

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. E029 OF 2024

JAMES KIVINDYO MWANGANGI.....
.....PLAINTIFF

-VERSUS-

MARGARET MUTHINA MUSILI.....
.....DEFENDANT

JUDGMENT

1. The Plaintiff brought this suit against the Defendant in which he sought the following reliefs:
 - a. Declaration that the caution registered against land parcel No. Kisau/Sakai/560 is unlawful and unwanted.**
 - b. An order directing the Land Registrar Makueni County to remove the said caution.**
 - c. Any other order that this Honourable court may deem fit and just to grant.**
 - d. Costs and interest.**
2. The Plaintiff is the registered owner of LR No. Kisau/Sakai/560 (suit property) which he purchased. This property has been subject of litigation before between the plaintiff and the Defendant. The litigation was before Tawa SRM's Court Civil Case No. 27 of 2013 (James Kavindyo Mwangangi –vs- Margaret Muthina Musili).
3. The Tawa court delivered a judgment where it found that the suit property belonged to the Plaintiff. The court barred the Defendant from interfering with the suit property and condemned her to pay costs. Costs were assessed but the Defendant was unable to pay. The Defendant was put in civil jail and was only released after two well-wishers undertook to pay the costs on her behalf by monthly instalments of Kshs.5,000/=.

4. While the Defendant was in civil jail, the Defendant's husband maliciously caused a caution to be registered against the title in the name of the Defendant. When the Plaintiff wanted to take a financial facility from a bank, he went to do a search only to discover that the Defendant had registered a caution against the title claiming proprietor's interest. This is what prompted the Plaintiff to file this suit against the Defendant.
5. The Plaintiff testified that he is a neighbor of the Defendant for over 20 years. He owns the property which he purchased. The Defendant had been trespassing to the property. In 2013, he was forced to file a suit against the Defendant at Tawa SRM's court. He got a judgment in his favour. The Defendant paid him costs of the suit after she was put in civil jail. Unknown to the Plaintiff, the Defendant had maliciously caused a caution against title to the suit property.
6. The Plaintiff purchased the suit property from Syontheke who is grandfather of the Defendant's husband. The Plaintiff stated that he has never been called by DCI officer regarding the acquisition of the suit property.

Defendant's case

7. The Defendant testified that she had nothing to do with the caution registered against the title to the suit property. She stated that she has nothing to do with the land and that it is her husband who caused the caution to be registered in her name.

Analysis and Determination

8. I have carefully gone through the evidence of the Plaintiff and the Defendant. The only issue for determination is whether the Plaintiff has demonstrated reason for removal of the caution and restriction on the title to the suit property.

9. The Defendant denied that she is the one who caused the caution to be registered against the title. It is her husband who caused registration of the caution in her name. While being cross examined, the Defendant stated that she is not the one who made a report at Mbooni East Police Station over the suit property.
10. The Plaintiff produced a committal warrant from Tawa SRM court which shows that the Defendant was committed to Machakos Prison on 20th April, 2017 to serve civil jail for 30 days. A search on the suit property shows that the caution was registered on 16th May, 2017. The caution was registered in her name while she was serving civil jail. It is therefore clear that the caution was maliciously registered by her husband using her name.
11. The same search shows that there was a restriction registered against the title to the suit property dated 10th October, 2021. The Defendant denied during cross examination that she is the one who reported the matter to Mbooni East Police station. This shows that the complaint which led to the DCI to cause registration of a restriction was also maliciously made. The Plaintiff testified that he has never been summoned to DCI over the suit property. If there were any investigations to be done, it will not take DCI officers over four years to do investigations when the person concerned has denied complaining to the DCI officers.
12. There is a letter from the Chief's office Waia Location which was filed with the defence. The letter was addressed to the court and sought the court's assistance over the suit property on allegations that the Plaintiff had taken the suit property due to his financial powers. This letter confirms the sustained efforts to frustrate the Plaintiff. There was no evidence adduced by the Defendant whether she preferred an appeal against the decision of the Tawa SRM's court.

Disposition

13. It is clear from the above analysis that the caution and restriction registered against the title to the suit property were maliciously registered. I find that the Plaintiff has proved his case on a balance of probabilities. I enter judgment for the Plaintiff against the Defendant as follows:

- a. A declaration that the caution and restriction registered against LR No. Kisau/Sakai/560 are unlawful and unwanted.**
- b. An order is hereby given directing the Land Registrar to remove the caution and restriction registered against title LR No. Kisau/Sakai/560.**
- c. Each party shall bear their own costs as it is evident that the caution and restriction were registered by a third party using the Defendant's name.**

.....
HON. E. O. OBAGA
JUDGE

JUDGMENT DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 4TH DAY OF DECEMBER, 2024.

IN THE PRESENCE OF:

Ms. Isika for Plaintiff.

Court assistant – Steve Musyoki