



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**ELC MISC.APPLICATION NO.76 OF 2017**

**BESSY NKIROTE.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**PATRICIA KAMATHI MUCHENA.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**-VERSUS-**

**DISTRICT LAND REGISTRAR, THIKA.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**DCIO, JUJA POLICE DIVISION.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

The Applicants herein have brought this *Notice of Motion* application dated *13<sup>th</sup> November 2017* under Section 78(2) of the *Land Registration Act 2012* and *Section 3 of the Environment and Land Court Act* and *Order 50 Rule 1 of the Civil Procedure Rules, Order 40 Rule 4 of the Civil Procedure Rules* and *Sections 3 & 3A of the Civil Procedure Act* and have sought for the following orders:-

- a) That this Honourable Court be pleased to order the 1<sup>st</sup> Respondent to forthwith remove the restrictions placed by the 1<sup>st</sup> Respondent on the instigation of the 2<sup>nd</sup> Respondent, over the applicants' land parcels known as Ruiru East/Juja East Block 2/18391, Ruiru East/Juja East Block 2/18392 and Ruiru East/Juja East Block 2/18393.*
- b) That the costs of this application be provided hereof.*

This application is supported by the *Supporting Affidavit* of *Patricia Kamathi Muchena*, and various grounds stated on the face of the application. Among the grounds in support are:-

- 1) The 1<sup>st</sup> Applicant is the legal proprietor of the parcel of land known as Ruiru East/Juja East Block 2/18391, Ruiru East/Juja East Block 2/18392.*
- 2) The 2<sup>nd</sup> Applicant is the legal proprietor of parcel of land known as Ruiru East/Juja East Block 2/18393.*
- 3) Sometimes this year, the restrictions were without notice and unlawfully lodged in respect of the said premises by Respondents claiming that investigations were being carried out in respect of the said premises.*
- 4) There is no suit filed by anybody to claim ownership of the said premises.*
- 5) The Applicants seek for orders that a restrictions placed by the 1<sup>st</sup> Respondent on the instigation of the 2<sup>nd</sup> Respondent, over the Applicants land parcels be removed forthwith.*
- 6) The Applicants are the owners of the suit land after purchasing the same from one Daniel Gitau Kuria vide agreements entered into on 26<sup>th</sup> July 2016.*
- 7) Prior to the said agreements, the Applicants had conducted an official search of the said premises and the 1<sup>st</sup> Respondent had cleared the said land as available for transfer. The 1<sup>st</sup> Respondent is stopped from placing restrictions on the said premises.*
- 8) The 1<sup>st</sup> Respondent lawfully received and effected transfer of the said premises in favour of the Applicants.*

9) *The Applicants have lawful title deeds in respect of the said premises.*

10) *The Applicants were never summoned to appear before the District Land Registrar over the said restrictions or formally informed of the same.*

In her **Supporting Affidavit**, **Patricia Kamathi Muchena** reiterated the contents of the grounds in support of the application and further averred that vide a letter dated **24<sup>th</sup> August 2017**, they have applied to the Land Registrar, the 1<sup>st</sup> Respondent to remove the said restrictions but the said 1<sup>st</sup> Respondent has never given any notice of intention to remove the restrictions and has not removed the said restrictions to date.

The Applicants annexed various documents to support their ownership of the suit property.

The Respondents were served with the instant **Notice of Motion** application but they failed to file any responses. The application is therefore undefended.

Even though the instant application is unopposed, is it merited?

The placing of restrictions on any parcel of land is governed by **Section 76(1)** of the **Land Registration Act** which provides:-

***“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.”***

Therefore from the above provision of law, it is clear that the Land Registrar has discretion to cause a restriction to be placed on a particular parcel of land or lease for the prevention of **fraud or improper dealing or for any other sufficient cause**.

Further, it is evident that the said restriction may be placed either with or without application of any person interested in the land.

However, it is clear that the said restriction is placed after the Land Registrar has given **Notices** and upon hearing persons affected as the Registrar considers fit.

The Applicants have alleged that the 1<sup>st</sup> Respondent did place restrictions on their parcels of land at the instigation of the 2<sup>nd</sup> Respondent. However, the Applicants were not notified of the said application and they were not served with any hearing Notices as provided by **Section 76(1)** of the **Land Registration Act**.

**Further Section 77(1)** of the said **Land Registration Act** makes it mandatory for the Registrar to give **Notice in writing** of a restriction to the proprietor of any parcel of land affected by the restriction. The Applicants alleged that they were never served with such **Notice**.

Though the Respondents were served with the instant application, they did not appear in court to controvert the Applicants' allegations and even inform the court why the restrictions were placed on the suit properties. **Section 78(1)** also empowers the Land Registrar to remove and/or vary the restriction on his own motion or upon application by any person interested.

The Court has seen letters dated **24<sup>th</sup> August 2017**, wherein the Applicants applied for the removal of the said restrictions. However, the Applicants have averred that the Land Registrar did not respond to the said letters nor issue **Notices** for the removal of the said restrictions. The Registrar has not appeared in court to defend his position.

Further, **Section 78(2)** gives the court discretion to grant an order for removal of restriction upon an application of a proprietor affected by a restriction. It is evident that the Applicants are the registered owners of the suit properties having purchased the same from **Daniel Gitau Kuria** and they obtained their title deeds on **3<sup>rd</sup> October 2016**. The Applicants are therefore the proprietors of the suit properties and have filed this application for removal of the restrictions. The Respondents have not filed any response to the instant application to justify the placing of the said restrictions. The Court finds no reasons as to why the restrictions placed on the suit properties should remain. The Court will be persuaded by the findings of the Court in the case of **David Macharia Kinyuri...Vs...District Land Registrar Naivasha & Another (2017) eKLR**, where the Court held that:-

***“I have already stated 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 Application must succeed. I therefore order the Land Registrar to remove the restriction registered on 22<sup>nd</sup> July 2014....”***

Equally, the Court finds no reason why the restrictions herein should remain and consequently, the Court allows the Applicants' **Notice of Motion** application dated **13<sup>th</sup> November 2017** entirely with costs being in the cause.

It is so ordered.

**Dated, Signed and Delivered at Thika this 26<sup>th</sup> day of October 2018.**

**L. GACHERU**

**JUDGE**

**26/10/2018**

In the presence of

Mr. Kurauka for the Plaintiffs/Applicants

No appearance for 1<sup>st</sup> Defendant/Respondent

No appearance for 2<sup>nd</sup> Defendant/Respondent

Lucy - Court clerk

**L. GACHERU**

**JUDGE**

**Court** – Ruling read in open court in the presence of Mr. Kurauka for the Applicants and no appearance for the Defendants/Respondents.

**L. GACHERU**

**JUDGE**

**26/10/2018**