



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA

THIKA LAW COURTS

ELC. MISC. APP. NO.59 OF 2017

PETER MAINA CHEGE.....APPLICANT

-VERSUS-

AGRICULTURAL & INDUSTRIAL

HOLDINGS LIMITED.....RESPONDENT

RULING

This is *Miscellaneous Application* filed by the Applicant herein *Peter Maina Chege*, brought under Order 50 Rule 1 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all enabling provisions of the law. The Applicant has sought for the following prayers:-

- 1) *Spent.*
- 2) *That the Respondent herein be directed to process title for the land parcel No.5846 in the name of the Applicant on behalf of his mother who is incapacitated due to a terminal illness.*
- 3) *That the Applicant be the sole transferee of the said parcel of land.*
- 4) *That parties to bear their own costs.*

The application is supported on the grounds stated on the face of the application and the Supporting Affidavit of the Applicant. These grounds are:-

- a) *That the Applicant's mother who is incapacitated due to a terminal illness is a registered member of Agricultural & Industrial Holdings Ltd which gave land parcel No.5846.*
- b) *That the Respondent had not processed or issued the title of the said land parcel.*
- c) *That the Applicant and his siblings are in agreement for the title to be transferred in his name vide the Chief's letter dated 21st July 2017.*
- d) *That the Respondent is willing to transfer the said parcel to the Applicant.*
- e) *That the transfer can only be effected if the Respondent are directed to process the title on*

behalf of the Applicant by order of this court.

f) That the Applicant had already paid Kshs.25,000/= to the Respondent as title fee for land parcel No.5846.

g) That it is only just and fair that the Respondent be directed by an order of this Honourable Court to process the title for land parcel No.5846 in the names of the Applicant.

In his *Supporting Affidavit*, the Applicant averred that he is the only son of *Gladys Wairimu Chege*, a member of *Agricultural & Industrial Holdings Ltd* and he attached a copy of her *Identity Card* as *PMC-1*. He further averred that the said *Gladys Wairimu Chege*, was allocated and given *plot No.5846*. He also alleged that his mother, *Gladys Wairimu Chege* is now incapacitated in that she is blind and does not talk and is bedridden. He annexed a letter from the Ministry of Health dated *16th August 2017*, to confirm that position. He further alleged that the Respondent is willing to transfer the said parcel of land to himself, but only with the Order of the court.

The Applicant further averred that all the beneficiaries have agreed

that the title be processed in his names vide the *Chief's letter* marked *PMC-2(b)*. It was his further averment that he has already paid the *title processing fees* of *Kshs.25,000/=* to the Respondent as per *annexture PMC-3*. He urged the Court to allow his application.

The application was allegedly served on the Respondent as per the *Affidavit of Service* of one *Amos Chege Kanoga*, a *Process server*, but the Respondent filed no response and did not appear in court.

The Court directed the Applicant to file written submissions in respect of his application so that the same could be decided on merit. In that respect, the Applicant filed his written submissions on *18th December 2017* and served on the Respondent on *20th December 2017*. Again, the Respondent did not file any response thereto. In his written submissions, the Applicant reiterated the contents of his grounds in support of the application and his Supporting Affidavit.

The Court has now considered the instant application which is brought under Section 3A of the Civil Procedure Act and which Section donates to court the inherent power to make such decision that is necessary for the end of justice to be met and for preventing abuse of the process of the court.

The Applicant alleged that his mother was allocated *plot No.5846*, by the Respondent herein but he now wants to be registered as the sole transferee. Apart from that allegation and the alleged letter from the *Chief* of *Ithiru Location* stating that *Gladys Wairimu Chege* is a registered owner of *plot No.5846*, there was no document produced showing the said *Gladys Wairimu Chege* is the registered owner of *plot No.5846*. Such documents of confirmation would be *share certificates, receipts* bearing her name, *register* from the Respondent or a *confirmation document* from the Respondent confirming that indeed the said *Gladys Wairimu Chege* is the owner of the said plot.

The Applicant alleged that his sisters have allowed him to be registered as the sole transferee. Apart from the letter from the Chief, none of his sisters swore any affidavit or appeared in court to support that allegation.

Further, the Applicant has alleged that the Respondent has consented to transferring the suit property to him but only with the Court Order. The Respondent did not file any affidavit to that effect or even a letter to the Applicant confirming the said allegation. The Court would not ascertain whether indeed this *plot No.5846*, is for *Gladys Wairimu Chege* and that the Respondent is willing to transfer the same to the Applicant herein. The payment receipt attached to the application is in the name of *Peter Maina Chege* for *plot No.5846*, with cancellation of one number. This Court is not certain the said plot is in respect of which person according to the Respondent's register. Therefore this Court finds and holds that with a number of unanswered questions, it would be an abuse of the court process to allow the instant application.

The Applicant's Siblings were not available in court to confirm that indeed they have allowed him to be the sole transferee. For the above reason, the Court finds that the instant application herein dated **21st August 2017**, is not merited. The said application is dismissed entirely with costs being in the cause.

It is so ordered.

Dated, Signed and Delivered at Thika this 2nd day of March 2018.

L. GACHERU

JUDGE

In the presence of

Present in person Appellant/Applicant

No appearance for Respondent

Lucy - Court clerk.

Court – Ruling read in open court in the presence of the Applicant and absence of the Respondent.

L. GACHERU

JUDGE