



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELC NO 116 OF 2017

WILLIAM KIMANI GICHIRA.....APPLICANT

VS

EDITH NJERI CHEGE.....RESPONDENT

RULING

1. Before me is an application dated the 7/2/2020 brought under Sections 1A, 1B & 3A of the Civil Procedure Act seeking that the prohibitory orders issued against LOC.11/MUCHUNGUCHA/1915 (suit land) be lifted.

2. The application is based on the grounds and the supporting affidavit of the Applicant where he states that this Court gave judgement on the 20/12/2018 in favour of the Applicant. That the Land Registrar has effected the transfer of the land in his name but declined to issue the title because of the presence of the prohibitory order on the title. He urged the Court to lift the orders so that the title in his name may be issued.

3. This suit was filed by way of Originating Summons on the 8/6/16. Following the hearing and determination the Court pronounced itself in favour for the Plaintiff.

4. I have examined the green card which bears the prohibitory order registered on the title on the 3/8/2012 as follows;

“no dealings until further of the Court in civil suit No 531 of 2004 of 3/4/12”.

5. The Court having delivered itself on the judgment may be said to be functus officio except where it is moved by way of review of judgement or under Section 34 of the Civil Procedure Act which provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree.

6. The question is whether the issue of removal of the prohibition orders is related to the ancillary functions of the Court as provided under Section 34. The Applicant has deponed that the execution of the judgment is being impeded by the subsistence of the prohibitory orders.

7. It is trite that this Court enjoys both original and Appellate jurisdiction over land disputes. However, the presence of the prohibitory orders issued by another Court needs to be interrogated. The Applicant did not see it necessary to supply the Court with the said orders. The nature of the transactions being prohibited were not disclosed to the Court either. The Court is unable to lift the prohibition unless there is evidence that the suit was concluded or further orders discharging the entries were made by the Court.

8. In the end the application is dismissed out with no orders as to costs.

9. **It is so ordered.**

DATED, SIGNED & DELIVERED AT MURANGA THIS 30TH DAY OF NOVEMBER 2020.

J. G. KEMEI

JUDGE

Delivered in open Court in the presence of;

Plaintiff/Applicant: Absent

Defendant/Respondent: Absent

Njeri & Kuyiki: Court Assistant