



**Kangara v Kimando (Environment & Land Case 1332 of 2013)  
[2023] KEELC 18233 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18233 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1332 OF 2013**

**AA OMOLLO, J  
JUNE 22, 2023**

**BETWEEN**

**KIMUHU KIMANDO KANGARA ..... PLAINTIFF**

**AND**

**KINGARA KIMANDO ..... DEFENDANT**

**RULING**

1. The Applicant filed a notice of motion dated 14<sup>th</sup> February 2022 seeking for the following orders;
  1. That the court be pleased to order the District Land Registrar-Kiambu to remove the cautions lodged by the Respondent on land parcel Kiambaa/Kanunga/920, Kiambaa/Kanunga 921 and Kiambaa/Kanunga 1483.
  2. That the court does authorize the Deputy Registrar of this court to sign all necessary documents to facilitate a transfer of 0.2-acre portion due to respondent on behalf of the respondent.
  3. That the costs of the application be provided for.
2. The motion was supported by an affidavit sworn by Kangara Kimando on the same date outlining its grounds that the court delivered a judgement on 18<sup>th</sup> June 2020 where no appeal has been preferred against it and the Respondent lodged cautions on the land parcels Kiambaa/Kanunga/920, Kiambaa/Kanunga 921 and Kiambaa/Kanunga 1483 herein after referred to as “the suit property” and to finalize the exercise, the Applicant’s Advocate wrote to the Respondent requiring him to withdraw the caution and have the restriction lifted and a similar letter was made to the Land Registrar but both parties did not respond on the same.
3. The Applicant stated that the Respondent had written to have his 0.2 acre transferred but upon the Applicant advocate’s reply, he went silent and so the Applicant is unable to give effect to the



court's judgment or even exercise full proprietorship right on his properties. That it is unlikely that the Respondent will willingly participate in getting the 0.2 acre portion transferred to him, making it necessary for the Deputy Registrar does sign the necessary transfer documents for Kiambaa/Kanunga/1483 on behalf of the Respondent to enable the Applicant effect the transfer.

4. The Respondent opposed the motion vide a replying affidavit sworn by Kimuhu Kimando Kangara on 11<sup>th</sup> December 2022 stating that he had not refused to remove the caution placed on the suit property provided that the gratuitous portion that was given to him by court is demarcated and transferred to him in accordance with the court's direction. He contended that the Applicant subdivided the suit properties long before this case and the modus of subdivision was such that LR No.1483 does not have delineations and measurements viable for development or occupation and by far does not adhere to the strict rules of physical planning and survey.
5. The Respondent stated that he had resided on the suit properties for more than 50 years and extensively developed the properties and planted trees that have since matured. He also stated that his Advocates wrote to Kiambu County Surveyor for advice on the most viable mode of subdivision of the suit properties and they responded with a report dated 23<sup>rd</sup> September 2020 and so his prayer is that the (0.2) acres given should be excised from the suit properties in delineations of 11 meters in width as per the surveyors sketch in the report. He also urged that the court does review its orders and allow for sharing of costs of the process of subdivision and transfer.
6. The Applicant filed a further affidavit sworn by Kingara Kimando on 12<sup>th</sup> January 2022 in response to the Respondent's replying affidavit stating that the same is misleading the court because in executing the order to transfer to the Respondent the 0.2 acres, there was an underlying condition that the Applicant would take consideration of the location of the Respondent's residence, that the Respondent would meet the cost of survey , transfer process and cost of the suit and that the transfer ought to be done in 60 days from the day of the judgement but despite pleas to the Respondent to remove the cautions to enable the Applicant comply with the orders given, he willfully refused to do so.
7. The Applicant stated that after realizing the deliberate delay on the part of the Respondent to remove the cautions and the inaction to execute the orders, he decided to personally engage the services of a surveyor at his own cost and the surveyor delineated 0.2 acres of land where the house of the Respondent is situate and his graves are and that the delineated portion is right next to the access road which is economically viable and that the Respondent moved into the excised 0.2 acre portion, fenced it off and commenced farming but the surveyor could not proceed with the mutation process due to the existing cautions on the suit properties placed by the Respondent.
8. The Applicant stated that the orders given did not specify which parcel of land the 0.2 acres ought to be excised from and the said orders were very explicit and clear in that the 0.2 acres would be excised from any of the suit properties, land parcels Kiambaa/Kanunga920, Kiambaa/Kanunga921, and Kiambaa/Kanunga1438, taking into consideration the location of the Respondent's residence and that is exactly what the surveyor did when he delineated 0.2 acres from Kiambaa/Kanunga1438.
9. The Applicant contended that Respondent, as it stands is benefiting from the fruits of the judgement as he is in occupation of the 0.2 acres awarded to him by this court and is already tilling the land and therefore lacks the incentive to change the state of affairs by removing the cautions he placed and does not have any justifiable cause as to why the cautions in the three parcels of land should be sustained.
10. The Applicant and the Respondent filed their submissions dated 13<sup>th</sup> January 2023 and April 14, 2023 respectively. The Applicant submitted that the cautions placed on the suit properties ought to be removed because the only logical explanation as to why the same still exist is to frustrate the Applicant's proprietorship rights over the suit properties. He noted that the wording used in the orders given was



that the 0.2 acres was to be from any of and/or the suit properties taking into consideration the location of the Respondent's residence.

11. The Applicant submitted that sections 73 and 78 of the *Land Registration Act*, 2012 provides that a caution may be withdrawn by the cautioner or removed by order of the court or by order of the Registrar and in support cited the case of *Christian Wafula Omusolo & 2 others v Pauline Jerotich & another* [2019] eKLR where the court held that the Applicant is entitled to the removal of the caution as it does not serve any purpose judgment having been delivered dismissing the Plaintiff's originating summons.
12. The Respondent submitted that the Applicant had initially done a subdivision on paper against the suit properties but did not place beacons and as such after the judgement of court, the Applicant entered and fenced off the properties without consideration of the development, viability and access of the part occupied by him. He submitted that the Applicant should not abuse the court order to render the Respondent's part of land useless and inaccessible. He submitted that the court should order for subdivision of the suit properties taking into consideration the expert report by the surveyor in the demarcation of the 0.2 ex gratia property to be transferred to the Respondent. He stated that he is not opposed to the removal of the cautions but with consideration of the Surveyors proposal on subdivision.

### Analysis

13. This is an application by the Applicant for removal of a caution lodged on the suit properties by the Respondent for implementation of the Judgement delivered by this court on 18<sup>th</sup> June 2020 whereby the court dismissed the plaintiff's/Respondent's suit for the claim of the suit property.
14. I have read the Applicant's motion, the affidavit and further affidavit, the Respondent's replying affidavit together with the annexures thereof, the parties' submissions and the issue posed for this court to make a determination on is as to whether the cautions placed by the Respondent on the suit properties should be removed.
15. The decree issued on October 13, 2020 ordered as follows;
  1. The Plaintiff/Respondent suit was dismissed with cost to the Defendant,
  2. That on an ex gratia basis, the Defendant/Applicant shall transfer to the Respondent herein at Respondent's own cost within sixty (60) days from the date hereof, a portion of land measuring 0.2 acres from Kiambaa / Kanunga /920, Kiambaa/Kanunga/921 and Kiambaa/Kanunga/1483 or from any one of them.
  3. That in determining the portion of the said parcels land transfers to the Plaintiff, the Defendant shall take into consideration the location of the Plaintiff's residence.
  4. That the Defendant shall not be obliged to effect the ex gratia transfer of the said portion of land measuring 0.2 acres if the Plaintiff is dissatisfied with this judgement and opt to challenge the same which is his right. This is because it would not be necessary to disturb the status quo if there is prospect of the orders given herein being reversed.



16. What the applicant is asking for is the court to assist in the implementation of the judgment by removal of the caution. The submissions of the Respondent have gone beyond the application and seems to me like they are arguing a review and reopening the case that has been determined.
17. As provided by section 73(1) of the [Land Registration Act](#) 2012, this Court has discretion to remove any caution placed on the suit property. This Court does find that under the provisions of sections 3A and 63(e) of the [Civil Procedure Act](#), it has powers to make necessary orders for the ends of justice to be met. On the basis that the decree in place has not been set aside or appealed, there is no reason why the cautions should remain on the suit titles. Consequently, by ordering the removal of the caution/ restriction herein, the Court will be issuing orders which will ensure that the end of justice is met.
18. Therefore, I find merit in the application dated February 14, 2022 and allow it as prayed.

**RULING DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JUNE, 2023**

**A. OMOLLO**

**JUDGE**

**In the Presence of**

**Muturi h/b for Waithera-Mwangi for App**

**N/A for the Respondent**

