



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC . CASE. NO. 700 OF 2011

JANE WANJIRU KURIA.....PLAINTIFF

VERSUS

JAMES MAINA MWANGI.....1ST DEFENDANT

COMMISSIONER FOR LANDS.....2ND DEFENDANT

CHIEF LAND REGISTRAR.....3RD DEFENDANT

DISTRICT LAND REGISTRAR.....4TH DEFENDANT

RULING

The Application for consideration is the Notice of Motion dated 17th November 2014 brought under **section 1A & 1B of the Civil Procedure Act and Order 40 Rule 1, 2 & 3 of the Civil Procedure rules, 2010** seeking for orders that:

1. Spent.
2. A declaratory order be issued declaring the Plaintiff as the sole registered owner of Thika Municipality Block 29/641 (hereinafter referred to as the “suit property”).
3. That a declaratory order be issued declaring that the Plaintiff’s title was earmarked as an industrial plot as per the Certificate of Lease issued for the suit property as registered by the 4th Defendant/Respondent.
4. An order be issued compelling the 3rd and 4th Defendants/Respondents to remove the caveat and/or restriction placed on the suit property.
5. A permanent injunction be issued restraining the 3rd and 4th Defendants/Respondents, their servants or agents from interfering or in any manner dealing with the suit property.

This Application is premised on the grounds appearing on the face of the Application together with the Supporting Affidavit of the Plaintiff, Jane Wanjiru Kuria, sworn on 17th November 2014 in which she averred that the suit property was officially allocated to her on 3rd August 2010 by the Commissioner of Lands being unsurveyed and she was required to pay statutory charges to the then Commissioner of Lands as stipulated in the Letter of Allotment dated 3rd August 2010. She averred further that she accepted the offer and paid the due stand premium, rent, conveyance, stamp duty and registration fee

amounting to Ksh 285,415/=. She further averred that on 3rd May 2011, the then Commissioner of Lands requested the Director of Survey to amend the Registry index map RIM for the suit property in the Plaintiff's favour. She averred further that the Chief Land Registrar forwarded the lease with instructions that it be registered but the District Land Registrar declined to register it citing that the valuation was not properly done. She averred further that it is the actions of the District Land Registrar which prompted her to file this suit and Application dated 21st May 2012. She further indicated that the District Land Registrar has consented to this Application and the same was marked as settled and the District Land Registrar Thika tendered to the Court the original Certificate of Lease, the Green Card and the Registry Index Map for the suit property. She further stated she has, however, not been able to develop the suit property because the 4th Defendant has placed a caveat and/or restriction on the suit property without the knowledge of the Plaintiff and she now wants the court to compel the 4th Defendant to lift the caveat as the same was placed in bad faith and in contravention of the Plaintiff's rights to own property as envisaged under the Constitution of Kenya.

This Application is unopposed. When the parties appeared before the Court on 17th February 2015, Counsel for the 1st Respondent, Mr. Owang, explained that they did not put any reply to the Application because this case was compromised by way of consent recorded on 13th June 2012 when the District Land Registrar presented to the court a certificate of Lease in favour of the plaintiff together with the RIM and the Green Card and added that they were not opposing the prayers sought by the plaintiff being granted. This position was supported by the Plaintiff's counsel who added that the only issue that remained unresolved was the caveat registered by the District Land Registrar on the suit property and prayed that the caveat be lifted.

The Plaintiff relied on **Section 1A and 1B** of the **Civil Procedure Rules**. It therefore follows that in deciding whether or not to grant the prayer to lift the caveat the court puts into consideration the overriding objective of the **Civil Procedure Act** which is expressed as justice, expedition and finality of proceedings. **Under section 73 (1), the Land Registration Act No.3 of 2012** gives the court power to make an order to remove of a caution. In this case, the Plaintiff was not notified of the reasons why the caveat was lodged against the suit property by the 4th Defendant/Respondent. Further, the Respondents have not objected to the lifting of the caveat and have infact acknowledged that the Plaintiff is the legal owner of the suit property. Indeed, the 4th Defendant/Respondent has produced before the court documents to show that the Plaintiff is the bona fide registered proprietor of the suit property. It was further shown that by his letter dated 13th November 2014 marked as annexure "JWK7", the Chief Land Registrar ordered the 4th Defendant/Respondent to lift the said caveat. Accordingly, this court is persuaded that the said caveat has no basis and cannot stand as against the Plaintiff who is the registered proprietor of the suit property. Consequently, this Application is allowed and more particularly, I order the 4th Defendant/Respondent to cancel and lift the caveat entered on the Plaintiff's Certificate of Lease in respect of the suit property with immediate effect. The costs of this Application are awarded to the Plaintiff.

DELIVERED AND SIGNED AT NAIROBI THIS 31ST

DAY OF JULY 2015

MARY M. GITUMBI

JUDGE