



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 56 OF 2012**

***In the matter of the Estate of CIANTU GATUANYAKI (Deceased)***

**ANGELINA KANINI CIATU.....APPLICANT**

**V E R S U S**

**VIDES MARIGU CIATU.....RESPONDENT/ADMINISTRATOR**

**R U L I N G**

1. In the Summons General dated 10/10/2016, the applicant seeks for orders that:-

*i. The respondent be compelled to remove restriction/ caution placed in the land parcel No. KAGAARI/ KANJA/350 and/or forthwith complete the transfer by signing of R17 and RL 19 in favour of the name Angelina Kanini Ciantu in certificate of confirmation.*

*ii. That alternatively this court do order the deputy registrar to sign all transfer documents on behalf of the respondent.*

2. The grounds in support are contained in the supporting affidavit. It is deponed that the grant was confirmed on 1/08/2016. that the respondent's application for stay was dismissed on 14/09/2016. Further that an appeal was filed by the respondent but has no chances of success. The applicant states that she is of an advanced age and that she wants to execute the grant without delay.

3. The respondent in its replying affidavit opposes the application on grounds that the application raises land issues which this court has no jurisdiction to hear. He therefore urges the court to disqualify itself from hearing the matter and send it to another court.

4. I have perused the application, the grounds in support and in opposition of this application.

5. The position of th is case is as per the contents of the applicant's affidavit that the estate was distributed and certificate of grant issued on 1/08/2016.

6. The respondent was a protester in the confirmation of grant but was unsuccessful. She filed an application for stay pending appeal which was dismissed.

7. The caution on LR. KAGAARI/KANJA/350 was lodged by the respondent to protect her interest in the estate. The land is registered in the name of the deceased. The respondent has now refused to remove it to facilitate the execution of the grant leading to the filing of this application.

8. As concerns the issue of jurisdiction raised by the respondent, it is my considered opinion that this

court has jurisdiction to deal with a matter for removal of caution placed to protect the interest of a party in a succession cause. In a succession cause a party seeking a remedy related to the cause does not have to go to the Environment and Land Court to institute proceedings.

9. This is a subsidiary issue arising out of contested succession proceedings. I find that this court is possessed of jurisdiction to hear and determine this application.

10. It is not in dispute that this case has been concluded in favour of the applicant and that the respondent's application for stay was dismissed for lack of merit. The respondent has not obtained stay pending appeal from the Court of Appeal. It is not appropriate for the respondent to hold the applicant and the beneficiaries at ransom pending prosecution of his appeal.

11. It is my considered opinion that the caution placed on LR. KAGAARI/KANJA/350 does not serve any useful purpose now that this cause has been determined.

12. I find this application merited and allow it as prayed.

13. Each party to meet its own costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 22ND DAY OF MARCH, 2017.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Mr. Mutuma for Kamunyori for Respondent**

**Respondent present**