



REPUBLIC OF KENYA

High Court at Kitale

Civil Miscellaneous Application 61 of 2012

KIPTARUS BINDO ::: APPLICANT.

VERSUS

BENJAMIN KIPTOO ::: RESPONDENT.

R U L I N G.

By an originating summons dated 29th November, 2012, the applicant Kiptarus Bindo prays for the following orders:-

(a) That this Honourable court be pleased to order that the caution registered against Title No. Kaisagat/Makonge Block 2/Karaus/193 on 24/7/2012 be removed forthwith.

(b) That the defendant be ordered to pay the costs of the application.

The originating summons was duly served upon the defendant who neither entered appearance nor filed any defence to the same. The applicant is father of the respondent. In his affidavit he deponed that he is the registered owner of Land Parcel No. Kaisagat/Makhonge Block 2/Karaus/193. He annexed a copy of title marked "KB1". Also annexed to his affidavit was a certificate of official search marked "KB 2" which shows that a caution was lodged against the title by Benjamin Kiptoo the respondent herein claiming beneficiary interest.

The applicant depones that he is a man aged 80 years and that he has five wives and a number of children. The respondent is his son whom he has given two acres and that due to his large family he has sold part of his land to about 10 people in order to raise school fees and maintain his wives and himself. When he instructed a surveyor to do survey work so that he can give titles to the various buyers, his son prevented the surveyor from carrying out his work. When he went to do a search at the Lands Registry, he found out that the respondent had lodged a caution against the title. He therefore wants to

have the caution removed so that he can transfer the land he has already sold to third parties who have taken possession of the same.

I have given due consideration to the application herein. The facts as put out by the applicant have not been controverted. If the applicant has sold part of his land to third parties, he should be let to transfer the same to them. He has deponed that he has already given land to his son who has sold part of it to a third party. The son cannot again caution the father's land for no apparent reason. Owners of land should be permitted to deal with their land as they wish subject of course to certain limitations as where it is matrimonial property being sold or the seller is selling the entire piece of his land without regard to his family. In the present case, there is nothing showing that the applicant is doing anything which the court ought to intervene and protect the interests of other family members. I find that the caution registered at the instance of the respondent is misplaced and ought to be removed. I allow the application with the result that the caution lodged against title no. Kaisagat/Makhonge Block 2/Karaus/193 should be removed forthwith. The applicant shall have costs of this application.

It is so ordered.

[Dated, signed and delivered in open court at Kitale on this 21st day of March, 2013.]

E. OBAGA.

JUDGE.

[In the presence of Mr. Kaosa for Mr. Samba for applicant.]

Court Clerk – Joan.]

E. OBAGA.

JUDGE.

21/3/2013.