



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

MISCELLANEOUS APPLICATION No. 130 OF 2017

SHAYONA TIMBER LIMITED.....APPLICANT

VERSUS

REGISTRAR OF TITLES, NAIROBI.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. This ruling is in respect of Notice of Motion dated 24th April 2017, an application brought inter alia under **section 78 (2)** of the **Land Registration Act** and seeking the following orders:

1. *Spent.*

2. *THAT this Honourable Court be pleased to order that the restriction placed and registered by the 1st respondent against the Applicant's parcels of land known as LR NO. 9950/13 IR NO. 129300 situate East of Nakuru Municipality in the Nakuru District and LR NO. 9950/8 IR NO. 129295 situate East of Nakuru Municipality on the 1st day of March, 2017 vide entry No. 3 be forthwith removed.*

3. *THAT the Respondents herein do meet the costs of this application.*

2. The application is supported by an affidavit sworn by Jayen M. Dodhia, the Managing Director of the applicant company. He deposed that the applicant is the registered proprietor of the parcels of land known as LR NO. 9950/13 IR NO. 129300 and LR NO. 9950/8 IR NO. 129295 having purchased them from Richard Ingram Crawford. That Certificates of Title were subsequently issued in favour of the applicant and that upon purchase and payment of the purchase price, the applicant took possession and erected a fence to delineate the boundaries. He added that he conducted a search on the properties in April 2017 and learnt that the 1st respondent had placed restrictions in respect of the parcels on the basis of suspected fraud in the sale and purchase of the properties. He further deposed that the vendor informed him that they had not lodged any complaint.

3. Despite being served, the respondents neither responded to the application nor attended court at its hearing. From the material placed before the court, I am satisfied that the applicant is the registered proprietor of the two properties and that the 1st respondent placed caveats in respect of the parcels on 1st March 2017 under **section 65 (1) (f)** of the **Registration of Titles Act** (repealed) and under **section 76** of the **Land Registration Act**.

4. The court has power under **section 78** of the **Land Registration Act** to order removal of a restriction. The section provides:

78. Removal and variation of restrictions

(1) The Registrar may, at anytime and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.

(2) Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs.

5. The registrar having been given notice of this application and there being no response from him, I see no reason why not to grant the orders sought. There is however no evidence that any demand was issued to the respondents requiring removal of the restriction prior to

filing of the present application. For that reason, I will make no order as to costs.

6. I therefore make the following orders:

a) The restriction placed and registered by the 1st respondent against the applicant's parcels of land known as LR NO. 9950/13 IR NO. 129300 situate East of Nakuru Municipality in the Nakuru District and LR NO. 9950/8 IR NO. 129295 situate East of Nakuru Municipality on the 1st day of March, 2017 vide entry No. 3 be forthwith removed.

b) No order as to costs.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 30th day of September 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Wambeyi holding brief for Mr Kahiga for the applicant

No appearance for the 1st respondent

No appearance for the 2nd respondent

Court Assistants: Beatrice & Lotkomoi