



REPUBLIC OF KENYA



KENYA LAW
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**Sagira v Jandiko & 2 others (Environmental and Land Originating Summons
163 of 2017) [2025] KEELC 1442 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1442 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 163 OF 2017**

M SILA, J

MARCH 19, 2025

BETWEEN

JACKSON WASONGA SAGIRA PLAINTIFF

AND

SAMWEL BARAZA JANDIKO 1ST DEFENDANT

MARGARET AKEYO JANDIKO 2ND DEFENDANT

ELSA ADOYO JANDIKO 3RD DEFENDANT

RULING

(Application for removal of a caution; caution placed pending hearing of the suit; suit decided; respondent contending that caution should remain in place as he has an appeal; pendency of appeal not entitling one to an automatic stay; no application made for maintenance of caution pending hearing of the appeal; application allowed)

1. The application before me is that dated 2 August 2024. It seeks orders for removal of a caution registered in the title to the land parcel Suna West/Wasweta II/4569. The application is based on the grounds *inter alia* that the caution was placed pending conclusion of this case and the case has already been concluded, thus the caution should be removed.
2. The application is opposed by the plaintiff/respondent. He urges that the caution should remain in place as he has lodged an appeal to the Court of Appeal against the judgment of the court being Kisumu Civil Appeal No. E044 of 2023.
3. The application was argued through written submissions and I have taken note of the submissions filed by Mr. Mboya for the applicant and Mr. Ochoki for the respondent.
4. I observe that the respondent filed this suit through an Originating Summons claiming orders that it be declared that he has acquired title through adverse possession to the land parcels Suna West/Wasweta



II/3104, 3105, 4569 and 4570. The case was heard by Ong'ondo J, culminating in a judgment delivered on 8 December 2022. In the judgment the good judge upheld the case of the respondent only in respect of the land parcel No. Suna West/ Wasweta II/ 4570. His suit for the other land parcels, i.e Suna West/ Wasweta II/3104, 3105 and 4569 was dismissed.

5. I have seen that a restriction was registered on 18 September 2015 in the register of the subject parcel of land, i.e Suna West/Wasweta II/4569, indicating that there should be no dealings pending hearing and determination of this suit. It is apparent that the suit is determined and in the determination the claim over the subject parcel of land was dismissed. Although an appeal has been lodged, there has been no application made seeking orders of stay pending appeal or any orders to maintain the restriction pending hearing and determination of the appeal. I reiterate that the restriction was only pending hearing and determination of this suit.
6. If the respondent thought it important to maintain a restriction pending hearing and determination of the appeal then he ought to have applied for one but he has not done so. If you look at Order 42 Rule 6 (1) of the [Civil Procedure Rules, 2010](#), the mere filing of an appeal does not operate as a stay of execution pending determination of the appeal. By parity of reasoning, the mere fact that the respondent has a pending appeal does not mean that the rights of the applicant over the subject parcel are stayed. Without there being an application for maintenance of the caution pending appeal, which has its own principles and guidelines, I am not persuaded that the respondent has made out a case for the maintenance of the restriction.
7. In his submissions, Mr. Ochoki referred me to the decision of Kemei J, in the case of [Jane Wanjiku Mwangi & Another vs Nathan Ndegwa Njeru](#) (2020)eKLR but I do not see how that case helps his client. In that case, the defendant/applicant asked for an order to remove a caution placed by the 1st plaintiff. The basis for the application was that the case of the plaintiffs had been dismissed and the defendant adjudged the owner of the land. The respondents opposed the application on the argument that the court was functus officio and that the applicant never asked for an order for removal of the caution in his pleadings. The court allowed the application and ordered removal of the caution. I would think that the reasoning in that case supports the argument of the applicant that the caution should be removed as the respondent lost the case. In the authority provided the court declined to maintain the caution after the dismissal of the case of the respondent.
8. My view is that having not sought any orders to maintain the caution pending hearing and determination of the appeal, the respondent cannot be heard to contest the application by the applicant for removal of the caution, as it was placed only pending hearing and determination of this case, which has now been decided.
9. For the above reasons, I allow the application. I order the Land Registrar, Migori, to remove the restriction placed on 18 September 2015 forthwith. The respondent will bear the costs of this application.
10. Orders accordingly.

DATED AND DELIVERED THIS 19 DAY OF MARCH 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MIGORI

Delivered in the presence of :

Mr. Adawo for the applicants



Mr. Ochoki for the respondent

Court Assistant : Michael Oyuko

