



RINGERA NAITIRA.....APPELLANT

V E R S U S

**GEOFFREY MURITHI
RINGERA(DECEASED).....RESPONDENT**

ROBERT KITHINJI M'RINGERA.....RESPONDENT

REGISTERED LAND

- **Caution – removal of caution s.....of the Registered Land Act. Cap 300 Laws of Kenya.**

R U L I N G

By an application brought by way of a Notice of Motion dated 18th March 2009, the Appellant herein sought two orders, namely:-

- (1) that all cautions, inhibitions and/or restrictions lodged on ABOTHUGUCHI/KITHIRUNE/784 be removed to enable the Appellant to effect the judgment of this court dated 28th January 2008, and
- (2) that the costs of the application be provided for.

The Motion was supported by the Affidavit of the applicant sworn on the 18th March 2009 and the grounds on the face of the Motion, basically that the Applicant is desirous of giving effect to the judgment so that this matter can come to a rest and all the affected parties can have the land registered in their names.

In response for the Motion, the Respondents, through Mr. M.M. Kioga & Co Advocates, their counsel on record filed grounds of opposition that:-

- (i) the judgment of the lower court has not been executed or implemented and that this application is aimed to defeat and forestall the plaintiffs from enjoying the fruits of their judgment;
- (ii) the applicant is dishonest and cannot be trusted by the respondents before he clearly binds himself to abide with the Judgment of both the Lower Court and of the High Court;

This application was urged before me on 8.10.2009, and both Mr. Kiambi (who appeared for the Applicant), and Mr. Kioga (who appeared for the Respondents) reiterated their respective arguments as set out above. Mr. Kiambi did however take exception to allegations of dishonesty on the part of the applicant and submitted that the application was made in good faith because the applicant is unable to give effect to the judgment unless the inhibitions are removed.

Under the Registered Land Act (Cap 300, Laws of Kenya) s.133(2) where land has a caution registered against the title thereto, the Registrar of Lands must give the cautioner notice of any application

to remove it and of his right to object to it (removal) *ibid* s.133(2)(b).

Accordingly to the Record of Appeal, a caution was placed upon the suit land on 14.10.1993 by Geoffrey Murithi Ringera, the 1st Respondent herein. Under the Registered Land Act, that is the person who is the cautioner and to whom the Applicant should address his notice, and not the court. For removal of the caution the applicant does not say in his affidavit in support of the motion either that he has given notice to the Land Registrar to remove the caution, or that the Land Registrar has failed to give notice to the cautioner for his consent or objection to the removal of the caution.

There may then be some justification on the part of the Respondents that if the caution was removed, avenue would have been found for the applicant to deal with the land in his own way, and ignore the court's judgment given in the Respondents favour in Meru Chief Magistrates Court Civil Suit No. 779 of 1993 and affirmed by this court in Meru H.C. Appeal No. 60 of 1999 on which cases, the current application is purportedly founded.

I have examined both the record and judgment of the lower court in **CMCC No. 779 of 1993**. I have also perused the Record of Appeal and judgment of this court dismissing the applicant's Appeal and affirming as stated above the lower court's judgment.

To recap for the record, and the conclusion to be drawn on this application the Respondents (original Plaintiffs) sued the Defendant(original defendant) for a declaration that the Defendant holds half share of title in land parcel No. **ABOTHUGUCHI/KITHIRUNE/784** in trust for the Plaintiffs (Respondents) herein. The plaintiff also sought for orders that the Defendant do transfer half share of the suit land or 2.15 acres to the Plaintiffs. The plaintiffs also sought suit costs of the suit and interest thereon. The plaintiffs are sons of the Defendant by his senior or 1st wife.

The lower court in a judgment delivered on 24th April 1999 granted the Plaintiff(Respondents) other prayers except the prayer for costs which the learned trial magistrate in my view properly ordered to be borne by each party.

The Applicant (Defendant) appealed against the judgment of the lower court. The appellants appeal was dismissed by this court (Hon. Mr. Justice Isaac Lenaola) in a judgment delivered on 28th January 2007, that is nearly three years ago.

In my considered view, the problem in giving effect to the lower courts judgment as affirmed by this court is not the existence of the caution of 14.10.1993, but rather the manifest reluctance by the Applicant to give effect to that judgment. It is really quite simple as Mr. Kioga learned counsel for the Respondents put it. All that the Applicant needs to do is to invite a surveyor to carry out an accurate sub division of the land fill up the Mutation Forms under the Registered Land Act, and together with the Respondents present the forms to the Land Registrar with the appropriate application for removal of the Caution and have both (the application for removal of the caution and the Transfer in favour of the Respondents) registered simultaneously. It may not be in the interests of the Respondents to have the caution removed while the Applicant sits on the entire title, to the land and quite deliberately dilly-dallying on giving effect to the judgment of the court.

In the premises, I find and hold that the application dated 18th March 2009 has no merit at all and I would on my part, dismiss it with costs to the Respondents.

There shall be orders accordingly.

Dated, signed delivered at Meru this 16th day of October 2009

M. J. ANYARA EMUKULE

JUDGE