



**REPUBLIC OF KENYA**

**High Court at Kitale**

**Civil Case 133 of 2012**

**HANAH NJERI NGUGI ::: PLAINTIFF.**

**VERSUS**

**DAVID KIARIE NGUGI ::: DEFENDANT.**

**R U L I N G.**

This is a ruling in respect of an application dated 19th November, 2012 brought under the provisions of section 3, 3A and 63 E of the Civil Procedure Act and Order 51 of the Civil Procedure Rules. The application is supported by the applicant's affidavit sworn on 19th November, 2012.

The applicant Hannah Njeri Ngugi who is said to be over 90 years seeks an order for removal of a caution lodged against title No. Trans Nzoia/Suwerwa/259. The applicant depones that she is the registered owner of the land aforementioned and that the respondent who is her son has lodged a caution against it. She therefore wants the caution removed so that she can sell part of the land to meet medical costs for her other son Sammy Ng'ang'a who is said to be suffering from a life long ailment. The applicant has annexed a copy of title deed, official search and a note from Provincial General Hospital Nakuru which indicates that Sammy Ng'ang'a aged 43 years suffers from a life long condition and that he suffers from renal failure.

The application was opposed by the respondent David Kiarie Ngugi through replying affidavit sworn on 30th November, 2012.

The application is further opposed through a supplementary affidavit of Sammy Ng'ang'a sworn on 3rd December, 2012. The respondent depones in his affidavit that the cautioned land belonged to his late father Ngugi Muchungu Karuu. The said land was registered in the name of the applicant after the demise of Ngugi Muchungu Karuu to hold it in trust for the applicant and his other siblings. He further deponed that upon transfer of the land into thje applicant's name, she started disposing off parts of it prompting him to lodge a caution against the land. He further deponed that contrary to the allegations that the applicant wants to sell part of the land to meet medical costs of Sammy Ng'ang'a, the said Sammy Ng'ang'a is not ailing. The said Sammy Ng'ang'a swore an affidavit disputing the allegations by the applicant. He deponed that he is in sound health and works for Tusker Mattresses in Nakuru and that there is no need for the applicant to sell family land to meet his non existent medical condition. He deponed that even if he were ailing, his employer is capable of meeting his medical expenses.

I have given due consideration to the application brought by the applicant as well as the opposition thereto by the respondent. This application was brought under certificate of urgency. The urgency according to the applicant is that she need to dispose off part of the land to meet the medical needs of one of her sons Sammy Ng'ang'a. The said Sammy Ng'ang'a has sworn an affidavit stating that he is not sick as alleged by the applicant who is his mother. It is not disputed that the land in issue was registered in her name by way of transmission upon the demise of her husband. This is therefore family land which is not only for the benefit of the applicant but also for the benefit of her other children, the respondent included. The applicant is advanced in age and her children have the right to protect the family land. Unlike in the past when a parent could successfully argue that a child had no interest in land registered in the name of a parent, the position has changed such that a parent cannot dispose off family land without consent of other family members. It is apparent that the applicant came to court with unclean hands. She claims on oath that one of her sons is sick and the same son has sworn an affidavit that that is not the case. Nothing could be further from the truth that the old lady is being misled by some family

members as alleged by the respondent. In the circumstances, I find that her application has no merits. The same is hereby dismissed with no order as to costs. I have not ordered for costs given that the parties herein are family members and given the age of the applicant who is said to be over 90 years old.

It is so ordered.

**[Dated and delivered at Kitale on this 29<sup>th</sup> day of January, 2013.]**

**E. OBAGA.**

**JUDGE.**