



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 56 OF 2015

EUNICE WAWIRA GITHINJI.....1ST PLAINTIFF

BENJAMIN KINYUA GITHINJI.....2ND PLAINTIFF

VERSUS

PATRICK NYAMU KIURA.....1ST DEFENDANT

ANNE WANJIRU GITHINJI.....2ND DEFENDANT

DORCAS WANGECHI GITHINJI.....3RD DEFENDANT

SARAH WAMBURA GITHINJI.....4TH DEFENDANT

DANSON MUCHIRI KAGAU.....5TH DEFENDANT

JOSEPH MUCHIRI KIBURI.....6TH DEFENDANT

PURITY NJERI GITHINJI.....7TH DEFENDANT

TERESIA WATIRI WANDIGA.....8TH DEFENDANT

RULING

The application giving rise to this ruling is the Notice of Motion dated 14th August 2019 brought under **Section 3A CPA**. The Applicants who are also defendants in this case are seeking two orders: first is leave to withdraw the firm of Ikahu Nganga & Co. Advocates who are their advocates on record and secondly, an order to remove a caution and/or restriction lodged on land parcel No. KABARE/MIKARARA/562. The defendants/Applicants are also seeking costs of the application to be provided for. The application is supported by the affidavit of Purity Njeri Githinji sworn the same date. The affidavit is further supported by a certificate of official search dated 5/8/2019. According to the Applicants, this suit which was instituted by the plaintiffs was struck out on 24th May 2018 and no appeal has been preferred by the plaintiffs. The Applicants also contend that the plaintiffs had lodged a caution on the suit land awaiting the outcome of this case. Since the case has now been finalized, they believe that the restriction on the suit land should now be removed. Despite the application having been served, no replying affidavit or grounds of opposition were filed to oppose the same. **Order 51 Rule 14 CPR** provides three ways in which an application can be opposed as follows:

O. 51 Rule 14 (1) Any Respondent who wishes to oppose any application may file any one or a combination of the following documents:

(a) A notice of Preliminary Objection

(b) Replying affidavit; and/or

(c) A statement of grounds of opposition.

(2) The said documents in sub-rule (1) and a list of authorities, if any shall be filed and served on the applicant not less than

three clear days before the date of hearing”.

The provisions of **Order 51 Rule 14 (4)** gives the Court power to proceed ex-parte where it is satisfied that no response has been filed opposing an application. The Applicants in this application have demonstrated to the satisfaction of this Court that this suit has been concluded after the same was struck out and no appeal has been preferred by the plaintiffs/Respondents. The Court is also satisfied that the Respondents were duly served with the application and that they have elected not to file any response pursuant to **Order 51 Rule 14 CPR**. The certificate of official search attached to the supporting affidavit sworn by Purity Njeri Githinji dated 5th August 2019 shows that a restriction was placed on the suit property L.R. No. KABARE/MIKARARA/562 vide Ref LND/KIR EXT/16/1/VOL. IX/II -17:9:15.

There being no opposition to the said application, the same is hereby allowed as prayed with costs to the Applicants. It is so ordered.

READ, DELIVERED and SIGNED in open Court at Kerugoya this 24th day of January, 2020.

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E.C. CHERONO

ELC JUDGE

24TH JANUARY, 2020

In the presence of:

- (1) 7th Defendant – present
- (2) Mbogo – Court clerk