



Rarl Limited v Chief Land Registrar & another (Environment and Land Miscellaneous Application E178 of 2023) [2023] KEELC 22034 (KLR) (5 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22034 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E178 OF 2023
MD MWANGI, J
DECEMBER 5, 2023

BETWEEN

RARL LIMITED APPLICANT

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

LUCY NCEKEI KIMATHI 2ND RESPONDENT

(In respect of the application dated 23rd June 2023 seeking an order for removal of the caution lodged on the title to the suit property way back on 4th April 2012)

RULING

Background

1. By a notice of motion application dated 23rd June 2023, the Applicant herein seeks for an order that the caution entered against the Applicant's land Reference No. 1/759 (orig. No. 1/560/1) be removed.
2. The application is based on the grounds on the face of it and on the supporting affidavit sworn by one Faud Allie as well as the Supplementary Affidavit filed subsequently after the 1st Respondent's Grounds of Opposition.
3. The Applicant's case is that the 2nd Respondent registered the caution against the title to the suit property way back on 4th April 2012. The Respondent was claiming, as shown on the search attached as an annexure, 'an interest under section 116(1)(A) of the *GLA* (Cap 280)'.
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4. The Applicant asserts that the Cautioner has never had a proprietary interest on the suit property and has not provided concrete and justifiable reasons behind the caveat. The caution therefore, according to the Applicant, has no legal basis and its maintenance amounts to an infringement of the rights to use and enjoy the interests confirmed to the title to the land.



5. The Applicant avers that it has written twice to the Chief Land Registrar requesting for the removal of the caution but he has failed to remove the caution. In the premises the Applicant asserts that it is only fair and just that the orders sought be granted.
6. The court upon considering the application at the first instance directed that the application be amended to include the Cautioner as the 2nd Respondent in this matter. Further, the court directed that the application be served by way of substituted service by an advertisement in a newspaper of nationwide circulation and on a weekday. The Applicant complied as evidenced by the affidavit of service filed.
7. The 1st Respondent replied to the application by way of grounds of opposition whereby he averred that the deponent of the supporting affidavit had no exhibited any evidence to prove that he was a director/shareholder of the Applicant Company. Further that there was no evidence that the letters addressed to the Chief Land Registrar were received. The 1st Respondent insinuated that the Applicant had not exhausted all available remedies more so applying for the removal of the caution through the prescribed form. The 1st Respondent therefore asserted that the application was premature and amounted to an abuse of the process of court.
8. The Applicant responded to the 1st Respondent's grounds of opposition through a further affidavit where the deponent attached a copy of the CR 12 form to confirm that he was a director/shareholder of the Company. He too attached copies of the letters addressed to the 1st Respondent showing that they were duly received.

Court's Directions

9. The Court directed that the 2nd Respondent be served by way of substituted service after the Applicants were unable to trace and serve her with the application personally. Service was done as directed by the Court and as confirmed by the Affidavit of Service on record. The 2nd Respondent did not file any response to the application. The application was heard orally in the absence of both Respondents who had been duly served as confirmed by the affidavit of service on record.

Determination

10. I have carefully considered the application before me. From the copy of the certificate of official search attached to the supporting affidavit as an annexure, it is clear that the caution was registered on the title to the suit property on the same 4th April 2012. That is over 11 years ago.
11. Section 73(1) of the *Land Registration Act*, 2012 provides that a caution may be withdrawn by the cautioner or removed by order of the court.
12. A caution/caveat, as I have stated elsewhere, in my view, is a temporary measure to enable the cautioner seek relief(s) to protect his interests elsewhere; for example, by way of a civil suit or other forms of legal proceedings.
13. The Court of Appeal in the case of *Boyes Vs Gathure* (1969) EA 385 held that:-

“... a caveat is intended to serve a twofold purpose: on the one hand, it is intended to give the caveator temporary protection, and on the other, it is intended to give notice of the nature of the claim to the person whose estate in the land is affected and to the world at large.”
14. The caution/caveat the subject of this application has been in existence for over 11 years now. If the Cautioner had any intentions to take action to enforce her alleged claims against the land, she has had



more than enough time. I agree with the holding of my brother Judge E.K Wabwoto in the case of *Sammy Nganga Ngatiri S.S Vs. George Ngatiri & 2 Others* (2021) eKLR that a caveat/caution should only serve as a temporary measure and should not be used to limit or deprive the applicant of his right to property indefinitely.

15. Accordingly, I allow the Applicants' application herein and order the Chief Land Registrar, to remove the caution on land parcels L.R No.1/759 (orig. No. 1/560/1) forthwith.

16. I make no orders as to costs of this application.

It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF DECEMBER 2023.

M.D. MWANGI

JUDGE

In the Virtual Presence of:-

Mr. Otieno for the Applicant

N/A for the Respondents

Court Assistant: Yvette

M. D. MWANGI

JUDGE

