



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC MISCELLANEOUS NO. 240 OF 2017**

**VERERIA WANJIRU MUNGA.....PLAINTIFF**

**VERSUS**

**HARON NYAKUNDI..... DEFENDANT**

**JUDGMENT**

1. On 7/12/2017, the plaintiff took out an originating summons dated 1/12/2017 against the defendant seeking this court's determination on the following verbatim questions:

*(a) As to why the defendant should not remove a caution placed on Nairobi/Block 63/595.*

*(b) As to why upon default of the defendant removing the caution, the honourable court cannot issue an order removing the said caution from the parcel of land known as Nairobi/Block 63/595 forthwith.*

*(c) As to why the defendant should not pay the plaintiff cost of this suit.*

2. The originating summons was supported by the plaintiff's affidavit sworn on 1/12/2017. He deposed that he was the registered proprietor of Nairobi/Block 63/595 (**the suit property**). In 2002, the defendant placed a caution against the title. Despite several requests, the defendant had refused to remove the caution. She sold the suit property to one David Maina Muhuthia but she was unable to transfer the property to him due to the caution. She alluded to an annexure marked "VWM1" but the said annexure was not attached to the affidavit.

3. The defendant opposed the originating summons through a replying affidavit sworn on 21/6/2019. He deposed that he learnt about this suit when his attention was drawn to a notice in the newspaper in which his name had been misspelt as "Harung" instead of "Harun". His case was that the suit property was originally allocated to Rachael Wambui Shebesh by the City Council of Nairobi in 1992. Rachael Wambui Shebesh sold to him the suit property in 1999. The City Council issued to him a lease agreement in 2001. He took possession of the suit property and erected thereon a four bedroomed maisonette with servants quarters between 2002 and 2005. While developing the suit property, he received a letter dated 22/8/2002 addressed to the plaintiff from the City Council, notifying the plaintiff that the suit property had been registered in the plaintiff's name in unclear circumstances because according to the records held by the Council, the property belonged to the defendant. The letter required the plaintiff to explain how she obtained the title to the suit property. He decided to protect his interest by lodging the caution. The Chief Land Registrar similarly placed a restriction on the title. He exhibited various documents among them: (i) Letter of Allotment; (ii) Agreement for Lease; (iii) Official Search; (iv) Development Approvals and Receipts relating to payments made to the Council.

4. On 25/6/2019, the court directed that the originating summons be canvassed through affidavit evidence and written submissions. When the matter came up on 11/11/2019, neither party had filed written submissions. Counsel for the defendant asked the court to give a date for judgment based on the materials that were before court.

5. I have considered the originating summons and the evidence before court. I have also considered the relevant law. The plaintiff did not annex any evidentiary material to the originating summons. What emerges from the materials placed before court by the defendant is that the plaintiff holds a letter of allotment dated 20/8/1999 from the City Council of Nairobi. He also holds a lease. He contends that he has developed the suit property and he has been in possession thereof since he acquired it. It is his case that the plaintiff's title is irregular because the plaintiff is not an allottee of the suit property. He further contends that he lodged the caveat to protect his interest.

6. Despite the above position of the defendant, he has done nothing to challenge the title held by the plaintiff. In my view, if indeed the defendant is the legitimate owner of the suit property, he should have taken appropriate legal proceedings to procure the cancellation of the title held by the plaintiff. He has not done that since the year 2002 when he lodged the caution. The object of a caution is to serve as a temporary preservative measure put in place pending the initiation of an appropriate action by the cautioner to secure his interest in the property. A caution is not intended to be a permanent fixture on a title.

7. In light of the foregoing, my answer to the two questions in the originating summons is that the caution registered against Title Number Nairobi/Block 63/595 by the defendant should be removed. This order is, however, suspended for 90 days to avail the defendant a reasonable opportunity to initiate appropriate court proceedings. Each party shall bear their respective costs of this suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26TH DAY OF FEBRUARY 2020.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

June Nafula - Court Clerk