



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND ACT AT MURANGA**

**ELC NO. 366 OF 2017**

**MUKURIA JAMES CHACHA.....1<sup>ST</sup> PLAINTIFF**

**LUCY WANJERI CHACHA.....2<sup>ND</sup> PLAINTIFF**

**GEORGE KANGATA MWANGL.....3<sup>RD</sup> PLAINTIFF**

**VS**

**THE LAND REGISTRAR MURANGA.....DEFENDANT**

**JUDGMENT**

1. The Plaintiffs filed suit against the Defendant seeking the orders of removal of the restrictions lodged against L. R NGINDA /SAMAR / BLOCK1/ 2871 AND NGINDA /SAMAR / BLOCK 350. The Plaintiff further prays for costs of the suit together with interest.
2. The Plaintiffs claim to be the registered owners of the suit lands having purchased from a willing seller and thereafter took possession as owners. That it is in 2017 that the Defendant lodged restrictions on the suit lands pursuant to a complaint of suspected fraud raised by the Directorate of Criminal Investigation (DCIO), Muranga. It is their case that the restriction was placed contrary to the law and the said letter from the DCIO did not form a lawful basis for restricting their lands. That their rights of enjoyment of the proprietary interests have been impeded by the restriction.
3. The Defendant denied the Plaintiffs claim in its statement of defence dated the 19/9/17. In it, it claimed that the restriction was registered lawfully pursuant to section 76 of the Land Registration Act, 2012 and it will be removed once investigations are complete. That it acted on instructions of the DCIO and registered the restriction in good faith.
4. At the hearing PW1- the 1<sup>st</sup> Plaintiff informed the Court that he and his wife, the 2<sup>nd</sup> Defendant bought land parcel No 350 measuring 4.05 ha from Alexander Miriti Mugambi. They took possession and developed the suit land. That in 2017 a person unknown to him but named Irungu filed a complaint with the DCIO Muranga claiming the land belonged to him. The investigations were carried out and no charges were preferred against him nor the seller of the land. Thereafter the DCIO caused the restriction to be registered against the land. That the restriction is impeding his ability to deal and transact using his land.
5. PW2- the 2<sup>nd</sup> Plaintiff testified that he owned parcel Nos. 350 and 351 which he bought from Cyrus Musevio Irungu. That he later subdivided parcel No. 351 into 4 parcels and sold to third parties. He was summoned by the DCIO and he presented himself whereupon he recorded a statement and was not charged with any offence. Later he learnt that the parcels had been restricted by the Defendant under the instructions of the DCIO.
6. DWI-the Land Registrar led evidence and stated that the restriction was registered pursuant to the letter dated the 6/4/17 from the DCIO, Muranga which requested that no dealings be allowed until the investigations were complete. The witness stated that once they are in receipt of the instructions from the police she is obligated to comply with the request pending investigations. That she has not received any letter from the DCIO instructing her to remove the restriction. She also stated that she saw no reason to inquire from the DCIO if the investigations have been completed. The letter from the DCIO suspected fraudulent dealings on the land. She stated that there is no obligation on the Land Registrar to notify the registered owner prior to registering the restriction.
7. At the close of the hearing, the Hon Attorney General represented by Ms Chimau, the Learned State Counsel, sought leave to consult with the office of the DCIO on the status of the investigations and the basis on which the restriction was registered. The Court granted her 14 days to file a report in Court by the 26/2/19. On the 26/2/19 the Defendant and its advocate were absent in Court and the Court reserved judgement in the matter. As at the time of writing the judgment there was no filed report on record.
8. The parties were directed to file Written Submissions which the Plaintiff duly filed. I have read and considered the submissions.

9. The key issue before the Court is whether the restriction should be removed.

10. The provisions of Section 76 of the Land Registration Act, 2012 provides that

“(1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure—

(a) for a particular period;

(b) until the occurrence of a particular event; or

(c) until a further order is made, and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

(2A) A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions”.

11. The Register of Lands has power to register a restriction in three instances; prevention of fraud; or improper dealings on land; or for any sufficient cause. The Registrar may be moved suo moto or on application of any persons interested in the land. The Registrar on receipt of the application is duty bound to direct inquiries to be made, notices to be served and hearing such persons as he considers fit and make an order prohibiting or restricting dealings with any land. The restriction may be for a particular period, until the occurrence of a particular event or until a further order is made. The Registrar shall give notice in writing of a restriction to the proprietor effected by the restriction.

12. In the case of **Matoya Vs Standard Chartered Bank (K) LTD & others (2003) I EA 140** it was held that;

“A restriction is ordered to prevent any fraud or improper dealing with a given parcel of land and the land registrar does this whether on its own motion or if so asked by way of an application by the person interested in that land but before ordering the restriction the registrar is bound by law to make inquiries, send out notices and hear all those other people he may think fit first and he is not to move by whim, caprice or whatever influence personal or otherwise just to impose a restriction since he has a duty to inquire and be satisfied that his duty to order restriction is not hurting a person who was not heard and that indeed the restriction is in general good that frauds and other improper dealings are prevented”.

13. In the case at hand the Registrar led evidence that the restriction was registered pursuant to the letter from the DCIO. The letter requested that the land be restricted until the investigations were completed. The main purpose of restrictions are the prevention of fraud and or improper dealings on land. The action of the Registrar was triggered by a letter from the DCIO who have the mandate as it were to investigate fraud. To that extent therefore the Court is of the view that the restriction was lawful that is to say it was for a purpose permitted by law. It is clear that the Registrar may restrict land with or without an application from anybody.

14. On receipt of the letter from the DCIO, the Registrar needed to have inquired into the issue, issue notices to the parties affected and carry out a hearing as he may have considered fit to do so and make an order of restricting dealings on the land. The Registrar led evidence that these steps were not taken. The Registrar did not make inquiries, nor issue notices to the affected parties nor heard the parties. With due respect to the Registrar she stated in Court that there is no duty to notify the owners of the land before registering the restriction. The Plaintiffs learnt later after being summoned to the DCIO and recording statements that a restriction had been made respecting the suit lands.

15. In the case of **Republic Vs Registrar of Lands, Kiambu County [2015] eKLR** Odunga J. held in a case where the Land Registrar did not oppose an application to remove a restriction, that the onus was upon the Registrar to shed light on whether the provisions of section 76(1) were complied with. In the instant case the Land Registrar did not comply with the law. She did not exercise her discretion in accordance with the law.

16. Section 77(1) of the Act mandates the Land Registrar to give notice in writing of a restriction to the proprietor affected by the restriction. The Registrar did not lead evidence that this step was taken despite the mandatory nature of its command.

17. It is clear from the above that the registration of the restriction was not in accordance with the law.

18. Section 78(1) of the Land Registration Act, 2012 provides for the removal of restrictions. The Registrar may at any time and on application by any person interested or at his own motion and after giving the parties affected by the restriction an opportunity of being heard order the removal or variation of a restriction. The Court, on application of a party with notice to the Registrar may order a restriction to be removed, varied or other order as it may deem fit to grant.

19. In this case the Court is being asked to remove the restriction under section 78(2) of the Land Registration Act, 2012. Whilst it is to be appreciated that the role of the DCIO in the prevention of crime and fraud is important, it is upon the Land Registrar to follow the law in the lodgment of restrictions. The Registrar cannot purport to be powerless in the performance of her duties under the law. Article 10 of the Constitution binds the Registrar to apply the law to promote the objects of the Constitution. Art 47 of the Constitution read together with the provisions of the Fair Administrative Act require that the Land Registrar to ensure that the process of ordering a restriction on one's land be

procedurally fair and one of the ingredients of a fair procedure is the right to be heard before a decision is made. In the instant case the Plaintiffs were not accorded any hearing at all.

20. This Court will be guided by the provision of section 24 of the Land Registration Act 2012 which provides as follows;

“The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”.

According to the official searches and the green cards placed before the Court at the hearing, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs remain the registered owners of the suit land about 3 years after the lodgment of the restrictions.

21. Given that a restriction is supposed to remain in place for a particular period, until the occurrence of a particular event or until the making of a further order, the registration of the restriction was made in 2016 and 2017 respectively and at the time of the hearing there was no evidence that the investigations were ongoing. There was no evidence that the titles were irregularly acquired or ownership had been successfully challenged on grounds of fraud. The Defendants Counsel requested for time to brief the Court on the stage of investigations which the Court allowed but she did not comply. It is the Courts view that the Plaintiffs should be allowed to enjoy their rights of proprietorship in the land in accordance with section 24 of Land Registration Act, 2012.

22. Excising the powers under section 78(2) of Land Registration Act, 2012 I order for the immediate removal of the restriction. I make no orders as to costs.

**Orders accordingly**

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 11<sup>TH</sup> DAY OF APRIL, 2019.**

**J G KEMEI**

**JUDGE**

**Delivered in open Court in the presence of:**

T M Njoroge for the 1<sup>st</sup> – 3<sup>rd</sup> Plaintiffs

Defendant: Attorney General Absent.

Kuiyaki and Njeri, Court Assistants