



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.238 OF 2014 (O.S)

JOSEPH MWANGI THEURI & 36 OTHERS.....PLAINTIFFS

VERSUS

DAVID GITONGA GITHINJI.....DEFENDANTS

RULING

(Application to lift an order of inhibition and release of money deposited as security pending appeal; inhibition order made to preserve the suit properties pending hearing of an appeal; appeal determined in favour of applicant who is the registered proprietor; appeal against him dismissed; no reason to continue keeping the inhibition; inhibition orders lifted; money deposited as security pending appeal to be released to the applicant)

1. The application before me is that dated 11 February 2019 filed by the defendant. He seeks orders inter alia that the order of inhibition made on 9 February 2015 in the register of the land parcels Nyandarua/Ol Joro Orok Salient/ 26199, 26200, 26201, 26202, 26203, 26204, 26205, and 26206, be cancelled and lifted and further that the sum of Kshs. 330,000/= deposited in court by the plaintiff through the order of 13 July 2016 be released to the applicant.

2. To put matters into context, this suit was commenced by the respondents on 5 August 2014 vide which the respondents applied to be declared owners of the land parcels Nyandarua/Ol Joro Orok Salient/ 26199-26206 (the suit properties) through the doctrine of adverse possession. So that the subject matter of the suit was preserved, on 9 February 2015, I made an order inhibiting the registration of any disposition in the registers of the suit properties pending hearing of the suit. I heard the case and delivered judgment on 21 January 2016. I was not persuaded that the respondents had made out a case for the suit properties by way of adverse possession and I dismissed the suit with costs to the applicant. The respondents thereafter appealed to the Court of Appeal and applied for stay pending appeal. In my ruling on the application for stay pending appeal, I ordered each of the respondents to deposit the sum of Kshs. 30,000/= as a condition for stay or else they vacate the land. It does appear that the collective sum of Kshs. 330,000/= was duly deposited by the respondents.

3. The appeal of the respondents before the Court of Appeal was heard and determined on 21 December 2018. The appeal was dismissed with costs. It is the position of the applicant that now that the respondents have lost the appeal, the orders of inhibition be lifted and the money deposited as security pending appeal be released to him.

4. There is nothing filed to oppose this motion and on my part I see no reason why I should not allow it. It is clear that the order of inhibition was made so as to preserve the title of the suit properties pending hearing of the suit. The suit has already been heard and even the appeal that followed has now been determined. The determination is in favour of the applicant who is the registered proprietor of the suit properties. The sum of Kshs. 330,000/= was deposited as security pending appeal. The respondents lost the appeal and they have to forfeit the security to the applicant.

5. I therefore allow this application. The hereby order that the orders of inhibition in the register of the land parcels Nyandarua/Ol Joro Orok Salient/26199, 26200, 26201, 26202, 26203, 26204, 26205, and 26206 be lifted. I also order that the sum of Kshs. 330,000/= deposited as security be released to the applicant through his advocates on record. The applicant shall also have the costs of this application.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 3rd day of April 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Katithi holding brief for Mr. Kinyua Njogu for the applicant.

No appearance on the part of M/s Gakuhi Chege & Co. Advocates for the respondents.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU