

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

MISC. ELC NO. 16 OF 2016

THE NATIONAL COUNCIL OF CHURCHES OF KENYA.....APPLICANT

VERSUS

THE CHIEF LAND REGISTRAR1ST RESPONDENT

THE LAND REGISTRAR, NYERI.....2ND RESPONDENT

RULING

1. The Notice of Motion dated **29th June 2016**, seeks **orders compelling the respondents to remove the restriction lodged against Nyeri/Municipality Block 1/1280** (hereafter referred to as the suit property) and costs of the application.
2. The application is premised on the grounds on the face of the application and is supported by affidavit sworn by the applicant's General Secretary and Chief Executive Officer, **Reverend Canon Peter Karanja** on **29th June, 2016**. He deponed that the applicant is the registered owner of the suit property; that the respondents registered a restriction against the suit property on **8th February, 2012** at the instigation of the Ethics and Anti-Corruption Commission (EACC) to enable it conclude investigations.
3. The Applicant has written several letters to the **2nd** respondent to remove the restriction (**21st May, 2015** and **12th October, 2015**) but there has been no response or action taken by the respondents.
4. Further the applicant has not received any report of the investigations by EACC. It is their contention, that this is a breach of its constitutional right to property under **Article 40** of the Constitution and the right to fair administrative action under **Article 47** of the Constitution.
5. The application is not opposed. From the affidavit of service sworn on **2nd November, 2016** by Peter Gakui Mugo, a licensed process server, it appears only the **2nd** respondent was served with the Notice of Motion on **28th November 2016**. There is no proof that the **1st** respondent was served.
6. EACC who instigated the registration of the restriction on **8th February, 2012** are also not parties in this matter. It is my considered view that the restriction against dealings with the suit property placed by the EACC should not be removed without EACC been given an opportunity to explain why after placing a restriction on the title four years ago to carry out to investigations, the restriction should not be removed.
7. In the interest of justice, I order that EACC be enjoined in these proceedings under **Order 1 Rule 10** of the Civil Procedure Rules having been found to be a necessary party in assisting the court to conclusively deal with the application before it. Costs of the application shall be in the cause.

Dated, signed and delivered in open court at Nyeri this **14th** day of February, 2017.

L N WAITHAKA

JUDGE

In the presence of:

Mr. King'ori h/b for Mr. Juma for the plaintiff

N/A for the respondents

Court clerk - Esther