



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYERI**

**ELC CASE NO. 253 OF 2013**

**WACHIRA WAMBUGU.....APPLICANT**

**VERSUS**

**NYERI COUNTY LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**

**SAMUEL KARENJU WACHIRA.....2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

The Applicant who is acting in person filed the Notice of Motion dated 3<sup>rd</sup> November 2020 seeking the following orders:-

***(1) That the Honourable Court be pleased to make orders directing Nyeri County Land Registrar to remove caution or cautions lodged by the 2nd Respondent, Samuel Karenju Wachira in respect of L.R. parcel Nos. CHINGA/GATHERA/5226 and CHINGA/GATHERA/5337 forthwith.***

***(2) That the costs of this application be borne by the Respondents.***

***(3) Any other or better relief that this Honourable Court may deem fit to grant.***

The application is premised on grounds apparent on the face of the application and the affidavit of the applicant supported by numerous annexures thereto. The application is opposed with a replying affidavit filed by the 2nd respondent and sworn on 7th December 2020.

The applicant filed a rejoinder to the 2nd respondent's replying affidavit by way of a further affidavit sworn on 8th December 2020.

**Summary of Facts**

The applicant states that he is the registered proprietor of land parcels No. CHINGA/GATHERA/5226 and CHINGA/GATHERA/5337 both of which have been placed a caution by the 2nd respondent claiming beneficial interest. The applicant contends that he had sued the 2nd respondent and one Stanley Thiongo in this case seeking for permanent injunction orders restraining the two from entering, remaining or in any other manner interfering with his peaceful use and enjoyment of his two properties.

After the suit was heard, the Court rendered herself by granting him the orders sought. He annexed a copy of the decree issued on 1st October 2018. The applicant also annexed a copy of certificate of official search showing he is the absolute and indefeasible proprietor of the two parcels of land. The applicant further stated that on 1st October 2020, he wrote to the County Land Registrar Nyeri requesting him to remove the cautions placed on his two parcels of land on the strength of the judgment and decree of this

Court and on 17th September 2020, the Land Registrar, Nyeri County issued a Notice of intention to remove the said cautions to the 2nd respondent within a period of 30 days but the 2nd respondent failed to remove the same after the lapse of the 30 days' notice. He then approached the Land Registrar to remove the cautions after the lapse of the 30 days' notice but the Land Registrar declined necessitating the present application.

In his response to the application, the 2nd respondent admitted that indeed the applicant who is his father had sued him and his brother Stanley Thiongo Wachira in this suit and judgment was given in his favour whereby a permanent injunction was issued by the Court and that they have been complying with the orders of the Court. The 2nd respondent also deposed that though the applicant wrote to the Land Registrar to remove the caution, there was no Court order compelling the Land Registrar to remove the same. The 2nd respondent further stated that his father, the applicant herein owns several properties which are well within his knowledge and in collaboration with his second

wife, they have sold some properties and vehicles and that he is now in the process of selling the suit properties where they have built and have lived with their siblings which actions will deny them their inheritance and beneficial interest.

By way of rejoinder, the applicant stated that he is blessed with nine (9) children and that he has given his sons namely Samuel Kamenyu Wachira, Stanley Thiongo, Joseph Kabuu, Peter Kanyari and George Karuku land parcel No. CHINGA/GATHERA/5226 measuring approximately five (5) acres. He stated that his two daughters never reside in the said land as they are happily married and settled with their husbands. He further stated that he has given his unmarried daughter Lilian Njoka a portion in L.R. CHINGA/GATHERA/5337 and one John Muhoho who occupy a separate parcel of land.

He stated that all his children are comfortable in the manner he has settled them except the 2nd respondent and his brother Stanley Thiongo who have all along been in conspiracy to frustrate his intentions of having the suit properties officially transferred to his children during his life time. The applicant further stated that the respondent is a grown up person who is now capable of working hard to acquire his own properties rather than depending wholly or waiting to inherit everything that he owns without minding about his welfare.

**Legal Analysis**

The 2nd Respondent Samuel Karenju Wachira has admitted in his replying affidavit that the Court entered judgment in this suit whereby him together with his brother Stanley Thiongo Wachira were restrained by permanent injunction from occupying and using portions of the plaintiff/applicant's land which the plaintiff/applicant has not granted them permission to use or occupy. The applicant/plaintiff in his supporting affidavit and the further affidavit stated that he gave the respondents each one acre in land parcel No. CHINGA/GATHERA/5226 whereby they have developed and are occupying with their families. A copy of the decree is annexure to the supporting affidavit. The respondent did not appeal against the said judgment. In fact the 2nd respondent admitted that they are in compliance of the Court order. The respondent Samuel Karenju Wachira seems disgruntled after his father the applicant herein married a second wife following the death of his biological mother.

I say so because there is no evidence shown that the applicant is in the process of selling the suit properties. Even assuming the applicant wants to sell the suit properties, nothing in law can stop him from disposing properties which he acquired during his youthful age for purposes of enjoying

during old age. The respondents are grown up persons who have been given portions of land by the applicant out of his moral obligation as a parent and not a legal obligation. It is for the respondents who are now adults to use their energies to create their own wealth and not prey on the applicant's property. The respondents cannot force their father, the applicant herein to give them land which he acquired through hard work or seek to "inherit" his properties while still alive. The upshot of my finding is that the Notice of Motion dated 3rd November 2020 is merited and the same is allowed in the following terms:-

***(1) The Land Registrar, Nyeri County is hereby directed to remove the caution placed by Samuel Karenju Wachira on land parcels No. CHINGA/GATHERA/5226 and CHINGA/GATHERA/5337 forthwith.***

***(2) The costs of this application to be borne by the respondents.***

**RULING READ, DELIVERED AND SIGNED IN OPEN COURT AT KERUGOYA THIS 19TH DAY OF MARCH, 2021.**

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**E.C. CHERONO**

**ELC JUDGE**