



REPUBLIC OF KENYA



In re Estate of Nelson Ngethe Nganga (Deceased) (Succession Cause E118 of 2022) [2025] KEHC 5934 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E118 OF 2022**

A MSHILA, J

MAY 9, 2025

IN THE MATTER OF THE ESTATE OF NELSON NGETHE NGANGA (DECEASED)

BETWEEN

JOHN MBUGUA NG'ETHE 1ST PETITIONER

BERNARD NG'ANG'A NGETHE 2ND PETITIONER

AND

JOSEPH NJOROGE KIRIRU 1ST RESPONDENT

JOHN MBUGUA NG'ANG'A 2ND RESPONDENT

RULING

Background

1. Before court is an application by way of Summons to remove caution/inhibition or restriction dated 18th March, 2024 and brought under Section 47 of the *Law of Succession Act*, Rule 49, Rule 73 of the *Probate and Administration Rules* and any other enabling laws. The Petitioners/Applicants sought for orders:-
 - a. Spent
 - b. That the caution/inhibition and or any restriction placed on the parcel numbers Kiambaa/Thimbigwa/8990 and Kiambaa/Muchatha/T.297 be removed unconditionally to pave way for transmission process.
 - c. That the Respondents be served through the Chief of the area Chief, Karuri Location Kiambaa Sub-County.



2. The Summons is premised on the grounds that the Respondents placed a caution on the two properties as such the caution has prevented the process of transmission by the administrators who have already confirmed the grant and are ready to finalise the process of transmission.
3. John Mbugua Ng'ethe and Bernard Ng'ang'a Ng'ethe swore their supporting affidavit as the administrators of the deceased's estate. They listed the beneficiaries of the deceased's estate stating that there are no other known beneficiaries. They deposed that the documents for transmission presented at the land registry were declined due to the registered caution by the Respondents. They contended that the parents to the Respondents were the brothers to the deceased and that each family stays on their own. The cautioners do not reside on the properties where they have placed the caution and that they never objected to the grant as such the administrators would like to complete the transmission process.
4. The Respondents did not respond to the application. The applicants wished to rely on their supporting affidavit.

Issues for Determination

5. Having considered the application and the supporting affidavit therein, the main issue arising for determination is whether the court herein should allow the application for removal of caution.

Analysis

6. The applicable law is found at Section 73 of the *Land Registration Act* Cap No 3 of 2012 which states as follows;-
 - “(1) 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.
 - (2) The Registrar, on the application of any person interested, may serve notice on the cautioner warning the cautioner that the caution will be removed at the expiration of the time stated in the notice.
 - (3) If a cautioner has not raised any objection at the expiry of the time stated, the Registrar may remove the caution.
 - (4) If the cautioner objects to the removal of the caution, the cautioner shall notify the Registrar, in writing, of the objection within the time specified in the notice, and the Registrar shall, after giving the parties an opportunity of being heard, make such order as the Registrar considers fit, and may in the order provide for the payment of costs.
 - (5) After the expiry of thirty days from the date of the registration of a transfer by a chargee in exercise of the chargee's power of sale under the law relating to land, the Registrar shall remove any caution that purports to prohibit any dealing by the chargee that was registered after the charge by virtue of which the transfer has been effected.
 - (6) On the withdrawal or removal of a caution, its registration shall be cancelled, and any liability of the cautioner previously incurred under Section 74 shall not be affected by the cancellation”.
7. From the above section of the law, a caution maybe withdrawn by the cautioner, the court or by the registrar.



8. In the case herein it is alleged that the Respondents had placed a caution on the suit properties which caution was removed by the court and that it is not clear how the Respondents placed the caution again after the same had been removed by the court.
9. Be that as it may, this court takes the position that the administrators, before approaching this court with an application to have the said caution removed, ought to have first lodged an application for the said removal with the land registrar who would then notify the cautioner of the said application.
10. Refer to the case of *Mwangi Rukwaro & another v Land Registrar Nandi* (2019) eKLR where the court expressed itself as follows;-

“There is no evidence that the Applicant made the applications contemplated in section 73 and 78 of the *Land Registration Act* cited above.

‘19. Whilst this Court has power to order removal of the caution/restrictions herein it cannot do that through a process where the cautioner or his legal representative has not been given an opportunity to participate. In the special circumstances of this case, I am of the considered view that the Applicants should invoke the process in section 73(3)(4) of the *Land Registration Act*. As it is the only through that process that it may be determined that there is no person with an interest in maintenance of the caution.’

The court in the *Mwangi Rukwaro case* further observed in relation to the impact of giving the cautioner notice that:-

‘A determination as to whether or not any person stands to suffer any prejudice if the caution filed against the title held by the Applicants can only be made if the process of removing a caution as contemplated in law is followed. That is to say there is need for the Applicant to apply to the Registrar for removal of the caution. The Registrar would then write to the cautioner to show cause why the caution should not be removed...’

11. In the light of the above the Applicants application is found to be premature as they have not exhausted the mechanisms put in place for removal of a Caution; the application is hereby struck out with no order as to costs. Each party to bear their own costs. Applicant at liberty to re-apply.

Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 9TH DAY OF MAY, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Gulenywa for Applicant

N/A by Respondent

