



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 152 OF 2017

FORMERLY MERU ELC 140 OF 2012

RICHARD MICHEMI MWAGIRUA.....PLAINTIFF

VERSUS

ERASTUS NJERU M'RAINI..... DEFENDANT

RULING

1. This application is dated **9th February, 2018**. It was heard on **20th March, 2018**. It seeks orders:

1. The restriction entry **number 9** by the plaintiff/respondent against land parcel **LR: KARINGANI/MUIRU/1390** be removed by the respondent and in default the land registrar be ordered and directed to remove the said restriction.

2. Cost of this application be provided for.

2. It is supported by the affidavit of Erastus Njeru M'Raini the applicant and has the following grounds.

a) That land parcel LR:KARINGANI/MUIRU/1390 is registered under the name of ERASTUS NJERU M'RAINI the defendant/applicant herein.

b) That to preserve the suit land pending the hearing of the application dated **25th June, 2012** and the main suit the plaintiff/respondent caused a restriction to be placed against land parcel **LR:KARINGANI/MUIRU/1390**.

c) That the application dated **25th June, 2012** was never heard inter partes consequently it naturally lapsed after the expiry of 14 days from the date of issuance.

d) That on **29th November** the main suit was dismissed for want of prosecution.

e) That there being no suit pending the purpose for which the restriction was lodged by the respondent against land parcel LR: KARINGANI/MUIRU/1390 is spent and the restriction now serves no meaningful purpose.

f) That substantive justice of this case now demand that the plaintiff/respondent be ordered to withdraw the restriction and in default the court do direct the land registrar to remove the same.

g) That no party stands to suffer any prejudice in the event the orders sought are granted.

h) That the orders sought are the best and most apt in the circumstances.

3. Mr. I.C. Mugo, the applicant's advocate told the court that this **suit was dismissed on 29th November, 2017**. As such this application was meant to fully give effect to the court's dismissal order as the plaintiff has no business to have the restriction placed against the suit land retained when there was no extant suit against the defendant.

4. I agree. I also find that this application had been properly served upon the plaintiff's advocate. It is not opposed.

5. In the circumstances, the application is allowed. It is ordered that the restriction entry number 9 placed by the Land Registrar, **Chuka against Land Parcel NO. KARINGANI/MUIRU/1390 be removed forthwith.**

6. Costs are awarded to the defendant.

7. It is so ordered.

Delivered in open court at Chuka this 20th day of March, 2018 in the presence of:

CA: Ndegwa

I.C. Mugo for the defendant/applicant

P.M. NJORGE

JUDGE