



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT THIKA**

**ELC MISC. APPLICATION NO. 32 OF 2021**

**BERNARD NDUNGU MWAURA.....1<sup>ST</sup> APPLICANT**

**JOSEPH NJUGUNA MWAURA.....2<sup>ND</sup> APPLICANT**

**PETER NJUGUNA MWAURA .....3<sup>RD</sup> APPLICANT**

**VS**

**JOICE WANJIRU THUO.....1<sup>ST</sup> RESPONDENT**

**FLORENCE WANGUI KIMANI.....2<sup>ND</sup> RESPONDENT**

**KIAMBU COUNTY LAND REGISTRAR.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicants filed the instant motion dated 12/2/2021 seeking orders THAT;

a. An order be directed to the Land Registrar, Kiambu County to remove and/or lift forthwith registered cautions onto parcels of land known as Land Reference Numbers **KIAMBU/ KANUNGA/1117**, **KIAMBU/KANUNGA/1118** and **KIAMBU/**

**KANUNGA/1119.**

b. Costs be in the cause.

2. The Application is based on the grounds on the face of it and the Supporting Affidavit of **Ivan Kipkoech Rono**, the Applicants' Counsel. He deposed that on 22/4/2013, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents sought interim orders to restrain the Applicants herein from dealing with LR Nos. Numbers **KIAMBU/KANUNGA/1117**, **KIAMBU/KANUNGA/1118** and **KIAMBU/KANUNGA/1119** (*the suit properties*) pending the hearing and determination of Nairobi ELC No. 479 of 2013. That simultaneously the 1<sup>st</sup> and 2<sup>nd</sup> Respondents lodged cautions on the suit properties which the 3<sup>rd</sup> Respondent duly registered. Counsel averred that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents Application for interim injunction was dismissed on 4/9/2014 upon the Court finding that the issue was res judicata. Copies of the suit properties' official searches and Ruling in Nbi ELC 479 of 2013 were annexed as **IKR1** and **IKR2**. That accordingly since the cautions were pegged on the outcome of the said suit, now defeated, the cautions ought to be removed forthwith.

3. The Application was served upon the Respondents but none of them opposed it. See Affidavits of Service of **Simon Githiomi** dated 12/10/2021 and 19/10/2021.

4. With leave of this Court, the Applicants filed a Supplementary Affidavit dated 31/1/2022 attaching copies of current official searches of the suit properties. However, I note that while the Affidavit shows **Jared Wanyoike** as the deponent, the jurat indicates **Simon Githiomi**. Undeniably the searches confirm that parcel 1117 belongs to Peter Njuguna Mwaura (*3<sup>rd</sup> Applicant*), Bernard Ndungu Mwaura (*1<sup>st</sup> Applicant*) is the registered proprietor of parcel 1118 and parcel 1119 is owned by Joseph Njuguna Mwaura (*the 2<sup>nd</sup> Applicant*). All the Respondents lodged the cautions on 6/12/2009 claiming beneficial interest.

5. The Application is premised on *inter alia* Sections 73 and 75 of the Land Registration Act (LRA). Sections 71 to 75 LRA outline the issue of placing of caveats on land and guidelines for deciding whether a caution ought to be removed, the Court should consider whether the Cautioner has a substantial point in his favour.

6. The Applicants have demonstrated that they are the registered owners of the suit properties. The official searches also confirm the

existence of the impugned cautions. The Respondents failed to file any objections for the Applicants' prayers despite service. This court is empowered under **Section 73 (1)** of the LRA to order for removal of cautions which states;

**73. Withdrawal and removal of caution**

(1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the Registrar.

7. In the Court of Appeal case of **Maria Nganga Gwaka Vs Charles Mwenzi Nganga, Civil Appeal No.287 of 2012 (2014) eKLR**, as quoted in **Magdalene Wambui Mbugua Muhia & 2 others v Charles King Kigwe & 3 others [2019] eKLR** where the Court held that:-

“When a caution is objected to by a proprietor of land affected thereby, the onus is upon the cautioner to justify the lodging of the said caution and the need for it to remain in place..... In the absence of any reasonable cause shown by the Respondent as to why the said caution should not be removed, the Application for the removal of the same must succeed”.

8. Guided by that decision and in light of the dismissal Ruling that was the basis for cautioning the suit properties, I am of the considered view that this is a proper case for the court to order removal of the cautions.

9. In the end the Application is allowed. I make no orders as to costs.

10. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 21<sup>ST</sup> DAY OF APRIL 2022 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of:**

Macharia for Applicants

Respondents: Absent

Court Assistant: Phyllis