



**Muthoka v Makau & another (Miscellaneous Application
E014 of 2022) [2022] KEELC 3264 (KLR) (21 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3264 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS APPLICATION E014 OF 2022**

BM EBOSO, J

JULY 21, 2022

BETWEEN

MOSES MAKAU MUTHOKA APPLICANT

AND

STELLA NDETEI MAKAU 1ST RESPONDENT

LAND REGISTRAR, THIKA 2ND RESPONDENT

RULING

1. Through a notice of motion dated 2/3/2022, the applicant, Moses Makau Muthoka, [the applicant] sought an order that the caution lodged against the land register relating to land parcel number Thika Municipality/Block 24/346 by Stella Ndetei Makau [the 1st respondent] on 3/4/2019 be removed. The application was supported by an affidavit of even date sworn by the applicant. He deposed that he was the registered proprietor of the suit property. He added that on 3/4/2019, the 1st respondent procured registration of a caution against the land register. According to the applicant, the cautioner was a complete stranger and had no beneficial interest in the suit property. It was his case that the caution was an unlawful fetter on his right to property.
2. When the application came up hearing in the virtual court on 16/5/2022, the court directed the applicant to serve the 1st respondent through a prominent notice in either the Daily Nation or the Standard newspapers. The interpartes hearing of the application was set for 7/6/2022. Come the 7/6/2022, Mr Muhota, counsel for the applicant, informed the court that he was unable to effect service. The court further insisted that service had to be effected as per the directions of 16/5/2022.
3. Advertisement was subsequently placed in the Daily Nation newspaper on 14/7/2022, notifying the respondents about the suit and the hearing scheduled for 21/7/2022. An affidavit of service sworn on 14/7/2022 by Edwin Muhota Advocate was filed.



4. The key question for determination in the motion is whether the caution lodged against the land register relating to land parcel number Thika Municipality/Block 24/346 on 3/4/2019 by the 1st respondent should be removed. As can be discerned from the documents annexed to the affidavit in support of the application, without contrary evidence, the suit property belongs to the applicant. Secondly, the application is unopposed. Thirdly, from April 2019 when the caution was registered, it was expected that the cautioner would ventilate her claim in a court of law and obtain appropriate reliefs from court. A caution is not supposed to be a permanent fixture on a land register. There is no evidence to suggest that the cautioner moved the court for an appropriate relief.
5. Section 73 (1) of the [Land Registration Act](#) empowers the Court to remove a caution. It provides;

“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.”
6. The section has given power to the cautioner or the court or the Land Registrar to remove a caution. The Environment and Land Court (ELC) enjoys original jurisdiction over disputes relating to land.
7. Having observed and made a finding that the respondents were properly served and never filed responses, it is only just that the prayers sought by the applicant be granted.
8. In the ultimate, the notice of motion application dated 2/3/2022 is allowed in terms of prayers 2 and 3. There shall be no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 21ST DAY OF JULY 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Muhota for the Applicant

Court Assistant: Ms Lucy Muthoni

