

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

PETITION NO. 13 OF 2018

JULIUS NYAMAI MUTISYA.....PETITIONER

VERSUS

THE CHIEF LAND REGISTRAR.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

JUDGEMENT

Through the petition dated 7 /2/2018, the Petitioner sought a declaration that the restriction registered against land reference number Nairobi/Block 93/40 (“the Suit Property”) on 4/10/2005 is wrongful and sought an order of mandamus to compel the 1st Respondent to remove the restriction placed against the Suit Property and compensation or general and exemplary damages against the Respondents or any of them found to have violated the Petitioner’s fundamental rights as well as costs of the petition.

The petition was supported by the Petitioner’s supporting affidavit, sworn on 6/2/2018 in which the Petitioner deponed that he is the registered proprietor of the Suit Property and annexed a copy of the certificate of lease as evidence of this. He averred that he intended to sell the Suit Property in 2015 but on conducting an official search, he discovered that his property was encumbered by a restriction registered on 4/10/2005 purportedly registered pursuant to a court order made in Civil Suit No.1253 of 2001. He attached a copy of official search as evidence. He maintained that Civil Suit No.1253 of 2001 had no relation to his property. He attached certified copies of the plaint, the judgment and the final decree in the said suit. He produced a copy of the letter dated 15/2/2017 as evidence that he had written a letter to the Land Registry requesting to have the restriction removed.

Through the replying affidavit of Edwin Munoko Wafula, a Senior Land Registration officer sworn on 14 /5/2018, the 1st Respondent admitted that it registered a restriction against the Suit Property on 4 /10/2005, pursuant to a prohibitory order issued in **Milimani Commercial Court Civil Suit No.1253 of 2001**. He annexed a copy of the prohibitory order. Further, he deponed that when he did a search on the Kenya Law Reports, (eKLR), he discovered that the case in respect of which the prohibitory order arose made reference to Nairobi/Block 90/43, but the drafter of the prohibitory order described the property as Nairobi/Block 93/40, which was a mistake. The 1st Respondent registered what was presented by the decree holder in Milimani Commercial Court Civil Suit No.1253 of 2001.The deponent opposed all the other prayers made by the Petitioner.

The court has considered the petition, affidavits, annexures and submissions filed by the parties. The 1st Respondent admitted that it registered a caution against the Suit Property, but denied that it do so intentionally. It argued that the registration of the caution on the Suit Property was a genuine mistake.

The court has looked at the judgement in **Milimani Commercial Court Civil Suit No. 1253 of 2001** and concurs with the 1st Respondent that the Judge gave the correct case number as Nairobi Block 90/43, but the correct land reference number was not indicated in the prohibitory order which gave the land details as Nairobi/Block 93/40. The Petitioner wrote to the 1st Respondent on 15/2/2017 requesting it to lift the caveat. No good reason was given for the 1st Respondent’s inaction after it became aware of the Petitioner’s complaint. This suit would have been avoided had the 1st Respondent taken up the Petitioner’s queries with the seriousness they deserved. The filing of this petition was necessitated by the fact that the 1st Respondent failed to act on the Petitioner’s request to remove the caveat placed on the suit property.

The caution was registered against the Suit Property on 4/10/2005. This petition was filed in 2018. The 1st Respondent shall pay the costs of this petition. The court directs the 1st Respondent to remove the caveat registered against the Suit Property forthwith.

Dated and delivered at Nairobi this 19th day of March 2019

K.BOR

JUDGE

In the presence of: -

Mr. E. Mageto holding brief for Mr. F. M. Mulwa for the Petitioner

Mr. V. Owuor- Court Assistant

No appearance for the Respondents