



**Kibugi v Kibugi & 2 others (Environment & Land Case 759 of 2017)  
[2022] KEELC 15434 (KLR) (20 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15434 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 759 OF 2017**

**JG KEMEI, J**

**DECEMBER 20, 2022**

**BETWEEN**

**PETER NJUGUNA KIBUGI ..... PLAINTIFF**

**AND**

**NAOMI WAIRIMU KIBUGI ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. On the July 13, 2015 the Plaintiff filed this suit against the Defendants seeking the following orders;
  - a. That an order be issued directing the 2<sup>nd</sup> Defendant to remove the caution lodged on parcel No Ngenda/nyamangara/1322 by the 1<sup>st</sup> Defendant.
  - b. Costs of the suit
2. It is the Plaintiff's case that he is the beneficial owner of the suit land having devolved to him following a successful succession proceeding in HCCC No 44 of 2006 Thika as seen by the confirmation of grant of administration dated February 8, 2010. That the 1<sup>st</sup> Defendant has lodged a caution on the property claiming beneficial interest without any legal cause or justification. That the Plaintiff moved the 2<sup>nd</sup> defendant under the relevant provisions of the law to remove the caution but the 2<sup>nd</sup> Defendant has remained adamant and indifferent to the Plaintiff's cause necessitating the filing of the suit. The Plaintiff urged the Court to remove the caution so as to facilitate the implementation/execution of the confirmation of grant of letters of administration.
3. The 1<sup>st</sup> Defendant entered appearance on the April 9, 2015 but failed to file a statement of defence in the suit.



4. The 3<sup>rd</sup> Defendant filed a Memorandum of Appearance on the August 10, 2015 but failed to file a defence in the suit.
5. On the September 25, 2017 the file was transferred to Thika ELC for hearing and determination.
6. The hearing of the suit proceeded *ex parte* despite service of the hearing notice to the parties.
7. PW1 – Peter Njuguna Kibugi testified and stated that he inherited the land from his late mother Njeri Kibugi. That the 1<sup>st</sup> Defendant has lodged a caution against the suit land. That through his advocates, he requested the Land Registrar to remove the caution in vain. He relied on his witness statement as evidence in chief and produced an assortment of documents marked as PEX No 1-60. That he lives on the land and the land devolved to him and his late brother Herman Kibugi.
8. The Plaintiff filed written submissions through the firm of Koceyo & Co Advocates which I have read and considered.
9. Having read and considered the pleadings the evidence, the written submissions and all the material placed before me I find that the key issue for determination is whether the caution should be removed.
10. It is not in dispute that the suit was heard *ex parte* but with notice. It is also not disputed that the Plaintiff is a beneficiary of the land given the confirmation of grant issued by the Court in the estate of the late Njeri Kibugi, his mother.
11. I have seen the official search dated the February 16, 2015 which shows that a caution was lodged by the 1<sup>st</sup> Defendant claiming beneficial interest on the land. This Court is empowered under Section 73 (1) of the [LRA](#) to order for removal of cautions which states;
 

“73. 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.”
12. The defendants failed to file defences to the suit. Despite the 1<sup>st</sup> Defendant informing the Court that the 1<sup>st</sup> Defendant was deceased there was no evidence placed before the Court in form of a death certificate or such other evidence. It is to be noted that the 1<sup>st</sup> Defendant’s Counsel is still on record.
13. Given that the Defendants have had notice of the removal of the caution since 2015 when they were served with the summons in the suit, and elected not to challenge the same, the presumption is that the defendants had no defence to the claim.
14. In the Court of Appeal case of [Maria Nganga Gwaka Vs Charles Mwenzi Nganga](#), Civil Appeal No 287 of 2012 (2014) eKLR, as quoted in [Magdalene Wambui Mbugua Mubia & 2 others v Charles King Kigwe & 3 others](#) [2019] eKLR where the Court held that:-
 

“When a caution is objected to by a proprietor of land affected thereby, the onus is upon the cautioner to justify the lodging of the said caution and the need for it to remain in place... In the absence of any reasonable cause shown by the Respondent as to why the said caution should not be removed, the application for the removal of the same must succeed.”
15. The caution having subsisted on the title without any justifiable reason, I concur with the Plaintiff that it is preventing the implementation of the confirmation of grant and inhibiting the quiet enjoyment and use of the land.
16. In the end I enter judgment in favour of the Plaintiff as prayed.



17. I make no orders as to costs.

18. It is so ordered

**DELIVERED, DATED AND SIGNED AT THIKA THIS 20<sup>TH</sup> DAY OF DECEMBER, 2022 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Koceyo for Plaintiff

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants – Absent

Court Assistant – Phyllis / Kevin

