:

Section 78 (2) "upon the Application of a proprietor affected by a restriction, and upon a notice to the registrar, the court may order a restriction to be removed, varied or other order it deems fit, and may make an order as to costs."

12. The proprietor made application herein which is not opposed. The court sent a notice dated 9th October 2014 to the land registrar to notify the same of the imminent removal of the restriction.

13. The said registrar has not filed any objection or even comment on the same notice.

14. In absence of opposition to removal of the restrictions subject herein, the court finds that the application has merit and makes the following orders:-

a. The Motion dated 20th August 2014 be and is hereby allowed.

b. Costs to the Applicant.

DATED, SIGNED and DELIVERED at MACHAKOS this 14TH day of NOVEMBER, 2014.

CHARLES KARIUKI

JUDGE