



Murigu v The Land Registrar (Naivasha Office) (Environment and Land Miscellaneous Application E005 of 2022) [2022] KEELC 3992 (KLR) (25 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3992 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005 OF 2022
LA OMOLLO, J
JULY 25, 2022**

BETWEEN

HANNAH MUKUHI MURIGU APPLICANT

AND

THE LAND REGISTRAR (NAIVASHA OFFICE) DEFENDANT

(Originating from Nakuru CMCC No 546 of 1990 which was later transferred to the High Court and became Nakuru HCCC No 82 of 2000.)

RULING

1. The applicant filed a notice of motion application dated March 8, 2022.
2. The application seeks the following orders:-
 - (1) That the honourable court be pleased to issue an order to the Land Registrar Naivasha to remove the caution lodged on the land parcel Kijabe/Kijabe block 1/3045 by Patrick Ngari Mbachu who is now deceased.
 - (2) That Patrick Ngari Mbachu a brother to Peter Njogu Mbachu lodged a caution claiming ownership whose case was dismissed by this honourable court.
3. The application is supported by the affidavit of Hannah Mukuhi Murigu.
4. She deposes that she is the owner of the property known as Kijabe/Kijabe block 1/3045 and has annexed a copy of the title deed and official search.
5. She deposes that a caution was lodged in respect of the suit land by one Patrick Ngari Mbachu who is a brother of one Peter Njogu Mbachu in the year 1990.



6. She deposes that Patrick Ngari Mbachu claimed ownership of the suit parcel and filed a suit Nakuru CMCC No 546 of 1990 which was later transferred to the High Court and became Nakuru HCCC No 82 of 2000.
7. She deposes that this suit ie Nakuru HCCC No 82 of 2000 was dismissed on November 12, 2003 for want of prosecution. An attempt was made to revive it *vide* an application dated August 25, 2005. This application was also dismissed on December 15, 2006.
8. She deposes that it is in the interest of justice that the said caution be removed as it now over thirty years and the caution is still registered.

Analysis And Determination.

9. I have perused the copy of the official search dated February 9, 2022. It shows at entry No 5 that a caution was lodged pursuant to an order in the Chief magistrate’s court at Nakuru in civil suit No 546 of 1990.
10. I have also perused a letter to the respondent by Ms Mirugi Kariuki & Co Advocates asking that the restrictions placed on the parcel of land be removed on account of Nakuru CMCC No 546 of 1990 (later Nakuru HCC No 82 of 2000) having been dismissed.
11. I note, further, that the respondent has been served with the application and hearing notice of the application but chose not to file any response to the said application.
12. The power to remove a caution is derived from section 73 (1) of the [Land Registration Act](#) and it states as follow: -

“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.”
13. In [Christian Wafula Omusulo & 2 others Vs Pauline Jerotich and another](#) [2019] eKLR, the learned Judge held as follows;

“... The applicant is entitled to the removal of the caution as it does not serve any purpose judgment having been delivered dismissing the plaintiff’s originating summons. I therefore allow the application and direct that the Land Registrar removes the caution lodged on LR No Uasin Gishu/Kimumu/107. Each party to bear their own costs.”
14. In [Jane Wanjiku Mwangi and Another vs Nathan Ndegwa Njeru](#) [2020] eKLR, the learned judge cited with approval the decision in [Mucamo Vs Edward Kagane Kaguce](#) [2019] eKLR where the learned Judge sitting on appeal held as follows;

“The court has considered and re-evaluated the entire material on record and the reasons tendered by the trial court in its ruling dated July 14, 2016. The court has also considered the circumstances of the case and the nature of the application before the trial court. The court finds no error of law on the part of the trial court. The reasons given for allowing the application for removal of the caution were perfectly plausible. The respondent had succeeded in the suit. He had a decree in his favour against the appellant. There was no pending application for setting aside the judgement. There was no order for stay pending appeal in force at the time. There was surely no plausible reason why the application could not be allowed.”



15. In the same breath, I note that the suit, pursuant to which the caution was lodged was dismissed 19 years ago and efforts to revive It in the year 2005 also bore no fruit. I see no justification for leaving the caution to subsist on the land.
16. The overriding objectives of the *Environment and Land Court Act* is to enable the court to facilitate the just, expeditious, propiate and accessible resolution of disputes governed by this act. Section 1B of the *Civil Procedure Act* also calls upon this court to handle matters before it for the purpose of attaining the just determination of proceedings and to administer substantive justice without undue regard to technicalities.
17. It has been a long 32 years in the corridors of justice for the applicant. Litigation must come to an end.

Disposition.

18. In the final analysis and taking into consideration the circumstances of this case, the application dated March 8, 2022 is allowed in the following terms.
 - (1) An order is hereby issued directing the Land Registrar Naivasha to remove the caution lodged on the Land Parcel No Kijabe/Kijabe block 1/3045 by Patrick Ngari Mbachu.
 - (2) The applicant shall meet own costs.
19. It is so ordered.

DATED, SIGNED AND ISSUED AT NAKURU IN OPEN COURT ON 25TH DAY OF JULY, 2022.

L.A OMOLLO, JUDGE

25TH JULY, 2022.

