



Simiyu v Land Registrar Bungoma (Environment and Land Miscellaneous Application E014 of 2022) [2022] KEELC 15032 (KLR) (24 November 2022) (Ruling)

Neutral citation: [2022] KEELC 15032 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2022
EC CHERONO, J
NOVEMBER 24, 2022

BETWEEN

ELIUD WEKESA SIMIYU APPLICANT

AND

LAND REGISTRAR BUNGOMA RESPONDENT

RULING

1. What is before is an ex-parte notice of motion application brought under certificate of urgency dated August 5, 2022 and filed in court on August 8, 2022. In the said application, the applicant who is acting in person seeks the following orders;
 1. (Spent)
 2. That this honourable court be pleased to remove caution lodged on land parcel No South Kanduyi/east Bukusu/12361.
 3. Costs be in the cause
2. The application is premised on seven grounds shown on the face of the said application and the affidavit in support thereof sworn by the applicant on even date.
3. The averments contained in the grounds in support of the application are the same issues deposed by the applicant in the supporting affidavit. In a nutshell, the applicant contends that he is the proprietor of a leasehold interest in land parcel No Southkanduyi/east Bukusu/12361 whose lease term has expired and that he owes the county Government of Bungoma an accumulated land rates.
4. The applicant further stated that he is under constant threats from the County Government of Bungoma who want to reposes the land due to the accumulated land rates.



5. The applicant also deposed that the land rates arrears can only be paid when orders of removal of caution have been removed or when the caution has been removed. The applicant further stated that he is a father with a polygamous family and hailing and wants to pay the land rates and thereafter share his land amongst all the beneficiaries before he dies so that they do not have to go through succession proceedings after his demise.
6. The application is unopposed as no grounds of opposition nor a replying affidavit was filed in response thereto.

ANALYSIS AND DETERMINATION

7. I have considered the notice of motion application, the supporting affidavit and the applicable law.

8. Section 73 of the *Land Registration Act* No 3 of 2012 provides as follows;

Withdrawal and removal of caution

1. A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the registrar;
 2. The registrar, on the application of any person interested, may serve notice on the cautioner warning the cautioner that the caution will be removed at the expiry of the time stated in the notice
 3. If a cautioner has not raised any objection at the expiry of the time stated, the registrar may remove the caution.
 4. If the cautioner objects to the removal of the caution, the cautioner shall notify the registrar, in writing, of the objection within the time specified in the notice, and the registrar shall, after giving the parties an opportunity of being heard, make such order as the registrar considers fit, and may in the order provide for the payment of costs-----“
9. It is clear from the above provisions of the law how a caution placed on a parcel of land can be removed. A caution can either be withdrawn by the cautioner himself or removed by an order of the court or the registrar. The applicant herein is seeking to remove the purported caution by a court order. I have looked at the application and the supporting affidavit and find no annexures indicating that a caution has been placed on land parcel No S Kanduyi/e Bukusu/12361 and the name of the cautioner, if any. This application is commenced by the applicant against the Land Registrar, Bungoma. There is no evidence that the purported caution was placed by the respondent. I have looked at the affidavit of service by one Eric Echesa Okumu sworn on August 29, 2022. At paragraph 6 thereof, the process server deposed as follows;

“6. That the respondent accepted service, signed and stamped on the principal copy then directed me to serve Catherine Namalwa Shem whom she referred to as the cautioner.”

10. The process server in his affidavit of service confirms that the respondent is not the cautioner but Catherine Namalwa Shem who is not a party in these proceedings. If the said Catherine Namalwa Shem is indeed the cautioner, my view is that she was the proper party in these proceedings and not the land registrar. A caution may be withdrawn by a cautioner himself, through an order of the court or by an order of the land registrar. A land registrar is one of the entities mandated by statute to investigate notices for removal of cautions placed on parcels of land and give directions accordingly. There is no iota of evidence that the land registrar, Bungoma who is the respondent herein placed the purported caution on the suit property.



11. The upshot of my finding is that the notice of motion application dated August 5, 2022 is frivolous, vexatious and an abuse of the court process. The same is hereby dismissed with no order as to costs. It is so ordered

READ, DELIVERED AND SIGNED IN THE OPEN COURT AT BUNGOMA THIS 24TH NOVEMBER, 2022.

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. The Appellant Present
2. The Respondent - absent

