

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI(MILIMANI LAW COURTS)

CIVIL APPEAL 284 OF 2000

WANJIKU WANJARA)

FRANCIS BORO WANJARA) APPELLANTS

TERESIA NJOKI WANJARA)

VERSUS

JOHN WANYOIKE WANJARA RESPONDENT

RULING

At the commencement of the hearing of the Notice of Motion dated 30th June, 2004, Counsel for the Respondent raised a Preliminary Objection as per his Notice of Preliminary Objection dated 21st July, 2004 on the following grounds:

1. THAT the said application lacks any basis as this Honourable Court is functus officio.
2. THAT this Honourable Court does not have the jurisdiction to entertain such an application in view of the provisions of the Registered Land Act, Cap 300, Laws of Kenya.
3. THAT the orders sought by the appellant/applicant ought first to be requested for at the appropriate Land Registrar's office as required by law.
4. THAT by this Honourable Court entertaining such an application the same will amount to infringing on a party's guaranteed constitutional right to be heard. Counsel for the Respondent argued that under Section 133 (2) of the Registered Land Act, Cap 300, the Applicant must first apply to the Land Registrar to remove the caution registered against the suit land, and only after the Registrar has determined the same, may an applicant apply to the High Court.

This argument is wholly untenable, and without any basis in law. Section 133 (1) of the Registered Land Act clearly outlined the methods by which a Caution may be removed.

It states as follows:

“133 (1) A Caution may be withdrawn by the cautioner or removed by the Court or subject to subsection (2) by order of the Registrar.” (underlining mine).

In any event, this Court's original and unlimited jurisdiction cannot be ousted by any other procedure.

Accordingly, the Preliminary Objection is dismissed with costs to the Applicant/Appellant.

Dated and delivered at Nairobi this 13th day of October, 2004.

ALNASHIR VISRAM

JUDGE