



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. 53 OF 2017 (O.S)

PAUL MULI MUYANGA.....APPLICANT

VERSUS

KAINDI NGUI MUNUVE.....RESPONDENT

RULING

1. In the Application dated 28th August, 2017, the Respondent/Applicant is seeking for the following orders:

a. That the court orders the removal of the restriction on the title to land parcel No. Nzambani/Kyanika/43 made on 28th June, 2017.

b. That the costs of this Application be borne by the Applicant.

2. The Application is premised on the grounds that the proprietor of parcel of land number Nzambani/Kyanika/43 was not notified of the registration of the restriction; that there was no basis for the registration of the restriction and that the restriction is illegal.

3. In response, the Applicant/Respondent filed Grounds of Opposition in which he averred that there is a competing claim of ownership between the parties herein; that there is a danger that the subject property may be interfered with by the Respondent/Applicant and that the Applicant/Respondent has a good cause.

4. In his Replying Affidavit, the Applicant/Respondent deponed that he caused a restriction to be registered against the suit land after the Respondent/Applicant manifested an intention to sell the land.

5. The Applicant and the Respondent's advocates filed brief submissions which I have considered.

6. The Respondent/Applicant is seeking to have the restriction that was registered against parcel of land known as Nzambani/Kyanika/43 on 28th June, 2017 lifted.

7. According to the Respondent/Applicant, he was not notified before the said restriction was registered by the Registrar.

8. Pursuant to the provision of Section 76, the Land Registrar may register a restriction on a parcel of land, either with or without the application of any person interested in the land for a particular period or until the occurrence of a particular event.

9. According to the restriction that was registered in respect to the suit land, the same was to remain in force until this suit is heard and determined.

10. The Respondent/Applicant has not enjoined the Registrar of Lands in this suit to enable him respond and explain the reasons that made him register the said restrictions.

11. Having not enjoined the Registrar of Lands in this matter, this court cannot determine if indeed the Registrar of Lands gave the Respondent/Applicant a hearing or not before making the said entry of restriction on the Title Deed.

12. In any event, the Respondent/Applicant, who has deponed that he has no intention of selling the land, has not stated the prejudice that he will suffer if the said restriction remains in place pending the hearing of the suit.

13. In the circumstances, I find the Application dated 28th August, 2017 to be unmeritorious and I dismiss it with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF FEBRUARY, 2018.

O.A. ANGOTE

JUDGE