



REPUBLIC OF KENYA.

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 8 OF 2017 (JR)

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS BY JOSEPH MUHANDA IMBUNYA

AND

IN THE MATTER OF TITLE COMPRISING L.R. NO. TIRIKI/CHEPTULU/1192

AND

IN THE MATTER OF THE DISTRICT LAND REGISTRAR, VIHIGA.

JOSEPH MUHADA IMBUNYA.....EXPARTE APPLICANT

VERSUS

DISTRICT LAND REGISTRAR, VIHIGA.....1ST RESPONDENT

DAVID KALO.....2ND RESPONDENT

RULING

This application is dated 28th December 2017 and is brought under order 53 rule 1 and section 3A of the Civil Procedure Rules seeking the following orders;

1. That the honourable court be pleased to order the Vihiga District Land Registrar to remove the restriction registered on land parcel number TIRIKI/CHEPTULU/1192.
2. That the costs of this application be provided for.

The applicant submitted that, he is the registered owner of land parcel number TIRIKI/CHEPTULU/1192 (Annexed is a copy of the title deed marked DK1) That the applicant/respondent herein Joseph Muhada Imbunya restricted his above mentioned parcel of land vide the case herein. That the applicant/respondent was granted restriction orders while seeking leave to apply for orders of mandamus against the Land Registrar Vihiga District. That the applicant/respondent never filed a substantive application for mandamus against the Land Registrar Vihiga County despite being granted leave to do so. That the period for filing the substantive application for mandamus elapsed long time ago. That the restriction orders filed by the applicant/respondent on his parcel of land are still in existence (Annexed is a search certificate marked DK2). That he prays that the Land Registrar be ordered to remove the restriction orders since the leave granted to the applicant/respondent elapsed upon his failure to file a substantive application for orders of mandamus against the Land Registrar Vihiga District. That the applicant/respondent has no proprietary interest in respect of land parcel number TIRIKI/CHEPTULU/1192. That he has been restricted from dealing with his parcel of land due to the orders registered by the applicant/respondent. That the Land Registrar cannot remove the restriction orders unless they are ordered by the honourable court.

The respondent stated that the suit herein was determined by consent on 16th November 2017 when all orders issued herein were considered to have lapsed including the inhibition placed by the Land Registrar. The application is seeking similar orders, it is res judicata and this court has no jurisdiction to hear and determine the issues raised herein. The orders being sought by the applicant can only lie in a fresh suit. The application is thus frivolous and vexatious and should be dismissed with costs.

This court has carefully considered both the applicant's and the respondent's submissions and the annexures therein. The application is based on the following grounds that the honourable court issued orders restricting any dealings in respect of land parcel number TIRIKI/CHEPTULU/1192 while granting the applicant/respondent leave to apply for orders of mandamus against the land Registrar Vihiga County. That the applicant/respondent failed to file the substantive application for mandamus within the period of 21 days granted. That the

leave granted to the applicant/respondent elapsed when he failed to file the substantive application for mandamus. That all the subsequent orders elapsed when the applicant/respondent failed to file the substantive application for mandamus. That the restriction registered in respect of land parcel number TIRIKI/CHEPTULU/1192 is still in force despite the fact that the orders had elapsed. That the Land Registrar cannot remove the restriction unless they are ordered by the honourable court. That it is in the interest of justice that the orders be removed to enable the 1st respondent/applicant to use his land without any restriction.

The respondent in opposing the application stated that the suit herein was determined by consent on 16th November 2017 when all orders issued herein were considered to have lapsed including the inhibition placed by the Land Registrar. The application is seeking similar orders, it is res judicata and this court has no jurisdiction to hear and determine the issues raised herein. Be that as it may, I find to meet the ends of justice it would be proper to clarify the meaning of the said withdrawal. I find that this application is merited and I grant the following orders;

1. That the Vihiga District Land Registrar to remove the restriction registered on land parcel number TIRIKI/CHEPTULU/1192.
2. That the costs of this application be borne by the applicant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 15TH DAY OF MAY 2018.

N.A. MATHEKA

JUDGE