



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

ELC CASE NO.251 OF 2017

FORMERLY MERU ELC 117 OF 2000

ARIEL NJERU NJAGI & ANO.....1ST PLAINTIFF

JOTHAM NJAGI M'ARUCHA.....2ND PLAINTIFF

VERSUS

M'MUGA THAMBURA MURUCHA.....1ST DEFENDANT

WILFRED NYAGA M'MUGA.....2ND DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion dated **29th January, 2022** in which the 2nd Defendant/Applicant seeks for orders that:-
 1. The orders of inhibition issued against the registration of any dealings relating to Land Parcel Numbers MUTHAMBI/IGAMURATHI/373 & MUTHAMBI/IGAMURATHI/132 be lifted.
 2. The cautions registered against Land Parcels Numbers MUTHAMBI/IGAMURATHI/373 & MUTHAMBI/IGAMURATHI/132 be lifted.
 3. Costs be provided for.
2. The application is brought pursuant to Section 70 of the Land Registration Act and is supported by the affidavit of WILFRED NYAGA MUGA sworn on **29th January, 2022** and is based on the grounds that this suit having been dismissed, the orders of inhibition ought to be discharged; the cautions registered against the suit lands also ought to be cancelled and that it is only fair and just that the orders sought be granted.
3. In the supporting affidavit, the Applicant has deponed that this suit was dismissed and an attempt to revive the same was rejected vide the court's ruling delivered on **20th November, 2018** and that there has never been any appeal or any other challenge of the same. The Applicant further avers that both the Plaintiffs and the 1st Defendant died many years ago and the suit would have abated in the absence of the orders for dismissal. The Applicant avers that the court had issued the orders of inhibition to subsist during the pendency of this suit and therefore there is no longer any basis for the said orders and the cautions. The Applicant has exhibited copies of certificates of search confirming that the said orders were registered and are still in force. The Applicant therefore urged the court to allow the application as prayed.
4. The application was served upon the firm of Kaumbi & Company Advocates for the Respondents on **1st February, 2022** and they acknowledged service by stamping and signing, but did not file any response. The matter came up for hearing on **15th February, 2022** and only Mr. Ringera advocate for the Applicant attended court. The court upon satisfying itself that service was duly effected, heard the application. Mr. Ringera learned counsel for the Applicant submitted that this matter has since abated because of the death of both the Plaintiffs and the 1st Defendant. Counsel further submitted that an attempt to revive the suit was dismissed by the court. The applicant's counsel urged the court to allow the application herein and grant the orders sought.
5. The court has considered the application, the affidavit in support and the submissions by counsel. As already stated, this application is not opposed. I have also perused the court record. This suit was dismissed on **13th December, 2017** for want of prosecution in terms of order 17 Rule 2 (1) of the Civil Procedure Rules. By an application dated **16th July, 2018**, the Applicant's advocate made an application seeking orders for the court to set aside the order dismissing the suit issued by the court on **13th December, 2017** and reinstate the same for hearing.

6. By a ruling delivered on **20th November, 2018**, the Honourable court (P. M. Njoroge, J.) dismissed the application to set aside the dismissal order and therefore the suit was not reinstated. In dismissing the said application, the honourable court noted that this suit has remained unheard and undetermined since the **year 2000**, a period of about **18 years**. The court further noted that the application for setting aside was filed many months after the suit was dismissed.

7. The court has also perused the orders for inhibition and injunction issued on **16th October, 2000**. The orders of inhibition were to remain in force until the final hearing and determination of this suit or until further orders of the court. Considering that the suit herein was dismissed by the Honourable Court on **13th December, 2017** it is clear that there is no pending suit before this court.

8. **Section 70** of the Land Registration Act provides as follows:

“The registration of an inhibition shall not be cancelled except in the following cases-

(a) on the expiration of the time stated in the inhibition;

(b) on proof to the satisfaction of the Registrar of the occurrence of an event stated in the inhibition;

(c) on the land, lease or charge being sold by a charge, unless such sale is itself inhibited; or

(d) by a consequent order of the court.”

9. Similarly, section 73 (1) of the same Act provides that 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.

10. The submissions proffered by the Applicant’s counsel persuade this court that this application is merited. I am in full agreement with the Applicant’s contention that the suit having been dismissed, there is no longer any basis for the orders of inhibition and caution to remain in force.

11. Accordingly, the application dated **29th January, 2022** is allowed as prayed but with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT CHUKA THIS 1ST DAY OF MARCH, 2022 IN THE PRESENCE OF:

C/A: MARTHA

RINGERA FOR 2ND DEFENDANT/APPLICANT

N/A FOR PLAINTIFF (DECEASED)

N/A FOR 1ST DEFENDANT (DEFENDANT)

C. K. YANO,

JUDGE.