

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.596 OF 2009

JOHN IHUGO MUNGAI.....PLAINTIFF
VERSUS
PETER KIHUHI NJUGUNA.....DEFENDANT

R U L I N G

1. Peter Kihuhi Njuguna who is the defendant in this suit has come to this court under Section 133(1) of the Land Registered Act seeking to have the caution lodged by the plaintiff against the suit property known as Kiambu/Munyu/222 removed. It is evident that the caution was lodged by the plaintiff with the Land Registrar on 5th May, 2010, and that the Land Registrar accepted the caution on the basis of the fact that the consent suit was pending. Subsequently, an application for an interlocutory injunction lodged by the plaintiff was rejected by this court.

2. I find that the caution which is still registered against the suit property is inconsistent with the order made by this court rejecting the application for interlocutory injunction. To have the caution remain registered against the suit property would have the effect of restraining the plaintiff from dealing with the suit property during the pendency of this suit, a matter which the court has in its ruling dated 1st March, 2010, found to be unmerited.

3. In the circumstances, I allow the defendant's application dated 25th June, 2010 and order that the caution lodged by the plaintiff and registered against the suit property be removed. Plaintiff shall pay costs of this application to the defendant. Orders accordingly.

Dated and delivered this 12th day of November, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Mwaura for the plaintiff/respondent
Advocate for the defendant/applicant absent
B. Kosgei - Court clerk