



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC MISCELLANEOUS APPLICATION CASE NO. 05 OF 2017

FORMERLY MERU ELC. 91 OF 2016

FORMERLY CHUKA MISC CIVIL APPLICATION NO. 08 OF 2016

ROBERT M'MUGAMBI JOSHUA.....APPLICANT

VERSUS

THE DISTRICT LAND REGISTRAR MERU SOUTH.....RESPONDENT

RULING

1. This application has been brought to court by way of **Notice of Motion** dated **15.9.2016** and seeks the following orders:

1. That the Respondent be directed to lift all the restrictions registered on the applicant's LR. MWIMBI/KIRARO/2000.
2. That the cost of the application be provided for.

2. The application has the following grounds:

- a) That on 26th August, 2016, the Respondent maliciously registered a restriction on the applicant's LR. MWIMBI/KIRARO/2000 and on the strength of the unexecuted Land Control Board Consents referenced LCR NO. 68/2014 and in favour of a transferee and who is now deceased.
- b) That the applicant did not attend the Land Control Board in respect of LCR No. 68/9/2014 and the purported consent issued to the deceased transferee (if any) are (sic) all forgeries.
- c) That the intended beneficiary of LCR NO. 68/9/2014 died on 21st August, 2016 and (sic) buried on 31st August, 2016 and therefore the purported consent issued vide LCR No. 68/9/2014 and not registered during the deceased lifetime has no legal basis.
- d) That if the purported consent issued to the deceased transferee in the year 2014 (if any) was genuine, (and which is denied), the deceased transferee could have facilitated the same to be registered in the Lands Office during his lifetime.
- e) That the Respondent has no legal basis to place a restriction on the applicant's LR. MWIMBI/KIRARO/2000.
- f) That unless the orders sought are granted, the applicant stands to suffer irreparable loss and damage.

3. The application is supported by the affidavit sworn by Robert M'Mugambi Joshua which states:

I, ROBERT M'MUGAMBI JOSHUA of Post Office Box 10 Chogoria and in the Republic of Kenya, make oath and state as follows:-

1. That I am the applicant herein, hence competent to make and swear this affidavit.
2. That I am the registered proprietor of LR. MWIMBI/KIRARO/2000 as evidenced on the Title Deed issued to me by the Respondent on 16th June, 2014. (Annexed find a copy of the said Title Deed and marked "RMMJ 1").
3. That M'Mutiga Kaimaciu (now deceased) duly transferred LR. MWIMBI/KIRARO/2000 to me and during his lifetime. (Annexed

find a copy of the register (green card) and marked “RMMJ2”)

4. That one M’Mutiga Kaimaciu and who transferred LR. MWIMBI/KIRARO/2000 to me died on 21st August, 2016 and was buried on 31st August, 2016. (Annexed find a copy of his eulogy and marked “RMMJ3”).

5. That on 26th August, 2016, the Respondent maliciously and without any legal justification placed a restriction on my land and on the strength of the alleged Land Control Board consents (sic) referenced LCR NO.68/9./2014. (Annexed find a copy of the search certificate and marked “RMMJ 4”)

6. That I did not attend any Land Control Board on 25th September, 2014 for transferring back my LR. MWIMBI/KIRARO/2000 to M’MUTIGA KAIMACIU and the purported consents (sic) (if any) are all forgeries and further if the said consent is genuine (and which is denied), the same could have been registered by the deceased himself during his lifetime.

7. That the actions of the Respondent to restrict my land are not within the law and the same ought to be lifted forthwith.

8. That the respondent has no legal basis to restrict my land and the same deserves to be lifted forthwith.

9. That unless the orders sought are granted, the applicant stands to suffer irreparable loss and damage.

10. That the contents of my affidavit are true to the best of my knowledge, believe and information.

4. As far as this court is concerned, this application is unopposed.

5. On 14.11.2017, Mr. Kiongo, litigation counsel in the AG’s office, told the court that there was a possibility of the matter being resolved amicably and asked the court to grant him 30 days after which a consent would be presented to court for adoption so that the matter could be marked as settled.

6. Nevertheless, Mr. Kiongo has since then never come back to court.

7. In the circumstances, this application, which is unopposed, is allowed.

8. No costs are awarded.

Delivered in open court at Chuka this **14th day of March, 2018** in the presence of:

CA: Ndegwa

Njeru Ithiga for the Applicant

P.M. NJOROGE

JUDGE