

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 223 OF 2017

HEZRON SUDI INDENGEZI PLAINTIFF/RESPONDENT

VERSUS

THOMAS SUTI MALUHA DEFENDANT

BENARD TECHU BEYU2ND DEFENDANT/APPLICANT

RULING

The application is dated 29th July 2020 and is brought under Sections 1A, 3A of the Civil Procedure Act and Sections 78 of the Land Registration Act Cap 300 seeking the following orders:-

1. That the restriction registered on 28th February, 2013, entry No. 3 or any other restraints on disposition in respect of register/title Land parcel LR No. Kakamega/Kapsotik/287 be and is hereby lifted/discharged/removed forthwith.
2. That the consent judgment of 7th March, 2018 in Kak HCELC 104/17 be given effect.
3. That costs be provided for;

It is based on the affidavit of Bernard Techu Beyo and grounds that a restriction was placed registered in register of Kakamega/Kapsotik/287 in favour of Hezron Sudi Indengezi which is pending. Hezron Sudi Indengezi's claim in the land was herein dismissed on 19th February, 2020. The interested party by consent of 7th March, 2018 in Kak. HC ELC 104/17 was awarded part of the subject matter. There are no good reasons to have the restriction in force.

This court has considered the application and the submissions therein. The respondent was served but failed to attend court or file any response. I have perused the court file and indeed find that in a judgement delivered on the 19th February 2020 and the court found that the plaintiff had failed to establish his case on a balance of probabilities and his case was dismissed. The court found that the 2nd defendant/applicant was a bonafide purchaser for value. This application has not been opposed. I find it is merited and grant prayer 1 and 2. There will be no orders as to costs as the same was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 15TH DECEMBER 2020.

N.A. MATHEKA

JUDGE