



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW NO. 20 OF 2009**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF THE MBEERE LAND DISPUTE TRIBUNAL CASE NO. 315 OF 2006**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE CHAIRMAN MBEERE LAND DISPUTE TRIBUNAL.....RESPONDENT**

**PAUL IRERI KANYOTI.....INTERESTED PARTY**

**NYONGA MUGO.....APPLICANT**

**RULING**

1. This application dated 27/10/2016 seeks for orders for removal of caution lodged against the title for L.R. Evurore/Nthambu/304. The second prayer is similar to the first one for it seeks for orders directing the Land Registrar Mbeere to remove the caution on the same subject matter.
2. The applicant relies on Bwonwonga, J.'s ruling delivered in these proceedings on 22/04/2015 which quashed the Land Disputes/Tribunal award ordering sub-division of L.R. Evurore/Nthambu/304 into three equal portions among three sons of one Mugo Mbarire the respondent's father who was also the applicant's grandfather.
3. The applicant states that since the respondent did not appeal against the ruling of the court, the caution ought to be removed.
4. The respondent opposed the application on grounds that the said caution continues to protect his interest in the land L.R. Evurore/Nthambu/304 in which he is entitled to 1/3 share. He says he is pursuing his interest in succession cause No. 191 of 2013 where the mother of the applicant inherited the whole parcel in disregard of share of the respondent. It is in order that the caution be retained pending disposal of the succession cause.
5. I have perused this court file which was a judicial review application seeking for order to the award of the Mbeere Land Disputes Tribunal case No.315 of 2006. The applicant successfully obtained the orders

in Bwonwonga J.'s ruling delivered on 22/04/2015.

6. My considered opinion is that upon conclusion of judicial review proceedings, the court becomes *funtus officio* and cannot entertain any other application. The application before me for removal of caution is not properly before this court and ought not to be entertained.

7. The respondent has annexed a copy of a protest against confirmation he has filed in succession cause. His protest is yet to be heard and determined. The applicant is well aware of this because he is said to have taken over the case from his deceased mother who was the administrator. It would be dishonest for the applicant to seek removal of caution whereas the protest is still pending before the succession court.

8. The gist of this matter is that this court has no jurisdiction to entertain the application for lifting the caution in these proceedings which have been concluded having spent their purpose.

9. I find the application incompetent and misplaced. It is hereby ordered struck out with costs to the respondent.

10. It is hereby so ordered.

**DATED, DELIVERED AND SIGNED AT EMBU THIS 13TH DAY OF DECEMBER, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the absence of the parties**