



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC JUDICIAL REVIEW CASE NO. 11 OF 2017**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE DEPUTY COUNTY**

**COMMISSIONER MAARA SUB-COUNTY,**

**THARAKA NITHIG COUNTY.....1<sup>ST</sup> RESPONDENT**

**THE CABINE SECRETARY**

**MINISTRY OF LANDS AND**

**PHYSICAL PLANNING.....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**FRANCIS KITHAKA RIMUNYA...INTERESTED PARTY -DSD**

**NJERU NDAKA NGURU.....EXPARTE APPLICANT**

**RULING**

1. This application is dated **8<sup>th</sup> May, 2018** and seeks orders:

1. That the respondents be directed to lift all the restrictions registered on the applicant's land parcel No. Muthambi/Lower Kandungu/1535.
2. That the Land Registrar Tharaka Nithi be directed to issue title deed in respect of Land parcel No. Muthambi/Lower Kandungu/1535 to the applicant.
3. That costs of this application be provided for.

2. The application has the following grounds:

- a) That on **28.1.2014** the applicant was on first registration registered as the absolute proprietor of land parcel No. Muthambi/Lower Kandungu/1535.
- b) That on the same date the Chief Registrar put a restriction against registration of any dealings in respect of the title deed until all the appeals are finalized.
- c) That on **7.9.2017** a prohibitory order from this court was registered in respect of the title to land parcel No. Muthambi/Lower Kandungu/1535 staying implementation of the minister of Land's decision in appeal case No. 205 of 2011 dated **14.3.2017** pending the hearing and determination of certiorari vide ELC Misc. Appeal No. 11 of 2017 dated **30.8.2017**.

d) That said Judicial Review Application has been determined and the ministers decision in Appeal Case No. 205 of 2011 has been determined in favour of the applicant and no other appeal is pending.

e) That all the restrictions and orders thus placed against land parcel No. Muthambi/Lower Kandungu/1535 should be lifted and a title deed be issued to the applicant.

f) That no prejudice will be occasioned to anybody else if the order sought herein are granted.

g) That there is no reason or legal justification to continue maintaining the restrictions against title to land parcel No. Muthambi/Lower Kandungu/1535.

h) That unless the orders sought are granted the applicant will suffer loss and damage as title deed to his land remain withheld by the Land Registrar Tharaka Nithi unnecessarily.

3. The application is supported by the affidavit of Njeru Ndaka Nguru, the applicant, sworn on **8<sup>th</sup> May, 2018** and which states:

1. That I am the applicant herein hence competent to swear this supporting affidavit.

2. That I am the registered proprietor on first registration of land parcel NO. Muthambi/Lower Kandungu/1535.

3. That I filed Judicial Review application as an ex-parte applicant in Chuka ELC Misc. No. 11 of 2017 in which I sought an order of certiorari to call unto this court and quash the decision of the Minister for Lands in appeal case 205 of 2011 dated **14.3.2017** in respect of my land parcel No. Muthambi/Lower Kandungu/1535.

4. That I had also sought a prohibitory order to prohibit the District Land Registrar Meru South and Maara Districts from implementing the said Minister's decision pending the hearing and determination of the Judicial Review application.

5. That the Judicial Review application was determined in my favour on **6.3.2018** and orders granted as I had prayed. (Annexed is a copy of the orders marked NN1).

6. That the Chief Land Registrar had put a restriction against the title to my land restricting any dealings until all the appeals are finalized.

7. That the prohibitory order of this court dated **30.8.2017** staying the implementation of the minister's decision dated **14.3.2017** in Appeal No. 205 of 2011 until the hearing and determination of the Judicial Review Application had also been registered on **7.9.2017**. (Annexed is a certified copy of the Register (green card) marked NN2).

8. That there is no pending appeal or proceedings in respect of my land parcel No. Muthambi/Lower Kandungu/1535 to justify the continued maintenance of the restrictions against the title to my land and I urge the honourable court to order and direct them to be lifted or vacated.

9. That upon lifting or vacation of all the registered restrictions I urge the court to direct the Land Registrar Tharaka Nithi to release and issue me with the title deed to my land parcel No. Muthambi/Lower Kandungu/1535.

10. That granting the orders I seek herein will not cause prejudice to anybody.

11. That what I have deponed to above is true to the best of my knowledge, information and belief.

4. When the application was slated for hearing, the respondents' counsel were not in court, although Miss Kungu, who represents the respondents, was in court on **11<sup>th</sup> June, 2018** when this hearing date was fixed. Mr. Ithiga for the applicant told the court that as the application was unopposed, it ought to be allowed. I agree.

5. The court notes that this application is intended to facilitate full implementation of this court's judgment delivered on **6<sup>th</sup> March, 2018**.

6. In the circumstances, the application is allowed in terms of prayers 1 and 2.

7. No costs apposite to this application are awarded.

8. It is so ordered.

**Delivered in open court at Chuka this 18<sup>th</sup> day of June, 2018 in the presence of :**

CA: Ndegwa

Njeru Ithiga for the applicant

**P.M. NJORGE**

**JUDGE**