



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC MISC. APPLICATION NO.234 OF 2016

MAYONE MATUNKE DAVIDAPPLICANT

VERSUS

THE DISTRICT LAND REGISTRAR NAROK NORTH...RESPONDENT

RULING

(Application to remove a restriction; no response filed to justify the restriction; application allowed)

1. Through a motion filed on 9 June 2016, the applicant has asked for orders to have the restriction placed by the respondent in the register of the land parcel number Narok/Cis-Mara/Maji Moto/2076 removed. In his supporting affidavit, the applicant has averred that he is the proprietor of the land parcel Narok/Cis-Mara/Maji Moto/2076 (hereinafter "the suit land") which measures 21.6 Hectares.

2. He has deponed that he is so registered as a trustee for the benefit of some 314 members of Maji Moto Group Ranch and 12 plots of public utilities. He became so registered while Chairman of the said Group Ranch. He did apply and did obtain consent of the Land Control Board to subdivide this land into 326 plots and prepared a mutation form. The subdivision of the land would result in the land being a commercial centre and he thus applied for a change of user which was published in the Standard Newspaper of 19 February 2016 inviting any objections. He then proceeded to have the District Physical Planner draw all the necessary plans which were approved by the Narok County Government Physical Planning Officer. He was finally issued with a certificate of compliance and his appointed surveyor drew an area list. On presenting it to the District Land Registrar, he was shocked to discover that a restriction had been placed on 19 April 2016 by the District Land Registrar. He has averred that he was neither notified nor heard before the said restriction was put in place. He has stated that the various beneficiaries of the land are now baying for his blood as they believe that he is holding back their title deeds.

3. The respondent did not file any response, and on the day of the hearing, Mr. Kirui, a State Counsel, who appeared on behalf of the respondent, sought adjournment, which I declined, as I was of the view that the respondent had ample time to respond. The only material that I have is therefore that presented by the applicant.

4. I have seen that the applicant does hold title to the suit land which he obtained on 23 January 2014. The title does not show that the applicant holds the land as trustee but he himself seems to concede that he holds the same as trustee. It is apparent that the applicant is keen to have this land distributed to the persons that he considers to be beneficiaries hence the process that I have outlined above.

5. I have seen the restriction placed on 19 April 2016 stating that there should be "*no dealings until the issue of irregular allocation is sorted out.*" I am not sure where this has come from, for as I have mentioned, the respondent has not filed any response. Mr. Kirui in his submissions stated that the restriction was to safeguard public interest but I have no material to tell me what this public interest is. What I can see is that the applicant is the owner of the land as it appears in the title issued. I have therefore not been given any good reason as to why the Land Registrar thought that there is an irregular allocation. Before me, there is no evidence of any irregular allocation. In any event, if the allocation is irregular, the Land Registrar can take appropriate action as permitted by law to have this corrected, if indeed the allegation is true.

6. On assessment of what is before me, I have nothing which justifies the restriction. I therefore have no reason to deny the applicant the prayers that he has sought. I hereby issue an order cancelling the restriction entered by the respondent on 19 April 2016 in the register of the land parcel CIS Mara/Maji Moto/2076. The applicant shall also have the costs of this application.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 16th day of February 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :

Mr. Karanja Mbugua for the applicant

Mr. Kiprotich Kirui for the respondent

Court Assistant : Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU