



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KIAMBU**  
**SUCCESSION CAUSE NO. 17 OF 2017**  
**FORMERLY SUCCESSION CAUSE NO. 1715 OF 1992-NAIROBI**  
**IN THE MATTER OF THE ESTATE OF NJOROGE CHEGE (DECEASED)**

**MBUGUA CHEGE.....APPLICANT**

**VERSUS**

**GEORGE NJOROGE CHEGE.....RESPONDENT**

**RULING**

1. Before me is a motion filed on 13<sup>th</sup> July, 2018, brought under Section 73 (1) of the Land Registration Act *inter alia*. The Applicant seeks an order that the caution lodged by the Respondent against the title in respect of the parcel No. known as LR.NO. GATAMAIYU/GACHOIRI/592 herein be removed.
2. The application is supported by the affidavit of **MBUGUA CHEGE**, the Applicant herein. He deposed that he is the registered owner of land parcel known as LR. NO. GATAMAIYU/GACHOIRI/592 which, pursuant to a ruling in this cause was ordered to be divided equally amongst nine beneficiaries of the deceased's estate. He contended that the caution placed by the Respondent has no legal justification and only serves to deny the beneficiaries their rightful share of the estate property.
3. The Respondent George **Njoroche Chege** filed grounds of opposition to the motion, on 8<sup>th</sup> August, 2018. To the effect that there is a pending appeal against the ruling of the Court (**Ngugi J**) that ought to be heard and determined before the order sought herein is granted; that the said appeal will be rendered nugatory if the orders sought are granted and that the Applicant is non-suited to bring the Application, not being an administrator of the estate. The court was urged to dismiss the application as the Applicant has not given sufficient reasons to warrant the court to act in his favour.
4. The application was disposed of by way of oral arguments. Mrs. Mburu for the Applicant submitted that the Notice of Appeal was filed a year ago but no appeal has been filed. She urged the court to order for the removal of the caution so that administration of the estate can be completed.
5. Mrs. Wachanga submitted on behalf of the Respondent. She argued that the deceased's estate has two administrators who are the correct parties to file the application herein, and not the present Applicant. It was submitted that the caution is the only way to protect the beneficiaries as the Applicant is registered as the owner of the suit property. She averred that the Respondent is awaiting the typed proceedings in order to file the appeal.
6. The court has considered the material canvassed by the parties pertaining to the motion filed on 13/7/18. It is not in dispute that the Respondent herein had lodged a caution in respect of the land parcel LR GATAMAIYU/GACHOIRI/592 in the duration of this dispute which goes back to 1973. The Applicant, one of the beneficiaries to the estate of the deceased herein, to which the suit land was found to belong, seeks the lifting of the caution so that distribution of the estate among the beneficiaries can take place. The Respondent's too pronged answer is firstly, that the Applicant is not an administrator of the estate and secondly, that the Respondent has preferred an appeal and therefore the caution ought to be left in place to protect the interests of beneficiaries entitled.
7. The court has perused the ruling of **Ngugi J** delivered on 15<sup>th</sup> March 2018. Any party aggrieved with the said ruling ought to file an appeal and in the pendency thereof, seek order to stay execution. A caution lodged against the suit property cannot be relied on as a substitute for a stay order, in a case where a court has determined the interests of the parties with finality as in this case. Secondly, the Applicant is not only a beneficiary himself but also the person in whose name the suit land is registered. He therefore has a right to approach this court as he has done if the administrators are unwilling to do so. There is in place, pursuant to the ruling of **Ngugi J**, a further Further

Amended Certificate of confirmation of grant in this case. In the absence of any order to stay execution, the distribution of the estate ought to proceed. More so in light of the age of this dispute. The application filed on 13<sup>th</sup> July 2018 is merited and is granted with costs.

**DELIVERED AND SIGNED AT KIAMBU THIS 5<sup>TH</sup> DAY OF MARCH 2020.**

**C. MEOLI**

**JUDGE**

**In the presence of:**

Mr. Karinga holding brief for Mr. Juma for Applicant

Respondent – No Applicant

Court Assistant – Ndege/Nancy