Replying Affidavit Asserting a Matrimonial Interest in Restricted Land

Educational sample 053 | 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, [Respondent], of [address for service], make oath and state as follows. I am the Respondent and oppose removal of the restriction without consideration of the interest I assert in [redacted parcel].

2. My claim arises from matrimonial proceedings concerning the vendor, rather than from a sale agreement with the Applicant developer. The relevant proceeding is [redacted case reference]. I annex the filed pleadings and the particular order, if any, affecting this land as M1.

3. I had earlier sought protection of my claimed interest by a caution. I contend that its removal and the subsequent transfer require examination. The certified register and the caution or removal documents actually obtained are annexed as M2. I do not treat the caution as the same entry as the restriction now challenged.

4. My allegation is that the transfer occurred without adequate protection of the matrimonial interest asserted in that proceeding. The acts relied upon are [insert proved particulars and their supporting documents]. These remain allegations unless adjudicated.

5. I acknowledge that the Applicant says its pre-purchase search was clear and that it was not notified of the restriction. I identify the notice or hearing material available to me as [records, or state that none is available]. I cannot infer that notice was served merely because the restriction appears on the register.

6. If the Court finds the registration procedure defective, I ask it to consider whether any lawful, limited protective relief can be made after hearing the Registrar and all affected parties. I recognise that such relief requires its own legal and evidential basis.

7. I request that the Court distinguish the procedural validity of the entry from final ownership of the land. My asserted matrimonial claim should be determined in the competent proceedings on admissible evidence, and not presumed proved by this affidavit.

8. I disclose the orders and current status of the related proceedings known to me. I do not rely on an injunction which has not been made or which does not concern the identified parcel.

9. The facts within my knowledge are true. Records and information received from others are identified by their source.

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

This reconstructs a respondent’s position, which did not prevent removal in the source ruling. It is not evidence that the respondent’s ownership or fraud allegations succeeded. Do not insert a fictitious preservation order; identify the actual order and its scope.

M1 authenticated matrimonial pleadings and relevant orders; M2 certified register and caution/removal record; M3 documents supporting the particular proprietary claim.

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.