



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC MISCELLANEOUS APPLICATION NO. E001 OF 2020

PATRICK WANYONYI SIBOKO.....PLAINTIFF

VERSUS

LAND REGISTRAR – BUNGOMA.....DEFENDANT

R U L I N G

PATRICK WANYONYI SIBOKO (the Applicant herein) is the registered proprietor of the land parcel **NO KIMILILI/KIMILILI/2303** (the suit land) since 8th February 1994 as per the Certificate of Official Search annexed to his Notice of Motion dated 12th October 2020.

By that Notice of Motion which is predicated under the provisions of **Section 73 (1) of the Land Registration Act, Sections 3A and 63 (e) of the Civil Procedure Act and Order 51 of the Civil Procedure Rules**, he seeks the following orders: -

1. **That the caution lodged on the land parcel NO KIMILILI/KIMILILI /2303 be removed.**
2. **That the orders issued herein be served upon the LAND REGISTRAR BUNGOMA for compliance.**
3. **Costs of the application be provided.**

The application is premised on the grounds set out therein and is also supported by the Applicant's affidavit dated 12th October 2020.

The gist of the application is that in the month of June 2020, the Applicant went to the **LANDS OFFICE BUNGOMA** for the purpose of transferring the suit land to his children. He was however shocked to discover that a caution had been placed thereon. Upon enquiry, he was informed that the caution had been placed on the suit land pursuant to orders issued in **KAKAMEGA HIGH COURT CIVIL CASE No 24 of 1994**. He therefore proceeded to **KAKAMEGA HIGH COURT** and upon perusal of the said case file, he found that the parties were strangers to him and the land subject of that suit was infact parcel **NO KAKAMEGA/ SHIKULU/430** and not the suit land. He therefore filed this application as the caution has no merit and is only intended to frustrate the Applicant who is now aged 85 years.

Though personally served with the Notice of Motion, the **LAND REGISTRAR BUNGOMA** whose name is indicated as **HELLEN A. OJWANG** did not file any response to the application nor attend Court. The application is therefore not opposed.

The Applicant annexed to his application some pleadings in respect of **KAKAMEGA HIGH COURT CIVIL CASE No 24 of 1994** which were however not very legible. Bearing in mind that he is a prose litigant and quite old, I called for the file from **KAKAMEGA COURT** for my perusal. Upon perusal of the said file, I established firstly, and as averred by the Applicant, that indeed the subject matter in that file was land parcel **NO KAKAMEGA/SHIKULU/430** and not the suit land. Further, there were no orders in that file ordering that any caution be placed on the suit land or even the land parcel **NO KAKAMEGA/ SHIKULU/430**. That suit was infact dismissed by **H.P.G WAWERU J** on 13th June 2002 for want of prosecution. I will therefore be interested to know on what basis the **LAND REGISTRAR BUNGOMA** placed a caution on the suit.

Having said so, it is clear that the suit land was wrongly cautioned. **Section 73(1) of the LAND REGISTRATION ACT** provides as follows: -

“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.”

Pursuant to that provision, I make the following orders: -

1. The caution lodged on the land parcel NO KIMILILI/KIMILILI/2303 be removed forthwith.

2. The LAND REGISTRAR BUNGOMA MS HELLEN A OJWANG be summoned to appear before this Court on 11th February 2021 at 9 a.m.

3. No orders as to costs.

Boaz N. Olao.

J U D G E

11th February 2021.

Ruling dated, delivered and signed in Open Court at **BUNGOMA** this 11th day of February 2021.

Applicant present

Boaz N. Olao.

J U D G E

11th February 2021.