



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**MISC. CIVIL CASE NO. 30 OF 2020**

**THOMAS OCHIENG APOPA.....APPLICANT**

**VERSUS**

**ANJELINA NYAKESA OLOO.....RESPONDENT**

**RULING**

1. By an application dated 4<sup>th</sup> May 2020 and supported by the affidavit sworn by **Thomas O. Apopa** on the same date, the applicant seeks orders:

*1) That the application be certified as urgent and be heard on priority basis and exparte in the first instance.*

*2) That the Respondent had issued warnings that she is going to place a caution on the land parcel of Land No. North Ugenya/Simuri/1217 which is the personal property of the applicant.*

*3) That the applicant was seeking for the stay orders stopping the Respondent from placing a caution in the aforesaid parcel No. 1217.*

*4) That the orders sought be granted.*

2. In the supporting affidavit, the applicant deposes that the property named herein is his personal property as shown by the annexed copy of Title Deed issued on 15/10/2009; and that the Respondent is threatening to lodge a caution on the said title hence this court should issue orders stopping her from placing a caution or subdividing the said parcel of land until this application is heard and determination.

3. The court directed service of the said application upon the Respondent and further directed that the application can be canvassed by way of written submissions.

4. The affidavit of service filed in court on 19/5/2020 sworn by Evans Amatha shows that the Respondent was duly sworn on 11/5/2020 at her home at Miyare Primary School and she received the same and acknowledged service by signing on the same.

5. That notwithstanding, the Respondent has not filed any response to the application herein.

6. The Applicant also filed his written submissions dated 18/5/2020 reiterating his application and deposition in his affidavit.

7. I have considered the application as presented under Order 50 Rule 6 of the Civil Procedure Rules and Section 1A and 1B of the Civil Procedure Act. I have also considered the written submissions by the applicant. Albeit the application is not opposed, the main issue for determination is whether the same discloses any cause of action and therefore whether this court should grant the orders sought.

8. The application seeks for orders stopping (injuncting) the Respondent or her agents from placing a caution on the applicant's parcel of **land No. North Ugenya/Simuri/1217** which is the applicant's personal property.

9. The Applicant does not claim that the Respondent has lodged a caution on his title of land aforesaid; but that she is threatening to do so.

10. Even if that were the case that the Respondent intends to do so- lodge a caution on title of land belonging to the applicant herein, or that she has done so, the court that has competent jurisdiction to hear and determine such dispute of whether or not the Respondent has any right to caution the title of land is the Environment and Land Court (assuming that the applicant's application discloses any reasonable cause of action).

11. For now, and without delving into the merits of the scanty application, I must dismiss it from this court for the reasons that any dispute relating to a claim for ownership, title to and or occupation of land entirely falls within the jurisdiction of Environment and Land Court by dint of Articles 162(2) (b), 165(5) (b) of the Constitution and Section 13(1) (2) and (7) of the Environment and Land Court Act.

12. In **Nyutu Agro vet Ltd V Airtel Networks Limited (2015) e KLR**, citing with approval the decision in **Nova Chemicals Ltd vs Alcon International Ltd HC MISC APPL 1124/2002** echoing the locus classicus case on jurisdiction in **owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd (1989) KLR 1**, it was held inter alia:

***"....It is not in dispute that jurisdiction as well as the right of appeal must be conferred by law, not by implication or inference. If the power and authority of or for a court to entertain a matter (jurisdiction) is not conferred by law then that court has no business to entertain the matter."***

13. The question of whether or not the Respondent has any right or justification in placing a caution on the title of land belonging to the Applicant is for the Environment and Land Court to determine, and not the High Court.

14. Accordingly, this application fails by the way, for want of jurisdiction, as without jurisdiction, a court of law acts in vain. It must down its tools which I hereby do and strike out the application dated 4/5/2020 with no orders as to costs.

15. File closed. Orders accordingly.

**Dated, signed and delivered at Siaya this 26<sup>th</sup> day of May 2020.**

**R.E. ABURILI**

**JUDGE**