Supporting Affidavit on a Restriction Entered Without Notice

Educational sample 052 | Environment and Land Court at Nairobi

Educational reconstruction based on a reported Kenyan decision. This is newly drafted text, not an original court filing, not a matter handled by our team, and not proof that a sample argument succeeded. Parties, parcels and identifying case details in the specimen are replaced with bracketed fields. Do not sign, swear or file it without checking your facts, jurisdiction, applicable rules and court directions.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CASE OR APPLICATION NO [insert appropriate reference]

[APPLICANT OR CLAIMANT] v [RESPONDENT OR DEFENDANT]

AFFIDAVIT

1. I, [authorised officer], of [address for service], make oath and state as follows. I am [office] of the Applicant company and am authorised to depose to facts within my knowledge and identified company records.

2. The Applicant acquired [redacted parcel] for KES 12,500,000. The official search obtained before purchase disclosed no encumbrance of the kind now asserted. The sale, transfer and registration documents are annexed together as R2 and R3.

3. After registration, the Applicant pursued approvals and preparations for development and marketed apartments off-plan. Prospective purchasers raised the restriction when they undertook their own checks. I annex the current certified register as R1.

4. The challenged entry is [copy the restriction verbatim from the register]. Its entry number is [number] and its registration date is [date]. These fields must be completed from registry evidence.

5. I did not receive a written notice addressed to the Applicant concerning the entry. The Applicant’s records disclose no invitation to a hearing before its registration. I state this after checking [identify correspondence records]; I do not speak for persons outside the Applicant.

6. The Applicant asked the Registrar to arrange a hearing. The request and any reply are annexed as R4. No hearing of the Applicant’s objection occurred before this application was brought.

7. The entry interrupted project arrangements and caused prospective buyers to question completion. Where deposits were refunded or financing deferred, the relevant records are [identify documents]. I do not state a monetary loss figure unsupported by a ledger.

8. I understand that the Respondent asserts rights arising from matrimonial proceedings involving the vendor. The Applicant was not a party to those proceedings. I annex only an authenticated copy of any order actually affecting this parcel and disclose any pending application known to me.

9. The Applicant seeks a hearing and removal or appropriate variation of the restriction. Questions of matrimonial entitlement or fraud remain for determination on proper evidence in the appropriate proceedings.

10. What is deposed to from my personal knowledge is true. Matters taken from identified company records are stated on that basis.

SWORN by [deponent] at [place] on [date]. Signature [ ]. BEFORE ME [Commissioner for Oaths]. The jurat must be completed by the authorised officer; this sample has not been sworn.

Use and evidence notes

Use a real authorised deponent and a properly completed jurat. Absence of notice must be proved from the relevant records, not assumed from dissatisfaction with the entry. Do not attach identity cards, private purchaser details or unredacted unrelated family papers to a public sample.

R1 register; R2 pre-purchase search; R3 transfer file; R4 hearing request and reply; R5 relevant project records, with confidential identifiers removed.

Source and procedural limits

A developer bought land for KES 12,500,000 after a registry search disclosed no encumbrance. A restriction subsequently interrupted development and off-plan sales. A spouse asserted rights connected with a pending matrimonial dispute. The registered developer said it had not been notified or heard and had unsuccessfully asked the Registrar for a hearing.

The court removed the restriction with costs because the statutory notice and hearing safeguards were not observed. It did not finally determine the matrimonial ownership dispute or declare that every allegation of fraud was false.

Land Registration Act sections 76, 77 and 78, particularly the court route under section 78(2). A restriction and a caution are different entries; obtain the actual register before choosing a remedy.

[2015] KEELC 655 (KLR) — 13 February 2015. Source: https://new.kenyalaw.org/akn/ke/judgment/keelc/2015/655/eng@2015-02-13

The linked original judgment may identify parties. This public specimen omits their names. Historical allegations are not presented as established facts. A different result in your own proceedings is possible.