



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

MISC ELC NO. 1 OF 2015

LUCY MUMBI NJOGU.....1ST APPLICANT

KITHINJI KARABA.....2ND APPLICANT

RULING

The applicants herein **LUCY MUMBI NJOGU** (1st applicant) and **KITHINJI KARABA** (2nd applicant) have moved this Court under their Notice of Motion dated 16th December 2014 seeking the following substantive orders:-

- 1. That the Honourable Court be pleased to remove all prohibitory orders placed on L.R No. MUTIRA/KAGUYU/1290 vide Civil Case No. 1998 of 1978 at Nairobi.***
- 2. That costs be in the cause.***

The application is supported by the two applicant's affidavits. The 1st applicant's affidavit is dated 16th December 2014 while the 2nd applicant's affidavit is dated 3rd March 2015. There is no respondent to this application which is really strange the same having been filed by an advocate. But that will become clearer later in this ruling.

When the application was first placed before me on 10th March 2015, I found it prudent to call for Nairobi High Court Civil Case No. 1998 of 1978 (the Nairobi case) because that is where the prohibitory orders were placed. However, after writing several letters to the Deputy Registrar Nairobi High Court requesting for that record, none has been availed. The letters written to the Deputy Registrar Nairobi High Court requesting for that record are as follows:-

1. Letter dated 25.3.2015
2. Letter dated 5.10.2015
3. Letter dated 18.3.2016
4. Letter dated 22.4.2015 and finally
5. Letter dated 27.4.2016.

All the above letters were requesting for the record in the Nairobi Case which, according to the applicant's affidavit was missing from the registry at Nairobi High Court. There was no response to any of the said letters which lends credence to the applicant's averment that the record is lost.

According to the supporting affidavits herein, the prohibitory order in the Nairobi Case was placed by the 2nd applicant. That perhaps explains why there is no respondent in this case. The 2nd applicant has deponed in paragraph two (2) of his affidavit as follows:-

“That way back in the year 1978, I had an interest in land parcel No. MUTIRA/KAGUYU/1290 and I had caused a prohibitory order to be placed against the same vide CC No. 1998 of 1978 at Nairobi when the suit was commencing between myself and the registered owner. Annexed and marked as KK – is a copy of the official search”.

The registered owner of the land parcel No. **MUTIRA/KAGUYU/1290** as per the certificate of search is one **JAMES KARIMI MIANO** who is not a party to this application. However, the applicants have also annexed to their application my ruling in **KERUGOYA ELC JUDICIAL REVIEW CASE No. 7 of 2012** in which the 1st applicant had sought orders that all

cautions placed on land parcel No. **MUTIRA/KAGUYU/1290** be removed. In that case, the said **JAMES KARIMI MIANO** the registered proprietor of land parcel No. **MUTIRA/KAGUYU/1290** was the 4th respondent and in a ruling delivered on 3rd July 2013, I directed as follows:-

“That all cautions registered against land MUTIRA/KAGUYU/1290 be removed so as to give effect to the orders of this Court dated 23rd June 2006”

In view of that very clear order issued over three (3) years ago, it is not known why the applicants have again moved to this Court. Perhaps it is because the party who lodged the caution and who is the 2nd applicant herein was not a party in **KERUGOYA ELC JUDICIAL REVIEW CASE No. 7 of 2012**.

As indicated earlier in this ruling, there is no respondent in this case. Ideally, the respondent ought to be the 2nd applicant who by his own admission in his supporting affidavit is the party who lodged the cautions. Rather than strike out the application, I will invoke my inherent jurisdiction and also **Article 159 (1) (d) of the Constitution** to save the application and make appropriate orders.

Section 70 (d) of the Land Registration Act empowers this Court to cancel any order of inhibition. In this application, the 2nd applicant who is the party that lodged the prohibition order in the Nairobi case has deponed in paragraph ten (10) of his supporting affidavit as follows:

“That I swear this affidavit to affirm that I am the one who caused the orders to be placed and I have no objection to this Honourable Court lifting the same as I no longer have interest in the subject land parcel”.

In view of the above averment, and also taking into account the orders issued by this Court on 3rd July 2013 in **KERUGOYA ELC JUDICIAL REVIEW CASE No. 7 of 2012**, the orders sought in the applicant’s Notice of Motion dated 16th December 2014 are well deserved.

I therefore make the following order with respect to that application:

1. The prohibition order placed on L.R No. MUTIRA/KAGUYU/1290 vide Nairobi High Court Civil Suit No. 1998 of 1978 be removed forthwith.

B.N. OLAO

JUDGE

31ST MARCH, 2017

Ruling delivered, dated and signed in open Court this 31st day of March 2017

Applicant Lucy Mumbi Njogu present.

B.N. OLAO

JUDGE

31ST MARCH, 2017