



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU**

**E.L.C. MISC. CASE NO. 15 OF 2017**

**EKRA MUTHONI GITARI.....APPLICANT**

**VERSUS**

**JUDITH IRIMBA NJAGI.....RESPONDENT**

**RULING**

1. On or about 4<sup>th</sup> October 2017 the Applicant, Ekra Muthoni Gitari, filed a chamber summons application dated 4<sup>th</sup> October 2017 seeking an order for the removal or lifting of a caution or restriction placed on *Title No. Gaturi/Githimu/11946* (hereinafter the suit property). The said application was grounded on the fact that she was the registered proprietor of the suit property and that the Respondent was a complete stranger to her.
2. The said application was supported by the Applicant's own affidavit sworn on 4<sup>th</sup> October 2017 in which she stated that she purchased the suit property for valuable consideration between May and July 2017 in consequence of which she was issued with a title deed on 13<sup>th</sup> July 2017.
3. It was the Applicant's case that when she visited the Lands Office on 28<sup>th</sup> August 2017 to check on the position of her land for the purpose of securing a loan facility, she discovered that a restriction had been entered in the register at the instance of the Respondent.
4. The Applicant contended that the Respondent is a stranger to her and she had no dealings with her whatsoever. The Applicant annexed copies of the relevant sale agreement, title deed in her name, and certificate of official search.
5. The Respondent opposed the said application and stated that the suit property was acquired through fraud or some "corrupt scheme" by the person who sold it to the Applicant. However, no particulars of the alleged fraud or corrupt scheme were given by the Respondent. The Respondent, therefore, wanted an order to direct the Land Registrar to cancel the Applicant's title deed.
6. The Respondent also swore in her replying affidavit that she bought the suit property from one Elijah Muriuki Gichuki in 2016 for valuable consideration and that she had never sold it to anybody else, let alone the Applicant. She annexed a copy of a sale agreement to demonstrate the purchase. However, an examination of the agreement reveals that the subject matter of the agreement was Gaturi/Githimu/3963 (hereinafter parcel 3963) and not the suit property.
7. When the said application came up for hearing on 13<sup>th</sup> December 2017, the Respondent applied for an adjournment for the third consecutive time. The court declined the application for adjournment and directed that the application shall proceed for hearing. The Applicant prosecuted her application on the

basis of her supporting affidavit whereas the Respondent's advocate opposed the same on the basis of the replying affidavit.

8. The main question for consideration is whether there is a legitimate reason to maintain the restriction entered against the suit property. It is evident that the Respondent may have bought a portion of parcel No. 3963 measuring about 0.2 ha but it was not demonstrated that that portion was indeed the suit property which bears parcel No. 11945. A proper nexus between the two parcel numbers was not established.

9. Whereas the sale to the Applicant appears to have been completed and the suit property transferred to her and a title deed issued, the sale to the Respondent does not appear to have been completed. All she had was a copy of a sale agreement and nothing more, hence it was not demonstrated that she had a registrable interest in the suit property.

10. The law relating to the entry of a restriction is to be found in section 76 of the Land Registration Act. The material provisions provide as follows;

**“(i) 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.”**

11. The Respondent's allegation that the suit property was acquired by one Phineas Njuki Kariuki through fraud or corrupt scheme was not borne out by the material on record. First, no particulars of fraud or corruption were supplied by the Respondent. Second, the certificate of official search does not indicate that the restriction was entered on account of suspected fraud or corruption. The Land Registrar simply indicated that there shall no further dealings without the consent of the Respondent. Third, there is no material on record to show that any inquiry or hearing was conducted by the Land Registrar as required by law.

12. For the reasons considered above, the court is not satisfied that there is a legitimate reason for maintaining the restriction on the suit property. The court finds merit in the Applicant's chamber summons dated 4<sup>th</sup> October 2017 and the same is hereby allowed in terms of prayer No 1 thereof. Each party shall bear her own costs.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **18<sup>th</sup>** day of **JANUARY, 2018**.

In the presence of the Plaintiff in person and the Defendant in person.

Court clerk Leadys.

**Y.M. ANGIMA**

**JUDGE**

**18.01.18**