



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1589 OF 1994**

**IN THE MATTER OF THE ESTATE OF ASHFORD NJUGUNA NDUNI (DECEASED)**

**RULING**

1. The application before court is dated 2<sup>nd</sup> August, 2019 and seeks for one substantive prayer; that cautions dated 21<sup>st</sup> October, 1993 and 11<sup>th</sup> June, 2004 placed by John Kimani Njuguna and Susan Waihera Njuguna against property L.R. No. Dagoretti/Riruta/1512 be lifted.
2. The application is supported by the affidavit of the Applicant Jacinta Njeri Ashford dated 2<sup>nd</sup> August, 2019 wherein she indicates that she is unable to execute court orders as a result of the same.
3. The application was objected to by one Mary Wanjiku Njoki describing herself as the 5<sup>th</sup> Respondent in an affidavit dated 28<sup>th</sup> January, 2020 and wherein, she complains lack of involvement in the proposed subdivision of the land, further she states that she moved the Court of Appeal for stay of execution; the applicant has allowed strangers on the suit property, and she acts in bad faith and with impunity.
4. At the hearing of the application counsel for the respondent urged that the application ought to be filed in the Environment and Land Court; there is pending an application for revocation of grant dated 23<sup>rd</sup> January, 2013 as the grant was obtained fraudulently and there is pending an appeal against the decision of Musyoka J.
5. In reply counsel for the applicant urged that the caution do not serve any purpose; since this is a succession matter this court ought to determine the matter. Applicant is yet to be served with the appeal, the ruling of Musyoka J stands.
6. On record is a notice of intention to appeal filed on 18<sup>th</sup> July, 2018 seeking for typed proceedings. Further in the application objecting to the revival of caution is annexed an application dated 20<sup>th</sup> August, 2018 seeking for stay of execution pending appeal. Surprisingly the Applicant herein has not been served yet the application which is several years old. It is also not clear whether an attempt has been made to secure a date in the Court of Appeal.
7. For now, Musyoka J's ruling remains as not stay orders have been obtained.
8. In my view no much effort has been put in place by the respondent to bring this long outstanding matter to a closure and therefore it would be unfair and unreasonable in the circumstances of this case to allow an indolent litigant to delay such a matter that has been pending in court since 1994.
9. Consequently, I allow the application with costs.

**DATED DELIVERED and SIGNED THIS 23<sup>RD</sup> DAY OF JULY, 2020.**

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**ALI-ARONI**

**JUDGE**