



**THE REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 21 OF 2017**

**MOSES WANJOGU ..... APPLICANT**

**VERSUS**

**M'MUNGANIA M'AJARIA & 2 OTHERS .....RESPONDENTS**

**RULING**

1. The application dated 11.10.2017 and filed on 1.11.2017 seeks the following orders:

- (a) That the annexed decree in respect of Meru SRMCC 457 and 381 of 1986 and the Judgment in Meru HCCA No. 40 of 1988 be declared as proper in the opening of a skeleton file.
- (b) That the Honourable court be pleased to make an order to raise and vacate the prohibitory orders in the applicant's land parcel No. Nyaki/Munithu/1098.
- (c) That the honourable court to make any other orders as would meet the interests of justice in this matter.
- (d) That the costs incidental to this suit be provided for.

2. The grounds in support of the application are that the court files in respect of Meru SRMCC 457/86 and 381/86 cannot be traced in court and in advocates offices, that applicant duly settled and paid all costs which had been ordered against him, that the prohibitory orders do not serve any purpose and that the defendant/respondent will not be prejudiced in any way.

3. Applicant has also filed a supporting affidavit where he has deponed that he was the plaintiff in Meru SRMCC 457/86 consolidated with 381 of 1986 (a Photostat copy of the decree is annexed and marked MW 1). Plaintiff had sued for specific performance of contract but the case was dismissed with costs. Plaintiff then filed High court civil appeal no. 40 of 19988 which was also dismissed (a Photostat copy of the appeal judgment is annexed and marked MW 2).

4. Thereafter, the costs were assessed. The defendants attached applicants parcel of land Nyaki/Munithu/1098 and prohibitory orders were issued on 6/9/1997 and 23.4.1993 respectively prohibiting all dealings in respect of the said parcel of land until the said cases and appeal were finalized (a Photostat copy of the certificate of official search in respect of the said parcel of land is annexed and marked MW 3).

5. Plaintiff's efforts to have the prohibitory orders raised were frustrated as the lower court files and the appeal file got lost in both the lower court and the high court and the files also at the advocate's offices could not be traced.

6. Applicant avers that he is old and intends to transfer his land to his children. By good luck his son had bought and preserved a copy of the decree in the lower court and the judgment of the appeal (MW 1 and MW 2 respectively).

7. I have perused the application which was served vide the return of service on 1.2.2019. The Meru High Court Civil of Appeal Judgment no. 40 of 1988 dated 3.3.1995 confirms that the dispute was finalized. If the land of the applicant was attached to defray the costs of the suit, then such a process ought to have been finalized by now. There is no good cause as to why the prohibitory orders should remain in force 20 years down the line from the time of issuance of the said orders.

8. I therefore find the application is merited. The same is allowed with no orders as to costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 6<sup>TH</sup> MARCH, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Gikonyo holding brief for B.G Kariuki for applicant

Moses Wanjogu

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**