



**REPUBLIC OF KENYA**

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

**ELC SUIT NO. 1800 OF 2002**

**1. VERONICAH WANJIRU THAIRU**

**2. ALICE NYAGICHUHI KARANJA**

**3. MARGARET WAMBUI KARIUKI (as Administrators of**

**NJERI MWAMBA, Deceased).....PLAINTIFFS**

**VERSUS**

**JOHN KIMANI MWAMBA.....DEFENDANT**

**RULING**

By a judgment delivered herein on 31<sup>st</sup> March, 2017, the court ordered that the registration of one, Mwamba Kamau and the defendant John Kimani Mwamba as proprietors of all that parcel of land known as Title No. Ngenda/Gathage/665(the suit property) on 24<sup>th</sup> July, 2001 and 21<sup>st</sup> December, 2001 respectively be cancelled and the suit property be reverted to the name of Njeri Mwamba. The court ordered further that the plaintiffs as the administrators of the estate of Njeri Mwamba be registered as the proprietors of the suit property in equal shares in accordance with the Certificate of Confirmation that was issued in High Court Succession Cause No. 1478 of 1999.

The said judgement and the decree that was extracted therefrom on 31<sup>st</sup> March, 2017 has not been stayed or varied. Following that judgment, the registration of Mwamba Kamau and the defendant, John Kimani Mwamba as proprietors of the suit property was cancelled and the property reverted to the name of Njeri Mwamba.

What is now before me is an application brought by the plaintiffs seeking the following orders;

1. The removal or lifting of the court orders that were lodged against the title of the suit property on 27<sup>th</sup> July, 2002 and 18<sup>th</sup> August, 2011.
2. The removal or lifting of the caution that was lodged against the title of the suit property on 25<sup>th</sup> June, 2002.
3. The removal or lifting of all restrictions registered against the title of the suit property.

The application was brought on the grounds set out on the face thereof and on the affidavit of the 1<sup>st</sup> plaintiff. The plaintiffs averred that the Land Registrar Gatundu was unable to issue a new title in their favour due to the many encumbrances that are subsisting on the register of the suit property. The plaintiffs averred that the said Land Registrar had asked them to obtain a court order removing the said encumbrances before he could have the property registered in their names and proceed to issue them with a new title deed.

The application was served upon the defendant and he did not respond to the same. At the hearing of the application, the plaintiff's advocate Mr. Kinyanjui relied entirely on the affidavit in support of the application and urged the court to allow the same. Mr. Oyuchio who appeared for the defendant informed the court that he had no instruction on the application.

I have considered the application together with the supporting affidavit. From a copy of the register annexed to the affidavit in support of the application, the following encumbrances are subsisting on the register of the suit property;

1. Caution in favour of Veronica Wanjiru Thairu registered on 25<sup>th</sup> June, 2002.

2. Court Order issued in High Court at Nairobi Succession Cause No. 1478 of 1999 registered on 27<sup>th</sup> July, 2002.

3. Court order issued in this suit registered on 18<sup>th</sup> August, 2018.

In the absence of any objection from the defendant, I can see no reason why the foregoing encumbrances cannot be removed from the register of the suit property so that the judgment made by this court on 31<sup>st</sup> March, 2017 can be executed. The 1<sup>st</sup> encumbrance is a caution that was registered in favour of the 1<sup>st</sup> plaintiff to preserve the suit property prior to the filing of this suit. Since it is the plaintiffs who wish to have the caution removed, the Land Registrar did not require a court order to remove the caution. The second encumbrance is a court order that was made in High Court Succession Cause No. 1478 of 1999. It is in that succession cause that the plaintiffs were issued with a grant in respect of the estate of Njeri Mwamba which was subsequently confirmed on 30<sup>th</sup> July, 2002. The Succession Cause file is closed. However, during the hearing of this suit, the file was brought to this court for perusal and the same is still inside this file. I have perused the proceedings in said Succession Cause. I have noted that the order that was registered against the title of the suit property on 27<sup>th</sup> July, 2002 was made on 1<sup>st</sup> July, 2002 on an application by the plaintiffs herein and the same restrained the defendant herein from selling or transferring the suit property that was then registered in his name. The order was to last until 29<sup>th</sup> July, 2002. On 29<sup>th</sup> July, 2002, the order was not extended. The court thereafter confirmed the grant of letters of administration that was issued in favor of the plaintiffs on 30<sup>th</sup> July, 2002. The plaintiffs abandoned the application that they had filed in the said Succession Cause for the cancellation of the title that was held by the defendant in respect of the suit property. It was in the said application that the court order of 1<sup>st</sup> July, 2002 had been issued on a temporary basis. The plaintiffs thereafter instituted the present suit on 10<sup>th</sup> December, 2002. From the foregoing, it is clear that the order that was made in the said Succession Cause on 1<sup>st</sup> July, 2002 in favor of the plaintiffs herein and registered against the title of the suit property on 27<sup>th</sup> July, 2002 is spent and no longer serves any purpose following the judgment that was issued herein.

The last encumbrance subsisting on the register of the suit property is a court order that was issued by this court on 22<sup>nd</sup> June, 2011. The same was registered against the title of the suit property on 18<sup>th</sup> August, 2011. This was an injunction order restraining the defendant from selling or charging the suit property pending the hearing and determination of this suit. Again, this order is spent following the final judgment delivered by the court herein on 31<sup>st</sup> March, 2017.

In the final analysis and for the forgoing reasons, I am satisfied that the plaintiffs' application dated 18<sup>th</sup> November, 2019 has merit. I hereby allow the same on the following terms;

1. The Land Registrar Gatundu shall cancel and remove forthwith from the register of Title No. Ngenda/Gathage/665 entries numbers 9, 10 and 11 in the proprietorship section of the said register.
2. The cost of the application shall be in the cause.

**DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF MARCH 2021**

**S. OKONG'O**

**JUDGE RULING**

**DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**IN THE PRESENCE OF:**

N/A for the Plaintiffs

N/A for the Defendant

Ms. C. Nyokabi-Court Assistant