



Mwadungudu v Rashid; Land Registrar – Mombasa (Interested Party) (Environment and Land Miscellaneous Application E002 of 2024) [2024] KEELC 3367 (KLR) (23 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3367 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E002 OF 2024
NA MATHEKA, J
APRIL 23, 2024

BETWEEN

IDDI RASHID MWADUNGUDU APPLICANT

AND

MESWALEH IDD RASHID RESPONDENT

AND

THE LAND REGISTRAR – MOMBASA INTERESTED PARTY

RULING

1. The application is dated 26th January 2024 and is brought under section 26, 73(1) and (6) and 75 of the [Land Registration Act](#) 212 (revised 2020) seeking the following orders;
 1. That this Honourable court do certify this application as urgent and have it heard on priority basis.
 2. That this Honourable court be pleased to order for the removal of the Caveats lodged by the Respondent herein on LR Numbers Mombasa/ Vyemani Scheme/976 and Mombasa/ Vyemani Scheme/978 respectively.
 3. That this Honourable Court be pleased to make such further or other Orders with regard to the payment of damages for wrongfully and without justifiable cause lodging Caveats.
 4. That the costs of this application be made against the Respondent.
2. It is based on the grounds that the Respondent wrongfully and without any justification lodged Caveats. The Respondent ignored legal advice from the office of the Director of Prosecutions and out of malice against her father the Applicant herein lodged the Caveats. The Order of removal of the Caveats is necessary so as to enable the applicant initiate succession proceedings without any hindrance.



3. This court has considered the application noting that the same was not opposed. The Applicant states his deceased wife was the owner of Mombasa/Vyemani Scheme/9786 and he is the owner of Mombasa/Vyemani Scheme/978. That the Respondent has made serious criminal allegations against him since the death of her mother that he committed forgery on Mombasa/Vyemani Scheme/978. That despite legal advice from the office of the Director of Public Prosecutions the Respondent has lodged the Caveats on the titles. The Applicant seeks an order of removal of the Caveats so as to enable the applicant initiate succession proceedings without any hindrance.

4. I find that the Applicant seeks substantive orders in this application. Courts have time and again taken the position that substantive orders cannot be issued in Miscellaneous Applications. This is the position that was adopted in Witmore Investment Limited vs County Government of Kirinyaga & 3 Others (2016) eKLR where the court held that;

So where a party such as an applicant herein seeks an order that in effect appears to resolve with finality an issue in controversy or a contested issue, the application ceases to be interlocutory and it is a misconception to describe it as such. If the applicant wanted to move this court for a final resolution of the issues in controversy raised in the application, it should have moved this court properly in the manner provided by law.”

5. Similarly in Nairobi West Hospital Limited vs Joseph Kariba & Another (2018)eKLR it was held that;

.....In my view this substantive order which for all intents and purposes cannot be issued through a miscellaneous application. A perusal of Order 3 Rule 1 of the Civil Procedure Rules will reveal that suit may be commenced by way of a plaint, a petition and or originating summons which is not the case here. The miscellaneous application may not offer the parties the opportunity to be heard. The order for discharge of a patient who is suffering from a rare condition stated to be ametrophyic lateral sclerosis and still admitted in the Intensive Care Unit of the applicant’s hospital is strenuously opposed....Consequently, the preliminary objection is upheld and this suit is ordered struck out.”

6. For the foregoing reasons, I find this application lacks merit and I dismiss it with no orders as to costs as it was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 23RD DAY OF APRIL 2024.

N.A. MATHEKA

JUDGE

