

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC MISC. APPLICATION NO. 57 OF 2015

WYCLIFF ODHIAMBO OMBAGO..... 1ST APPLICANT

SYLVESTER ONYANGO OMBAGO.....2ND APPLICANT

VERSUS

HOUSING FINANCE LIMITED.....RESPONDENT

RULING

On 10th February, 2017, the parties filed herein a consent letter dated 26th January, 2017 signed by the applicants' advocates and the respondent's legal manager the effect of which was to lift a prohibitory order that was said to have been issued in High Court Civil Case No. 7 of 1997 and registered against the title of L.R. No. Nairobi/Block 60/232 owned by Gabriel Ombago Owondo (deceased) on 14th September, 1997. On 25th May, 2017, the said consent was adopted by the Deputy Registrar as an order of the court. Subsequently, a consent order was extracted and certified by the Deputy Registrar of this court on 29th May, 2017. When the applicants sought to register the said consent order at the Lands Office against the title of L.R No. Nairobi/Block 60/232, it was pointed out to them that the order did not contain the correct case number for the High Court case in which the prohibitory order they sought to remove was issued and the correct date when the said prohibitory order was registered. The applicants were informed that the correct case number in which the said prohibitory order was issued was High Court Civil Case No. 7 of 1977 and the correct date when the same was registered was 14th September, 1977.

The application now before me is seeking the review of the said consent order of 25th May, 2017 so as to capture the correct number for the case in which the said prohibitory order was issued and date of registration of the same. I have considered the application dated 8th October, 2018 together with the various affidavits filed in support thereof. I am satisfied that the applicants' application is well founded. I have noted from a copy of the register for Nairobi/Block 60/232 which is annexed to the applicants' further affidavit filed on 13th November, 2018 that the prohibitory order in question was actually issued in High Court Civil Case No. 7 of 1977 and not in High Court Civil Case No. 7 of 1997 as indicated in the consent order. I have also noted that the prohibitory order was registered on 14th September, 1977 and not on 14th September, 1997. The application was not opposed by the respondent. I am satisfied that the applicants have made out a case warranting the review of the consent order made on 25th May, 2017.

When the application came up for hearing, I pointed out to the applicants' advocate Ms. Waceke that I was hesitant to grant the orders sought in a miscellaneous application. I inquired from Ms. Waceke why the application was not brought in High Court Civil Case No. 7 of 1977 where the prohibitory order in question was issued. Ms. Waceke responded that due to the passage of time, the court file for High Court Civil Case No. 7 of 1977 could not be traced and it was not possible to reconstruct the file. That response which I found reasonable laid my concerns to rest.

Due to the foregoing, it is my finding that the application dated 8th October, 2018 has merit. The same is allowed in terms of prayer 1 thereof.

Delivered and Dated at Nairobi this 20th day of November 2018

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

N/A for the Applicants

N/A for the Respondents

John Court Assistant