



IN THE MATTER OF SECTION 133(1) OF THE REGISTERED LAND ACT, CAP 300 OF THE LAWS OF KENYA

GEORGE NJUGUNA KINUNU..... APPLICANT

VERSUS

NJERI KIBUI.....RESPONDENT

RULING

1. George Njuguna Kinunu the applicant in this matter has filed an Originating Summons dated 19th May 2011 pursuant to order XXXVII rule 8 of the Civil Procedure Rules Cap 21 laws of Kenya, Sections 1A, 3A of the Civil Procedure Act, seeking the following order that the caution lodged by the respondent against Title No. Ruiru/Ruiru East Block 2/799 be removed. According to the applicant the following questions are for determination:

- i. Does the respondent have any beneficial interest over Title No. Ruiru/Ruiru East Block 2/799 to warrant the caution placed over the said parcel of land by her?
- ii. Is the caution lodged by the respondent over Title No. Ruiru/Ruiru East Block 2/799 maintainable noting that the respondent has not established any alleged beneficial interest over the parcel of land?
- iii. Noting that the existence of the caution over the land continues to restrict sale of Title No. Ruiru/Ruiru East Block 2/799 to an innocent third party, one Mr. Charles Njoroge Kimani who had already bought the said piece of land, paid the purchase price and carried out mutation over the piece of land upon approval of the land registry. Should the caution be allowed to continue being in place?
- iv. Shouldn't an innocent third party be allowed to continue his land purchase process without undue interference?
- v. Should the caution place over Title to Ruiru/Ruiru East Block 2/799 be lifted?
- vi. Who is to bear the cost of this application?

2. The applicant filed a supporting affidavit dated 19/5/2011. He depones as follows; that him together with one Beth Mirigo Kinunu are the lawful and registered proprietors of Title No. Ruiru/Ruiru East Block 2/799, holding equal shares of 50/50 having acquired the parcel of land from the original proprietor one Beth Watiri Kanja. That on 2nd November, 2010 the respondent moved the land registrar and placed a caution over title no. Ruiru/Ruiru East Block 2/799 claiming beneficial interest over the parcel of land. That the respondent has not established any beneficial interest that she has over title no. Ruiru/Ruiru East Block 2/799 as claimed in the caution as she has no family relations with the proprietors and has never lived or settled on the said parcel of land either as a squatter or otherwise to enable her have any beneficial interest. As such the continued existence of the caution is only intended to forestall operations over the parcel of land. That on 25th February 2010 the estate of the late Beth Watiri Kanja moved court through succession Cause No. 25 of 2008 and successfully obtained grant of letters of administration in regard to the estate of the deceased. At no time ever did the respondent apply to have the letters of administration revoked on grounds that she had been left out of administration or of being a beneficiary as

she now claims nor did she raise the issue of having been a beneficiary of the estate or properties of the late Beth Watiri Kanja to whom Title No. Ruiru/Ruiru East Block 2/799 initially vested before administration. The respondent's claim that she has beneficial interest over the parcel of land is hence misappropriated, unlawful, farfetched and only intended to forestall dealings over Title No. Ruiru/Ruiru East Block 2/799. That on 8th September 2010 being one of the lawful and registered proprietor of Title No. Ruiru/Ruiru East Block 2/799, he sold his 50% share of Title No. Ruiru/Ruiru East Block 2/799 to one Mr. Charles Njoroge Kimanyi an innocent purchaser for value. That the third party has paid huge sums of the initial purchase price, carried out mutation pursuant to an approved subdivision plan by the physical planning authorities. Further, the third party has obtained consent by the land control board over subdivisions of the said parcel of land and allowing the unlawfully placed caution to continue existing will greatly forestall a lawful sale of a genuinely owned parcel of land. That the completion date for the sale is scheduled to take place. During this time, the purchaser will be required to officially obtain title of the parcel of land failure to which the sale will lapse and colossal amounts of money and time wasted on the basis of an unlawful caution. That it is only fair, legal and equitable that the unlawful caution placed over Title No. Ruiru/Ruiru East Block 2/799 be removed and the applicant be allowed to take back active possession of the parcel of land while at the same time the third party purchaser be allowed to rightfully obtain title through the purchase and conveyance that has already reached an advance stage.

3. In a further affidavit of George Njuguna Kinunu dated 11/7/2011 in response to the Respondent's replying affidavit, he depones that the respondent is blatantly and openly lying to court by alleging that she bought land Ruiru/Ruiru East Block 2/799 from a company known as Nyakinyua Investment company. That the share certificate that she has annexed in support of her claim is in the name of Lucia Murugi Kibui- a stranger to this suit and obviously not the respondent. The respondent's names are Njeri Kibui and not Lucia Murugi Kibui. That the respondent has not produced any evidence in support of her claim that she had initially made arrangements to have the said parcel of land registered in her name and that in the event that her allegations are true, which is denied, it is trite law that a first registration under the Registered Lands Act is indefeasible and cannot be impeached even on the basis of fraud or illegality. Beth Watiri's title was a first registration under Registered Lands Act. That the Respondent never raised or brought up the issue of fraud concerning land Ruiru/Ruiru East Block 2/799 which she now alleges. She has never instituted any claim with the police or C.I.D officials as would be expected of any fraud or illegal allegations/claim touching on a land issue. Her claims and allegations of fraud are thus unfounded and any calculated to delay transactions over Ruiru/Ruiru East Block 2/799- parcel of land in question.

4. The Respondent in her replying affidavit dated 4/7/2011 depones as follows; that she bought the land Ruiru/Ruiru East Block 2/799 from a company by the name Nyakinyua Investment Limited even before the same had been registered formally and a title issued. That together with one Beth Watiri Kanja they were members of the said company (Nyakinyua Investment Limited) she having joined the same before Beth Watiri. That she had made arrangements with the company to have the land formally registered in her name and a title deed issued to her by the Lands Department but which arrangements never came to fruition. That the land was never registered in the name of Beth Watiri Wanja as alleged and the only title deed issued in respect of the land is only that annexed to the applicants summons and marked GNK1. That indeed the registered proprietors thereof Beth Mirigo Kinunu and George Njuguna Kinunu could not have been registered proprietor of the same were it not for the fraud they perpetuated with the officials of Nyakinyua Investment Company Limited in collusion with the officials at the Ministry of Lands. That as a result of that fraud they are not bona fide proprietors of that land as their title is tainted with illegality. That there is a pending case before the Lands Disputes Appeal Tribunal at Nyeri where the issue of ownership of the said land is set to be canvassed. That the registered proprietors caused themselves to be registered as such vide succession proceedings with full knowledge of the existence of the said case.

5. Parties filed written submission which I have read and considered together with the affidavits filed and annexures attached. From what is deponed there is a caution that was registered by the respondent over land Ruiru/Ruiru East Block 2/799 on the 2nd of November 2010 as evidenced in the certificate of official search dated 11th April 2012. The applicants claim is that him together with Beth Mirigo Kinuni are the lawful registered owners of the suit land and that the respondent has no beneficial interest in the

same land as claimed in the caution. This is denied by the respondent who claims that she bought the said land from Nyakinyua Investment limited even before the sale was registered formally and a titled issued. To support this she has exhibited a share certificate NK1 No. 05175 in the name of Lucia Murugi Kibui of P. O Box 128 Gatundu. She claims further that she together with one Beth Watiri Kanja were members of the said company and that she had made arrangements with the company to have the land registered on her name but the same was not done nor was the land registered in the names of Beth Witiri Kanja as alleged as the only title that was issued is the one annexed as GKN1 in the names of Beth Mirigo Kinunu and George Njuguna Kinunu and that this happened because of a fraud that was perpetuated with the officials of Nyakinyua Investment Company Limited in collusion with the official of Ministry of Lands. She also claims that there is a dispute pending at the Lands Dispute Appeal Tribunal at Nyeri.

6. The Originating summons is brought under section 131 of the Registered Land Act CAP 300 (now repealed) which deals with cautions. Section 131 (1) (a) states as follows;

“ any person who claims the right, whether contractual or otherwise, to obtain an interest in any land, lease or charge, that is to say, some defined interest capable of creation by an instrument registrable under this act, may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same”

Section 131 of RLA CAP 300 now repealed is section 71 of The Land Registration Act, 2012, No. 3 of 2012. The issue as raised by the applicant is whether the respondent has a beneficial interest in the suit land. From what is exhibited by the respondent it is evident that the share certificate NK1 is not in her name but in the name of Lucia Murugi Kibui who is not a party to this suit. The said share certificate does not refer to the suit land or a plot number. What then is the respondent interest in the matter? I find that she has failed to demonstrate that she has a beneficial interest in the suit land as claimed as she has no title and the share certificate issued by Nyakinyua Investment Company Limited is not in her name nor does she explain how she got the share certificate bearing the name of person who is not a party in this suit. Her allegation at paragraphs 7 and 8 have not been supported by any evidence. She has also failed to annex any proceedings of the Lands Dispute Appeal Tribunal at Nyeri to demonstrate that the issue of ownership of the said land is yet to be canvassed. I therefore find having failed to demonstrate that she has a beneficial over title No. land Ruiru/Ruiru East Block 2/799, she ought not to have placed the caution over the parcel of land.

7. I further find that the caution lodged is not maintainable and is restricting the right of an innocent third party Mr. Charles Njoroge Kimani who has bought the piece of land as averred and demonstrated by the applicant through the attached agreement. I therefore find that the application has merit. The respondents counsel submission on the caution lawfully lodged cannot hold. There were also no particulars of the fraud as alleged to have been done nor evidence of the same by the respondents. On the Court’s jurisdiction the respondent has failed to demonstrate that there is a matter at the appeals tribunal. Under section 28 of the RLA CAP 300 (now repealed) ***“the rights of a proprietor acquired on 1st registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject”***

Section 28 of CAP 300 (now repealed) is now section 25 of The Land Registration Act, 2012 No. 3 of 2012. ***Section 27A states that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.*** Section 26 of The Land Registration Act ***provides that that the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restriction and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or () where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.*** The applicant has demonstrated that through a Court order in the Succession

Cause filed No. 25 of 2008 they acquired the suit parcel of land as shown in the certificate of confirmation of grant attached. He is the proprietor of the suit land and in the absence of proof of fraud, misrepresentation or un-procedural or corrupt scheme he remains the indefeasible owner. I therefore find that the applicant's case has merit and order that the caution place by the respondent over title No. land Ruiru/Ruiru East Block 2/799 be removed. Costs shall be borne by the respondent.

Orders accordingly.

Dated, signed and delivered this 31st August 2012

R. OUGO
JUDGE

In the Presence of:-

..... For the Applicant

..... For the Respondent

..... Court Clerk