



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC JR APP NO. 33 OF 2018

REPUBLIC

VERSUS

CHIEF LAND REGISTRARRESPONDENT

AND

NAIROBI STEAM LAUNDRY & DRY CLEANERS [1978] LTD...EX PARTE APPLICANT

RULING

1. This is the notice of motion dated 13th July 2018 brought under order 53 rules 1 and 2 of the Civil Procedure Rules, Section 79 of the Land Registration Act.
2. It seeks orders:-
 - (1) *That this honourable court be pleased to issue an order of mandamus to compel the respondent to remove the restriction placed on the Applicant's properties known as LR No. 209/3497 and LR No. 209/4844/8 Nairobi.*
 - (2) *That the costs of this application be on the cause.*
3. The grounds are on the face of the application and are set out in paragraphs (a) to (j).
4. The application is supported by the affidavit of Nazir Jinah, the Asset and Project Manager of the Exparte Applicant sworn on the 29th May 2018.
5. The respondent who was duly served with the application did not file any response.
6. On the 13th February 2019, the court directed that the application be canvassed by way of written submissions.
7. It is the Exparte Applicant's submission that it is the registered proprietor of the suit properties. That the respondent has illegally and unlawfully placed restrictions on the applicant's suit properties. Section 76 of the Land Registration Act obliges the Registrar to place a restriction on a title only after directing such inquiries to be made and notices to be served and hearing such persons that may be affected by such a decision. Section 77 of the Land Registration Act provides that the Registrar shall give notice, in writing of a restriction to the proprietor affected by the restriction.
8. They have put forward the cases of **Itrade Company Limited vs Jane Mukami Mwangi & Another [2015] eKLR; Matoya vs Standard Chartered Bank (K) Ltd & Others [2003] 1EA 140.**
9. It has also relied on section 26(1) of the Land Registration Act and Article 40 of the Constitution. Article 47 of the Constitution guarantees everyone the right to a fair administrative action. The Exparte Applicant stands to suffer loss and damage if the restriction is not lifted.
10. The application is not opposed. The Exparte Applicant is the registered proprietor of the suit properties. I have considered the motion and written submissions on record.

11. I am satisfied that the respondent placed the said restrictions on the suit properties without giving the Exparte applicant an opportunity to be heard. In the case of **Matoya vs Standard Chartered Bank (K) Ltd & Others [2003] 1EA 140** the court 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 his 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 or order a 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.”

12. I am satisfied that the Ex parte Applicant has made out a good case to warrant the orders sought. I find merit in this applicant and the same is allowed. Accordingly an order of mandamus is hereby issued to compel the respondent to remove the restrictions placed on the Exparte Applicant's properties known as LR No. 209/3497 and LR No. 209/4844/8 Nairobi. The cost of the application be in the cause.

It is so ordered.

Dated, signed and delivered in Nairobi on this 17th day of October 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Ms Wawinga for Mr. Maloba for the Applicant

No appearance for the Respondent

Kajuju - Court Assistant