



Ndirangu v Magua & 2 others (Environment and Land Miscellaneous Application E024 of 2022) [2023] KEELC 20067 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20067 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E024 OF 2022
JO OLOLA, J
SEPTEMBER 28, 2023**

BETWEEN

EDWARD MAINA NDIRANGU APPLICANT

AND

EDWIN NDUNGI MAGUA 1ST RESPONDENT

AGNES NDUNGI WANJIRU 2ND RESPONDENT

LAND REGISTRAR, NYERI 3RD RESPONDENT

RULING

1. By the Notice of Motion dated 22nd December 2022, Edward Maina Ndirangu (the Applicant) prays for orders:
 1. That the Honourable court be pleased to issue orders directing the Respondents to remove and/or lift the caution/restriction registered/placed against the Land Parcel L.R No. Mugunda/Rurii/BLK 1/Muthangira/9 on 3rd November, 2021 at the behest of Edwin Ndungi Magua and Agnes Ndungi Wanjiku claiming purchase interest; and
 2. That the costs of this application be provided for.
2. The application which is supported by an Affidavit sworn by the Applicant is premised on the grounds that:
 - (i) There exists a restriction against the said parcel of land lodged by the 1st and 2nd Respondent on 3rd November, 2021 claiming interest as purchasers;
 - (ii) The 1st and 2nd Respondents were at the time of sale aware that the said parcel of land had a caution since the title had been deposited as security at Kibera Law Courts as a subject in Criminal Case No. 2899 of 2015;



- (iii) The case at the Kibera Law Courts was concluded and the restriction imposed by the court was lifted; and
 - (iv) The 1st and 2nd Respondents went ahead and placed another caution before the Applicant could transfer the land to them and the same ought to be removed as it has impeded the transfer of the land.
3. Edwin Ndungi Magua and Agnes Ndungi Wanjiku (the 1st and 2nd Respondents herein) are opposed to the application. In an Affidavit of Reply sworn on their behalf by the 1st Respondent and filed herein on 13th February 2023, the two Respondents aver that the application as filed is frivolous, vexatious and a total abuse of the Court process and that the same ought to be dismissed with costs.
 4. The 1st and 2nd Respondents further aver that contrary to the Applicant's assertions, he has not come before this Court with clean hands as he is the one who has frustrated the completion and transfer of the land to the two Respondents. The Respondents assert that they were only being vigilant to protect their interest in the said property when they registered the caution.
 5. The Respondents further aver that since his acquittal from criminal charges at the Kibera Law Courts on 4th August 2022, the Applicant had declined or neglected to communicate to them on how to effect the transfer despite numerous requests being made and it is now apparent that the Applicant is unwilling to comply with the conditions in the Sale Agreement.
 6. I have carefully perused and considered the Motion as well as the response thereto by the 1st and 2nd Respondents. I have similarly perused and considered the submissions placed before me by the Parties herein. The Land Registrar Nyeri sued herein as the 3rd Respondent did enter appearance through the Office of the Honourable Attorney General. They did not however file any response to the application.
 7. By the application before me, the Applicant urges the Court to be pleased to issue orders directing the removal of the caution/restriction placed by the 1st and 2nd Respondents upon the parcel of land known as Mugunda/Rurii/Block 1/Muthangira/9. It is the Applicant's case that the two Respondents had bought a portion of the said parcel of land but before he could sub-divide the land and transfer their portion to them, the two lodged a caution which has now impeded the transfer of the land and hence the prayer for its removal.
 8. On their part, the 1st and 2nd Respondents aver that contrary to the Applicant's contention herein, it was the Applicant who had frustrated the completion of the sale and the transfer of their portion of land to themselves. They assert that by lodging the caution, they were only being vigilant for purposes of protecting their interest in the land.
 9. As it were, the process of removing a caution registered on any parcel of land is provided for under Section 73 and 78 of the [Land Registration Act](#), 2012 as follows:

“73.

- (1) A caution may be withdrawn by the cautioner or removed by order of the Court, or subject to sub-section (2) by order of the Registrar.
- (2) The Registrar, on the application of any person interested, may serve notice on the cautioner warning the cautioner that the caution will be removed at the expiration of the time stated in the notice.



- (3) If the cautioner has not raised any objection at the expiry of the time stated, the Registrar may remove the caution.
- (4) If the cautioner objects to the removal of the caution, the cautioner shall notify the Registrar, in writing, of objection within the time specified in the notice, and the Registrar shall, after giving the Parties an opportunity of being heard, make such order as the Registrar considers fit, and may in the order provide for payment of costs.”

10. On the other hand, Section 78 of the said Act provides thus:

“78.

- (1) The Registrar may at any time and on an application by any person interested or at the Registrar’s own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.
- (2) Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the Court may order a restriction to be removed, varied, or otherwise order as it deems fit, and may make an order as to costs.”

11. Arising from the foregoing provisions, it was apparent to me that a determination as to whether or not anyone stands to suffer any prejudice if the caution placed on any parcel of land is removed can only be made if the process of removing a caution as contemplated under the law has been complied with. That process requires the Applicant to first apply to the Registrar for the removal of the caution. In that application, the Applicant would give the reasons for seeking the removal of the caution. The registrar would then write to the cautioner to show cause why the caution should not be removed and thereafter proceed to make a determination after hearing the Parties.

12. In the matter before me, it was clear that other than being sued, as the 3rd Respondent herein, the Land Registrar, Nyeri had not been given an opportunity to deal with the issue in the manner that is contemplated under the *Land Registration Act*, 2012. All that the Applicant did was to write a demand letter dated 2nd December, 2022 to the 1st and 2nd Respondents demanding the removal of the auction within 14 days. The said letter written through the Applicant’s Advocate was neither copied to the 3rd Respondent herein nor was the 3rd Respondent asked in any other manner to facilitate the removal of the caution.

13. It follows that I find the application before me premature and misconceived. I dismiss the same with costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 28TH DAY OF SEPTEMBER, 2023.

In the presence of:

Mr. Edward Ndurangu - the Applicant in person

Mr. Ombongi holding brief for Gori for 1st and 2nd Respondents

No appearance for the 3rd Respondent



J. O. OLOLA
JUDGE

