



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC SUIT NO. 3 OF 2004(OS)

JOSEPH KABURU.....PLAINTIFF

VERSUS

M'ARIMI KAMURU.....DEFENDANT

R U L I N G

1. This application brought to Court by way of a Notice of Motion is dated 20th May, 2013 and seeks orders that:-

1) All registrations, prohibitory orders, inhibitions and/or cautions registered against L.R No. Lower Abothuguchi/Makandune/ 724 be lifted forthwith.

2) Costs be in cause.

2. The Application is based on the grounds that:-

a) Execution of the decree herein has been rendered impossible by the existence of a prohibitory order erroneously registered against the title and a restriction by the Register.

3. The Applicant has also filed a Supporting Affidavit where he has deponed as follows:-

1) That judgment in applicant's favour was delivered on 30/04/2010 and a decree extracted on 20/12/2011.

2) That however the same could not be executed as the subject parcel of land was encumbered by a prohibitory order, restriction and a caution, Annexure "JK 1" is a copy of the register.

3) That the Applicant has managed to trace the cautioner who had applied to withdraw the caution, Annexure "JK 2" is a copy of the application.

4) That the land also has a prohibitory order arising from Meru SRMCC NO. 115 of 1979.

5) That his efforts to trace the said Court file has been futile and the only hint as to what the case was all about is the Court register which shows that the JD herein was not even a party to that case, Annexure "JK 3" is a copy of the court register.

6) That there is also a restriction by the Land Registrar pending the finalization of Nyeri SRMCC No. 143 of 1980.

7) That the said case involved the JD as defendant but the same was finalized long time ago and the Court file disposed of vide Gazette Notice Number 4034 of 16/4/2010, Annexure "JK 4" is a bundle of the Court register, the Gazette Notice and the list of the relevant files.

8) That the Applicant urges this Honourable Court to lift all the prohibitory orders , restrictions, cautions and/or inhibitions to enable him execute the decree in his favour herein.

4. This application was served but no response was filed. I find that the application is meritorious in that the Judgment delivered on 30:04:10 is in respect of the parcel land No. Abothuguchi/Makandune/724 and the orders will facilitate the execution of the said judgment.

DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 4TH DAY OF OCTOBER, 2017

IN THE PRESENCE OF:

CA: Janet

Parties Absent

Hon. L.N. MBUGUA

ELC JUDGE