



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO E002 OF 2021(OS)

BENSON NDITIKA NJOROGE.....APPLICANT

VERSUS

ELIZABETH NJERI NGERURO1ST RESPONDENT

DAVID NJOROGE NGERURO2ND RESPONDENT

JUDGMENT

1. The Plaintiff filed suit by way of Originating Summons against the Defendants on the 8/4/2021 seeking for declaratory orders that the Plaintiff is the registered proprietor of LOC8/KIONJOINE/1082 under adverse possession; that the 1st Defendant's title has been extinguished by the Applicant's occupation exceeding 12 years as set out under section 17 of the Limitations of Actions Act; the caution lodged on the title be lifted and or vacated.
2. The application is supported by the supporting affidavit of the Plaintiff dated the 6/4/2021.
3. The Plaintiff deposed that he purchased the suit land from the 1st and 2nd Defendant's husband and father respectively in 1996 and was put in possession in the same year. That the title was issued to the 1st Defendant in 2019 without his knowledge.
4. That he has occupied the land from 1996 openly and exclusively while developing it without any interference from the Defendants. That neither the 1st and 2nd Defendants have ever set foot on the land.
5. On the 4/5/2021 the Plaintiff and the 1st Defendant recorded a consent to the effect that the suit land be transferred to the Plaintiff. This therefore settled the suit between the Plaintiff and the 1st Defendant. What remained is the case between the Plaintiff and the 2nd Defendant.
6. On the 27/5/2021 the Plaintiff sought and obtained interlocutory judgment in default of appearance and defense.
7. Thereafter the Plaintiffs case proceeded on formal proof on the 13/7/2021.
8. The Plaintiff testified and stated that the 2nd Defendant lodged a caution on the title. He stated that the 2nd Defendant's caution is illegal and urged the Court to remove it.
9. The Plaintiff filed written submissions which I have read and considered.
10. Section 73 (1) of the Land Registration Act empowers the Court to remove a caution. The Environment and Land Court (ELC) enjoys original and Appellate jurisdiction over matters land, removal of cautions, is one such matter.
11. According to the copy of the title on record, the title is registered in the name of the 1st Defendant. On the 22/9/20 a caution was lodged by the 2nd Defendant claiming beneficiary interest.
12. The Plaintiffs suit against the 2nd Defendant is undefended.
13. In the absence of evidence to the contrary the Court is of the view that the Plaintiff's prayer is for granting.
14. It is granted with no orders as to costs.

15. Final orders;

a. The caution lodged by the 2nd Defendant on the title No. LOC8/KIONJOINE/1082 be and is hereby ordered removed by the Land Registrar forthwith.

16. It is so ordered.

DATED, SIGNED AND DELIVERED ONLINE AT MURANG'A THIS 14TH DAY OF SEPTEMBER 2021

J. G. KEMEI

JUDGE

Delivered online in the presence of:

Mwangi Ben for the Applicant

1st & 2nd Respondents – Absent

Court Assistant: Kuiyaki/Alex