



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MURANG'A

ELC NO. 473 OF 2017

PETER NJORA NJOROGE.....PLAINTIFF

VS

METHI & SWANI FARMERS

COOPERATIVE SOCIETY LIMITED.....DEFENDANT

JUDGMENT

1. The Plaintiff filed suit on 5/10/17 against the Defendant seeking the following orders;

a. An order do issue upon the Defendant their agents employees and whomsoever claiming through them to remove the lodged restriction on the Plaintiffs parcel of land No **Mitumbiri/Wempa/Block II/3518** and in the alternative the District Land Registrar Muranga be ordered to remove the same restriction

b. Costs of the suit.

2. The Plaintiff avers that he became registered as the absolute owner of the suit land measuring 0.4312 ha and a title was issued to him in the 19/9/2013. That on the 2/9/2013 upon obtaining an official search of the suit land he discovered that the Defendant had illegally vide a letter dated 25/6/16 caused a restriction to be registered on the suit land prohibiting registration of any dealings. That despite demand to the Defendant to remove the restriction the same has been ignored. In his evidence in chief the Plaintiff stated that he succeeded the suit land from his parents upon their demise and was issued with a title and a share certificate No 3028 in 2013. He annexed the copy of the title as well as copy of share certificate.

3. The Defendant was duly served but failed to enter appearance nor file a defense. On the 24/10/2017 the Plaintiff filed a request for judgment which was duly granted on the 3/11/2017. The Plaintiff proceeded with the formal proof of his case.

4. At the hearing he testified and relied on his witness statement in its entirety.

5. The District land Registrar, Muranga namely Nancy Nyambura Njenga testified that according to the records kept at the Land Registry, the suit land belongs to the Plaintiff. That upon receipt of a letter dated the 25/4/2016 referenced CS/12/03/VOL1 from the Defendant she proceeded to register the restriction. That the said letter requested for a restriction to be placed on the suit land because the acreage was more than ½ acre over and above the entitlement of each member. On cross examination by the Plaintiff Counsel on record she stated that she did not give notice to the owner of the land before registering the restriction. She neither confirmed whether the acreage of the land was more as alleged in the said letter.

6. The Plaintiff filed written submissions which I have read and considered.

7. Section 76 of the Land Act, 2012 provides as follows;

“ (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

(2) A restriction may be expressed to endure—

(a) for a particular period;

(b) until the occurrence of a particular event; or

(c) until a further order is made, and may prohibit or restrict all dealings or only the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

(2A) A restriction shall be registered in the register and may prohibit or restrict either all dealings in the land or only those dealings which do not comply with specified conditions.

(3) The Registrar shall make a restriction in any case where it appears that the power of the proprietor to deal with the land, lease or charge is restricted.

77 (1) The Registrar shall give notice, in writing, of a restriction to the proprietor affected by the restriction.

(2) An instrument that is inconsistent with a restriction shall not be registered while the restriction is still registered except by order of the Court or of the Registrar.

78 (1) The Registrar may, at anytime and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.

(2) 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'.

8. The procedure for registering a restriction is very clearly stated in the Lands Act. The Plaintiff stated that he was not notified before the restriction was placed on his title. The Land Registrar testified that she did not notify the Plaintiff as provided for under section 76 above. Instead she relied on a letter from the Defendant to so register the restriction. She did not verify the contents of the letter as to give her a justifiable reason to register a restriction. It leaves the Court with the irresistible conclusion that the restriction placed on the title was not only registered unprocedurally but remains illegally on the title. I see no reason why the Court should not grant the Plaintiff's prayer to have the restriction removed.

9. The upshot is that the Court makes the orders as follows;

c. It is hereby ordered that the Defendant its agents employees and whomsoever claiming through it to remove the lodged restriction on the Plaintiff's parcel of land No Mitumbiri/Wempa /Block II/3518 within a period of 15 days in default the District Land Registrar Muranga be and is hereby ordered to remove the said restriction forthwith.

d. Costs of the suit are in favour of the Plaintiff.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 13TH DAY OF SEPTEMBER 2018.

J. G. KEMEI

JUDGE

In the presence of:

Ms Kiama HB for Ms Tumuti for the Plaintiff

Defendant – N/A

Ms.Irene and Ms Njeri, Court Assistants.