



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MERU

ELC CASE NO. 60 OF 2002

IN THE MATTER OF REMOVAL OF CAUTION OVER ALL THAT PARCEL OF LAND KNOWN AS NTIMA/IGOKI/9245

AND

IN THE MATTER OF THE LAND REGISTRATION ACT NO. 3 OF 2012

BETWEEN

SURESH KUNDAN WASON.....PLAINTIFF/1ST RESPONDENT

VERSUS

SATISH KUNDAN WASON.....DEFENDANT/APPLICANT

MILLIAM KARIMI MWANIKI.....2ND RESPONDENT

THE DISTRICT LANDS REGISTRAR MERU

LANDS REGISTRY.....3RD RESPONDENT

AND

RESHMA SHAHIO SURIYA.....EXPARTE APPLICANT

RULING

1. This application dated and 20.2.2020 was filed Ex=Parte by one **RESHMA SHAHIO SURIYA** to have the caution lodged on land parcel No. Ntima/Igoki/9245 removed. Counsel for the applicant informed the court that the suit was closed on 18.12.2017 and that the caution had been placed during the subsistence of the suit and that is why the application was made exparte.

2. I have keenly perused this file where it has emerged that the caution in question marked as “RSS3” was lodged on **21.5.2019**. It was therefore not lodged during the subsistence of this suit. There is a statutory mechanism provided for the removal of a caution- See **Section 73** of the **Land Registration Act**.

3. **Section 34 (1) of the Civil Procedure Act** provides that;

“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit”.

4. In the present case, no evidence has been adduced to indicate that the issue of the caution had arisen during the subsistence of the suit, rightly so because the caution was lodged when this suit was no longer in existence. The removal of the caution should therefore be in independent proceedings and not in this suit which no longer exists.

5. Further, I note that as at the time the plaintiff died on **23.2.2011**, the parties to this suit were **SURESH KUNDAN WASON (Deceased plaintiff) vs SATISH KUNDAN WASON (Defendant)**. The suit abated one year after the death of the plaintiff and it was not revived. The applicant appears to have been a party in another suit **MERU H.C.C.C NO.13 OF 2019**, but this court has not been told whether that suit and the present suit (**MERU ELC 60 OF 2002**) were consolidated. Who then is the applicant. When did she become a party in this suit? I

can only conclude that the applicant is a stranger to this case.

6. In the final analysis, I proceed to dismiss this application dated 20.2.2020 with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE