



ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

MISC ELC APPLICATION NO. E201 OF 2021

MARY NJERI KARIUKI & 7 OTHERS.....APPLICANTS

VERSUS

MARY MUGURE DANIEL KARIUKI.....RESPONDENT

RULING

Background

1. By a notice of motion application dated 11th November 2021, the 8 Applicants herein seek for an order that “this Honourable Court be pleased to direct the Land Registrar Kiambu County to vacate the cautions registered against titles *No. L.R KABETE/ NYATHUNA/ 2749/ 50/51/52/53*.
2. The application is based on the grounds on the face of the application and on the supporting affidavit sworn by one MARY NJERI KARIUKI.
3. The Applicant’s case is that the Respondent registered cautions against the titles way back on 7th May 2009. The Respondent was claiming beneficial ownership over all the titles *L.R KABETE/NYATHUNA/ 2749/ 50/51/52/53*. She filed a case against the applicants being Nairobi ELC 1339/2005 (Mary Mugure Daniel Kariuki & another vs Rahab Waruga Kariuki & 8 others). The case was however dismissed by the Environment and Land Court prompting the Respondent to file an appeal in the Court of Appeal; Nairobi Civil Appeal 278/2014 (Mary Mugure Daniel Kariuki & another vs Rahab Waruga Kariuki & 8 others).
4. The Appeal too was dismissed. Despite the dismissal of the ELC case and the Appeal the Respondent has refused to remove the cautions lodged on the Applicants’ titles.
5. The Applicants have therefore moved to court under the provisions of Section 73(1) of the Land Registration Act, 2012 seeking for a court order to remove the cautions on their titles.

Court’s Direction.

6. The Court directed that the Respondent be served by way of substituted service after the Applicants were unable to trace and serve her with the Application personally. Service was done as directed by the Court and as confirmed by the Affidavit of Service on record. The Respondent did not file any response to the Application.

Determination

7. I have carefully considered the application before me. From the copies of the certificates of official search attached to the supporting affidavit as annexures, it is clear that all the cautions were registered on all the titles on the same date, 7th may 2009. That is over 12 years ago.
8. The existence of the cautions on the titles has hampered the Applicants use of their parcels of land. They are unable to use the titles as securities to access financial facilities to develop the parcels of land.
9. Section 73(1) of the Land Registration Act, 2012 provides that a caution may be withdrawn by the cautioner or removed by order of the court. It is the section under which the applicants have moved this court.

10. A caution/caveat, in my view is merely a temporary measure to enable the cautioner seek relief(s) to protect his interests elsewhere; may be by way of a civil suit or other forms of legal proceedings. It is not an end in itself, so to speak.

11. Section 2 of the Land Registration Act, No. 3 of 2012 defines a caution to include a caveat.

12. The Court of Appeal in the case of **Boyes Vs Gathure (1969) EA 385** held that:-

“... a caveat is intended to serve a twofold purposes: on the one hand, it is intended to give the caveator temporary protection, and on the other, it is intended to give notice of the nature of the claim to the person whose estate in the land is affected and to the world at large.”

13. As I have noted earlier, the Respondent filed a case against the Applicants seeking to enforce her claim on the Applicants’ parcels of land but her case was dismissed. The Appeal too was dismissed. Despite the dismissal of the case and the Appeal, the Respondent has not taken action to withdraw or have the cautions removed.

14. The cautions have been in existence for over 12 years now. I agree with the holding of my brother Judge E.K Wabwoto in the case of **Sammy Nganga Ngatiri S.S Vs. George Ngatiri & 2 Others (2021) eKLR** that a caveat/caution should only serve as a temporary measure and should not be used to limit or deprive the applicant of his right to property indefinitely.

15. Accordingly, I allow the Applicants’ application dated 11th November 2021 and order the Land Registrar, Kiambu County to remove the caution on land parcels *L.R No. KABETE/NYATHUNA/2749, L.R No. KABETE/NYATHUNA/2750, L.R No. KABETE/NYATHUNA/2751, L.R No. KABETE/NYATHUNA/2752, L.R No. KABETE/NYATHUNA/2753* forthwith.

16. The Applicants too shall have the costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF MARCH 2022.

M.D. MWANGI

JUDGE

IN THE VIRTUAL PRESENCE OF:-

MR. MWAURA SHAIRI FOR THE APPLICANTS

N/A FOR THE RESPONDENT

COURT ASSISTANT: HILDA

M.D. MWANGI

JUDGE