



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 224 OF 2016 (O.S)**

**BEIGE INVESTMENTS LIMITED.....PLAINTIFF**

**VERSUS**

**CHIEF LAND REGISTRAR.....1<sup>ST</sup> DEFENDANT**

**REGISTRAR OF GOVERNMENT LANDS.....2<sup>ND</sup> DEFENDANT**

**NATIONAL LAND COMMISSION.....3<sup>RD</sup> DEFENDANT**

**RULING**

Through the application dated 26/3/2019, the Plaintiff seeks to have this court's judgement delivered on 26/2/2019 reviewed; and to have the 3<sup>rd</sup> Defendant pay the Plaintiff damages or compensation for the wrongful sustenance of a caution over the land known as land reference number (L.R. No.) 27/114 ("the Suit Property"). The court dismissed the suit for lack of evidence of a caveat being registered against the Suit Property. The Plaintiff claimed that it presented evidence of the caveat to its advocate who inadvertently failed to exhibit the document in the pleadings filed in court. Further, the Plaintiff claimed that it learnt that the 3<sup>rd</sup> Defendant which was the originator of the caveat concluded hearing the dispute over the suit land and there was no basis for the continued existence of the caveat against the land.

The application was supported by the affidavit of Simon Kagwanja Thuo in which he made reference to another suit being **ELC Suit No. 78 of 2019** while averring that he learnt of the 3<sup>rd</sup> Defendant's determination from that suit. He annexed a copy of the caveat dated 12/5/2015 together with a copy of the certificate of postal search dated 26/6/2015, which shows existence of the caveat. He attached a copy of the 3<sup>rd</sup> Defendant determination together with a search done on the suit land on 22/3/2019.

The Honourable Attorney General filed grounds of opposition on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on 10/2/2020 and contended that the Plaintiff was trying to introduce new evidence which it failed to adduce during pretrial as required by the Civil Procedure Rules. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that the application did not merit a review of the court's judgement.

During the hearing of the application on 26/5/2020, Mr. Kamau informed the court that Okong'o J was dealing with **ELC Suit No. 78 of 2019** over the Suit Property. He added that the Plaintiff in that suit was the one who moved the 3<sup>rd</sup> Defendant and caused the caveat to be registered against the Suit Property. Mr. Ouma who appeared for the Plaintiff contended that the issue before Okong'o J related to the ownership of the Suit Property and that there would be jurisdictional challenges if the application for review of this court's judgement were transferred to Okong'o J. None of the parties presented the pleadings filed in **ELC Suit No. 78 of 2019** before this court. Mr. Kamau conceded that there was a caveat registered against the Suit Property.

The court has considered the submissions of the Plaintiff together with those for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. It is not contested that at the time this court gave its judgement no evidence had been placed before the court showing the existence of the caveat. Neither is it contested that there is a caveat registered against the suit land or that there is a dispute over ownership of the Suit Property. Order 45 Rule 1 of the Civil Procedure Rules gives the court discretion to review its orders or decree for the grounds set out and any other sufficient reason.

In light of the evidence confirming that a caveat is registered against the Suit Property, the court is inclined to set aside its judgment delivered on 26/2/2019. To save judicial time and for the efficient disposal of all the issues relating to the Suit Property, it is prudent to have this suit seeking the lifting of the caveat against the suit land heard by Okong'o J. alongside **ELC Case No. 78 of 2019** which this court was informed is a dispute over the ownership of the Suit Property. Each party will bear its own costs.

**Dated and delivered at Nairobi this 28<sup>th</sup> day of May 2020.**

**K.BOR**

**JUDGE**

**In the presence of:-**

Mr. Odhiambo Ouma for the Plaintiff

Mr. Allan Kamau for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Mr. V. Owuor- Court Assistant

No appearance for the 3<sup>rd</sup> Defendant