



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**THIKA LAW COURTS**

**ELC.MISC.55 OF 2017**

**JOYCE WAITHIRA MWANGI.....APPLICANT**

**-VERSUS-**

**THIKA LAND REGISTRAR.....DEFENDANT**

**RULING**

The Applicant herein **Joyce Waithira Mwangi** filed this Miscellaneous Application on **25<sup>th</sup> May 2016** brought under Order 51 Rules 1 of the Civil Procedure Rules 2010, Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Section 78 of the Land Registration Act 2012 and all other enabling provisions of law and has sought for the following orders:-

- 1. Spent.**
- 2. That the restriction registered against Thika Municipality Block 9/682 be lifted.**
- 3. That raising orders do issue to order removal of a restriction against Thika Municipality Block 9/682 by the Thika Lands Registrar.**
- 4. That costs of this application be provided for.**

This application is premised upon the following grounds:-

- a. That the Applicant is the registered and legitimate title holder of the parcel of land being Thika Municipality Block 9/682.***
- b. That the register of the said parcel of land has been registered with a Registrar's restriction dated 30<sup>th</sup> October 2015 which was registered at the request of the Applicant herein.***
- c. That the Applicant has requested the Respondent herein to remove the said restriction from the register to enable the Applicant deal with the parcel of land but the request has been declined by the Respondent for no reason.***
- d. That the Applicant herein is in the dire need of finances and looks to dealing with this suit property to get and access necessary funding.***

***e. That the Applicant herein is highly prejudiced by the failure by the Respondent to remove the said restriction and has not proffered any reason as to why the said request by the Applicant has been declined.***

***f. That it is just and meet that the raising orders sought herein be issued to protect the integrity of the title to the parcel of land herein.***

The application is also supported by the affidavit of **Joyce Waithira Mwangi**, who averred that she is the registered owner of land parcel **No.Thika Municipality Block 9/682** as is evident from **JW-1, a Certificate of Lease**. She further averred that she is currently residing in the United Kingdom and her mother has been taking care of the said parcel of land which has a house on it. It was her further averments that out of abundance of caution and owing to the prevalent **fraud** involving land within Thika area, she requested the Land Registrar to register a restriction against the said parcel of land to prevent any fraud taking place unless she appears personally before the Registrar which **restriction was registered** on **30<sup>th</sup> October 2015** as is evident from **annexture JW-2** which is a copy of **Certificate of official search**. She also contended that she has lately experienced financial difficulties and she is desirous of dealing with the suit property herein to either access credit or dispose it off. However she cannot do so because of the said restriction. That she has written to the Land Registrar, Thika to remove the said restriction but the Land Registrar has failed to remove the said restriction. That despite her efforts to have the said restriction removed, the Land Registrar has been non-committal and has not removed the said restriction and has neither indicated reasons for the said decline to remove the restriction in place. That the said restriction is detrimental to her interest as it unnecessarily restricts her from freely dealing with her parcel of land whose title is not in dispute in any way. She averred that it is prudent and proper for this Court to allow the instant application. She urged the Court to order the Respondent to remove the restriction to enable her deal with the parcel of land freely.

Despite being served with the Application, the Respondent, **Thika Land Registrar**, did not enter appearance nor file his response to this application. The Court directed the Applicant to file brief **written submissions** to support her claim which she filed on **27<sup>th</sup> November 2017** and relied on various provisions of law specifically **Section 76 and 78(2) of the Land Registration Act**.

The Applicant also relied on the case of **David Macharia Kinyuru...Vs...District Land Registrar, Naivasha & Another, Nakuru ELC Misc. Appl.No.331 of 2016**, where the Court held that:-

***“.....the purpose of a restriction is aimed essentially at stemming fraud or improper dealings over land. The Land Registrar may also place a restriction where there is other sufficient cause. Restrictions are to endure for a particular time or until the occurrence of an event, or the making of a further order. It is not the purpose of this section of the law to have restrictions remain indefinitely. The reasoning is that a restriction should only hold a property in abeyance as the underlying issue leading to the restriction is being resolved; since restriction by itself does not solve a dispute....”***

The Applicant further submitted that the feared fraud did not occur and the Applicant is keen to deal with the said parcel of land and so the said restriction should now be ordered removed. Further she submitted that the Respondent did not appear in court to explain why the restriction should not be removed and so the court should order it removed. The Applicant further relied on the case of **David Macharia Kinyuru’s Case (supra)**, where the Court also held that:-

***“The Respondents have not appeared before this court to explain why the restriction should continue being in the register. I have not seen any reason why such restriction should remain and I am persuaded that the Applicant must succeed. I therefore order the Land Registrar to remove the restriction registered.....”***

This Court has now carefully considered the instant application and the annexures thereto. The Court has also considered the written submissions, the cited authorities and the relevant provisions of law and

makes the following rendition:-

There is no doubt that the suit property herein **Thika Municipality Block 9/682**, is registered in the name of **Joyce Waithira Mwangi**, the Applicant herein as from **16<sup>th</sup> October 2015**. There is also no doubt that as per the **official search** dated **10<sup>th</sup> November 2015**, there is in existence a **restriction** on the title of the suit property **registered on 30<sup>th</sup> October 2015**, wherein it is indicated that **“No dealings without personal appearance of the registered owner”**.

The registered owner is **Joyce Waithira Mwangi**, the Applicant herein. She alleged that she placed the restriction on the suit property for fear of fraudulent activities on the titles as she is based in the United Kingdom. However, she is now interested in dealing with the suit property but she cannot do so because of the restriction on the title. That she has requested the District Land Registrar, Thika through various correspondences to withdraw the said restriction to no avail. Indeed the Court has seen one such letter dated **24<sup>th</sup> March 2016** requesting the Land Registrar to withdraw the restriction imposed on the suit property. The restrictions are placed on a title to land to **prevent any fraud** or **improper dealing**. The Applicant alleged that she applied for restriction on the suit property to **prevent improper dealing** or **fraud** on the suit property as she is based in the United Kingdom. However, the said fear is now over and she needs to deal with the suit property to alleviate her

financial constraints.

Further **Section 76(2) of the Land Restriction** states that:-

***“Restrictions may endure for:***

- a. A particular period***
- b. Until the occurrence of a particular event or***
- c. Until the making of further orders.***

It is evident that restrictions are not supposed to endure indefinitely on a title. The restriction on the title herein indicate that **‘no dealings without personal appearance of the registered owner’**. The Applicant is the registered owner and she wants the restriction removed. Since the restriction was imposed to prevent fraud or improper dealing and none has occurred, then the Court finds that there is no need of keeping the restriction on the title forever.

The Applicant has alleged that even after applying to the Land Registrar to remove the restriction, the said Registrar has failed to do so and thus the filing of this application as provided by **Section 78(2) of the Land Registration Act**, which provides:-

***“Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs”***.

It is evident from the above provisions of law that the Court has power to remove any restriction on a title to land. The Respondent did not appear in Court to explain why the restriction should not be removed even after the person who applied to have it registered has applied for its removal. This ***Court therefore finds no reason why the said restriction should remain*** on the said title and consequently, the ***Court finds that the Applicant’s Notice of Motion dated 26<sup>th</sup> May 2016 is merited. The Court allows the said application entirely with costs being in the cause.***

It is so ordered.

***Dated, Signed and Delivered at Thika this 9<sup>th</sup> day of April 2018.***

**L. GACHERU**

**JUDGE**

In the presence of

M/S. Cheserek holding brief for Mr. Tumu for Plaintiff/Applicant

No appearance for Defendant/Respondent

Esther - Court clerk.

**L. GACHERU**

**JUDGE**

**Court** – Ruling read in open court in the presence of the above stated advocate.

**L. GACHERU**

**JUDGE**

**9/4/2018**