



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
THIKA LAW COURTS
ELC.MISC.60 OF 2017

JOHN KAMAU KINYANJUI.....PLAINTIFF/APPLICANT

-VERSUS-

THIKA DISTRICT LAND REGISTRAR.....DEFENDANT/RESPONDENT

RULING

By a *Miscellaneous Application* dated 20th July 2017, the Applicant herein sought for the following orders against the *Thika District Land Registrar*:-

- 1) *That the court be pleased to order lifting of restriction filed against title No.Ruiru/Kiu Block 2/2616.*
- 2) *That costs of this application be provided for.*

This application is premised upon the grounds stated on the face of the application and on the *Supporting Affidavit* of *John Kamau Kinyanjui*. These grounds are:-

- i. *That the Plaintiff is the registered owner of Plot No.Ruiru/Kiu Block 2/2616.*
- ii. *That the Respondent has refused to remove the restriction even after the Applicant has requested for removal of the same, the instituted restriction having no merit at all.*
- iii. *That the Respondent has no justification at all to refuse or pend a restriction against the above mentioned plot.*
- iv. *That the said restriction has been lodged by some people interested in violating the Applicant's rights to property and not keen in proving why the said restriction should be maintained on record.*
- v. *That this court has a duty to protect the property of the Applicant as he is the registered owner of the property.*
- vi. *That the Respondent is being used by some people who are interested in swindling the Applicant.*

In his Supporting Affidavit, the Applicant herein *John Kamau Kinyanjui* averred that he purchased the

suit property from one **Mr. Gitu Makumi, ID No.[particulars withheld]**, sometimes in the **year 2004** and paid the said **Mr. Gitu** in full. Further that on **1st December 2011**, the Respondent without any justification and without any care to inform him, lodged a restriction against his title as can be seen from **annexture JKK2**. He also averred that no reason was communicated to him as to why the restriction was registered against the title. Further that the action of the Respondent has not even been officially communicated to him and no reasons given as to why the said restriction exist against his title and it is now **over 5 years** since the said restriction was placed against the title. He contended that he holds a clean title which has not been challenged in any court or at all and there is no criminal or civil case pending over the suit property. He also contended that there is no investigations going on with regard to his property as he has never been contacted to record any statement or at all for the last **5 years**. He also contended that he has approached the Respondent to lift the restriction or call the restrictor to tender evidence of their claim against his title but nothing has been done. He urged the Court to issue an order of lifting the restriction so that he can deal with his property appropriately.

The Respondent did not file any **Replying Affidavit** and the court directed the Applicant to file brief written submissions which was done on **31st October 2017**. The Applicant in his submissions reiterated the contents of his Supporting Affidavit and urged the court to allow the instant Misc. Application.

The Court has considered the instant Misc. Application which is brought under Section 78(2) of the Land Registration Act, 2012 and Section 3A of the Civil Procedure Act. Section 78(2) of the Land Registration Act provides that:-

“Upon application by a proprietor affected by a restriction and upon notice to the Registrar, the court may order a restriction to be removed, varied or other orders as it deems fit and may make an order as to costs”.

It is apparent therefore that the court has discretion to make an order for removal of any restriction placed on a title. However as usual, the said discretion must be exercised judicially.

Further the application is anchored upon Section 3A of the Civil Procedure Act which gives the Court the inherent power to make such orders that are necessary in ensuring that the end of justice is met and prevent abuse of the court process.

Bearing in mind the above provisions of law, the Court will consider the available evidence and determine whether the Applicant is deserving of the orders sought.

The Applicant alleged that he bought the suit property from one *Gitu Makumi* and the said property was registered in his name. Though the Applicant did not attach the certificate of title in his name, he attached a copy of certificate of official search dated **16th June 2016**, which shows that the suit land is registered in the name of the Applicant but with restriction places on **1st December 2011**.

However the Applicant did not annex a copy of the Green Card which would clearly show why the said restriction was placed upon the said land and by whose application.

Section 76(1) of the Land Registration Act provides that:-

76. (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the Registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

It is therefore clear that restrictions are placed on a parcel of land for purposes of prevention of **fraud** or **improper dealing**. Further the Registrar may either on his own or by an application brought by any person interested in the land make an order of restriction.

Without the copy of the Green Card, this Court is not in a position to determine whether the restriction herein was placed either on the Registrar's own motion or by an application made by any person. Given the purpose of restriction is to prevent fraud or improper dealing, the Court would not wish to order the removal of the said restriction without Notice to the person who applied for the placing of the said restriction.

This Court finds that the Applicant herein has not attached a copy of the Green Card and it is therefore not clear why the restriction herein was placed on the suit property. The Applicant also did not enjoin the person who caused the Registrar to place the restriction on the suit property as a Respondent herein. If the Court would allow the removal of the said restriction, then it would mean that the said Applicant will be condemned unheard and that would be against the rules of Natural Justice.

For the above reasons, the Court finds that the instant *Misc. Application* dated *20th July 2017* is not merited. The same is dismissed entirely with costs being in the cause.

It is so ordered.

Dated, Signed and Delivered at Thika this *20th* day of *December 2017*.

L. GACHERU

JUDGE

In the presence of

No appearance for the Plaintiff/Applicant

No appearance for Defendant/Respondent

Lucy - Court clerk.

Court – Ruling read in open court in the absence of the parties though date taken in court in the presence of the Applicant.

L. GACHERU

JUDGE