



Munge v Naivasha Land Registrar; Kamau & 2 others (Interested Parties) (Environment & Land Miscellaneous Case 50A of 2022) [2023] KEELC 16298 (KLR) (16 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16298 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND MISCELLANEOUS CASE 50A OF 2022**

**A OMBWAYO, J
MARCH 16, 2023**

BETWEEN

PETER KIONGERA MUNGE APPLICANT

AND

NAIVASHA LAND REGISTRAR RESPONDENT

AND

RUTH WANJIRU KAMAU INTERESTED PARTY

GEORGE KIMANI MWANGI INTERESTED PARTY

SAMUEL NG'ANG'A NJUGUNA INTERESTED PARTY

RULING

1. Peter Kiongera Munge hereinafter referred to as the applicant has come to this court against Naivasha Land Registrar as the respondent and Ruth Wanjiru, George Kimani Mwangi, Samuel Ng'ang'a Njuguna as interested parties praying for orders that this honorable court does issue orders directing the Naivasha Land Registrar to remove a caution lodged by Ruth Wanjiru Kamau against the parcel number Gilgil/Karunga Block 3/241 (Shoka).
2. That this honorable court does issue orders directing the Naivasha Land Registrar to remove a caution lodged by Ruth Wanjiru Kamau by herself, her relatives, her servants, agents, appointees, nominees, or any other person or entity acting on her behalf from lodging any caution, Caveat or Restriction against the parcel number Gilgil/Karunga Block 3/241 (Shoka).
3. That this honorable court does issue a permanent injunction restraining Ruth Wanjiru Kamau by herself, her relatives, her servants, agents, appointees, nominees, or any other person or entity acting on her behalf from lodging any caution, Caveat or Restriction against the parcel number Gilgil/Karunga Block 3/241 (Shoka).



4. That this honorable court does issue orders directing the Naivasha Land Registrar to remove a Restriction lodged by George Kimani Mwangi and Samuel Ng'ang'a Njuguna against the parcel number Gilgil/Karunga Block3/241 (Shoka)
5. That his honorable Court does issue a permanent injunction restraining George Kimani Mwangi and Samuel Ng'ang'a Njuguna by themselves, their relatives, their servants, agents, appointees, Nominees, or any other person or entity acting on their behalf from lodging any caution, Caveat or Restriction against the parcel number Gilgil/Karunga Block 3/241 (Shoka)
6. That his honorable court does issue any other orders that it may deem fit to grant in the circumstances and that the costs of this application be provided for.
7. The application is based on the affidavit of the applicant whose gist is that the applicant purchased the suit parcel of land from the owner John Kamau Njuguna via agreement dated October 31, 1995 and paid full purchase price. The transfer of the land was effected on November 3, 1995 and title deed issued on November 3, 1995. A title deed was re-issued on January 8, 2013. That on or about July 31, 2013, Ruth Wanjiru Kamau, put a caution claiming beneficial interest but went to sleep. On the same date George Kimani Mwangi put a restriction. The applicant wrote to the Land Registrar to remove the caution but the Land Registrar has not moved to remove the caution. The Naivasha Land and did not even make a reply.
8. The interested parties on their part in reply stated that they never received a notice from the Land Registrar on the intention to remove the caution and restriction.
9. The interested party stated that the owner of the parcel of land died on October 31, 1995 after being killed by unknown persons. She stated that she did not give consent for the matrimonial property to be sold.
10. She further stated that the consent of the Land Control Board was issued on October 5, 1995 whereas the sale agreement was dated on October 31, 1996. The interested party states that investigations are ongoing.
11. In the supplementary affidavit, the applicant, reiterates that he entered into a sale agreement on October 31, 1995 with John Kamau Njoroge in relation to parcel of land Gilgil/Karunga Block 3/241. Thereafter they agreed to meet on November 3, 1995 when the seller was to appear with the title deed. On November 3, 1995 they met in the office of the District Commissioner and went to the office of one Julius K Kinga advocate who prepared the transfer form and they both signed. Later the same date they lodged the documents with the Land Registrar who issued a title deed. Later, one and half weeks thereafter he was informed that John Kamau Njuguna had died. Later he was charged with the offence of forgery but was acquitted. He took possession of the land but a caution and restriction were registered on the land hence he can't develop the same. The applicant reiterated that he purchased the land on October 31, 1995. He states that the body of the late John Kamau Njuguna was discovered on November 14, 1995 after the signing of the agreement but the interested party clearly reported the death of as having happened on October 31, 1995 to coincide with the date of signing the agreement so as they can form a narrative that the deceased could not have signed the agreement on the date he died.
12. I have considered the application, affidavit on record and do find that the Land Registrar is the right person to command the removal of the caution and restriction.

Section 73 of *Land Registration Act* provides:-



73. Withdrawal and removal of caution.	
(1)	A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the Registrar.
(2)	The Registrar, on the application of any person interested, may serve notice on the cautioner warning the cautioner that the caution will be removed at the expiration of the time stated in the notice.
(3)	If a cautioner has not raised any objection at the expiry of the time stated, the Registrar may remove the caution.
(4)	If the cautioner objects to the removal of the caution, the cautioner shall notify the Registrar, in writing, of the objection within the time specified in the notice, and the Registrar shall, after giving the parties an opportunity of being heard, make



	such order as the Registrar considers fit, and may in the order provide for the payment of costs.
(5)	After the expiry of thirty days from the date of the registration of a transfer by a chargee in exercise of the chargee's power of sale under the law relating to land, the Registrar shall remove any caution that purports to prohibit any dealing by the chargee that was registered after the charge by virtue of which the transfer has been effected.
(6)	On the withdrawal or removal of a caution, its registration shall be cancelled, and any liability of the cautioner previously incurred under section 74 shall not be affected by the cancellation.
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(6)	On the withdrawal or removal of a caution, its registration shall be cancelled, and any liability of the cautioner previously incurred under section 74 shall not be affected by the cancellation.

Section 78 of the *Land Registration Act* 2012 provides



78.	<p>Removal and variation of restrictions.</p> <table border="1"> <tr> <td data-bbox="858 271 1123 837">(1)</td> <td data-bbox="1123 271 1390 837">The Registrar may, at anytime and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.</td> </tr> <tr> <td data-bbox="858 837 1123 1364">(2)</td> <td data-bbox="1123 837 1390 1364">Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs.</td> </tr> </table>	(1)	The Registrar may, at anytime and on application by any person interested or at the Registrar's own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.	(2)	Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs.
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13. It is not clear between the applicant and the interested party as to who was trying to take advantage of the death of John Kamau Njuguna was it his family to pose a narrative that a dead man cannot sign a sale agreement or that he was murdered on the date of the sale agreement or was it the applicant so as to take his land for free. This issue can't be determined by this court by way of notice of motion.
14. This court orders that the Naivasha Land Registrar does give notice to the parties to attend a hearing before him and decide as to whether to remove the caution and restriction or not. The land Registrar Naivasha to determine the issue within the next six months from the date of the order. Each party to bear own costs.

RULING SIGNED AND DELIVERED AT NAKURU VIA EMAIL THIS 16TH DAY OF MARCH 2023.

A O OMBWAYO

JUDGE

