

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL AND LAND DIVISION

ELC CIVIL SUIT NO. 560 OF 2011

MOHAMED OMAR IBRAHIM..... PLAINTIFF

VERSUS

HALIMA O. IBRAHIM..... DEFENDANT

JUDGMENT

The plaintiff on 12th October 2011 filed the instant originating summons against the Defendant seeking the determination of the questions:

- i. Whether the caveat registered on the title **L.R. NO.36/1/219 Eastleigh Nairobi** by the Defendant should be withdrawn by the Defendant or removed by an order of this Honourable court and
- ii. Who should bear the costs of the summons,

The Plaintiff/Applicant swore a supporting affidavit dated 12th October 2011 and in the affidavit depones that he is the owner of Land **L.R.NO.36/1/219 Eastleigh Nairobi** pursuant to a confirmation of Grant dated 22/3/2010 annexed to the affidavit and marked “**MOI1**”. The applicant states that he learnt through the Registrar of Titles that the Defendant had placed a caveat on the property claiming beneficiary interest as per the copy annexed to the affidavit and marked “**M0I2**”. The applicant avers that the Defendant has no beneficial interest or any other interest in the property and there is no legal basis for sustaining the caveat and that the same ought to be removed.

The Defendant/Respondent was served with the originating summons by way of substituted service as ordered by the court on 23/3/2012 and on 19/9/2012 the court gave directions that the hearing of the originating summons do proceed by way of viva voce evidence. The Defendant did not enter any appearance and did not file any response to the originating summons. The court on 26/6/2013 granted leave to the applicant to serve hearing notice of the originating summons on the Defendant through her last known physical address at c/o P.O. Box 30089. The originating summons was fixed for hearing before me on 22/1/2014 and even though the Defendant had been served there was no appearance on her behalf.

The Plaintiff gave evidence reiterating the contents of his affidavit sworn in support of the originating summons. Upon review of the evidence and in the absence of any controverting evidence from the Defendant, I am satisfied that the Plaintiff is the legal owner and/or his entitled to ownership of the subject suit property having regard to the certificate of confirmation of grant to the estate of the late **Hadija Ibrahim Adan** which indicates the property **L.R. NO.36/1/219- Eastleigh Nairobi** was to be inherited wholly by the Plaintiff/Applicant.

The Defendant did not enter appearance and/or file any response and thus the beneficiary interest she claimed under the registered caveat has not been established and is unsustainable against the title. The court in the premises enters judgment in favour of the plaintiff and orders and directs the Registrar of Titles to remove the caveat registered against **L.R.NO.36/1/219 Eastleigh, Nairobi** by the Defendant herein. The costs of the suit are awarded to the Plaintiff.

Judgment dated and delivered at Nairobi this 27th day of March 2014

J. M. MUTUNGI

JUDGE

In presence of:

..... **PLAINTIFF**

..... **DEFENDANT**