



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**SUCCESSION CAUSE NO. 350 OF 2007**

**IN THE MATTER OF THE ESTATE OF JOSEPH MAGURU (DECEASED)**

**ISAAC NJAGI NJERU.....PETITIONER/APPLICANT**

**VERSUS**

**APIJA IGOKI NJERU .....RESPONDENT**

**RULING**

1. The applicant seeks an order of this court to remove the caution and restriction launched by the respondent against land parcel No. Kyeni/Mufu/1964. The applicant also seeks an order to provide for costs of this application. Her application is supported by the grounds on the face of the notice of motion and her supporting affidavit dated 3<sup>rd</sup> December 2012.
2. In ground 1, she has stated that the land is registered in the name of the deceased. In ground 2 she has stated that this court issued an order that the applicant carves out her share of 3.43 acres out of the suit land. In ground 3, she has stated that the court had authorized the Deputy Registrar to sign the necessary documents to enable her get her share out of the suit land. In ground 4, she has stated that unless the caution is removed she cannot effect the transfer of the land into her name.
3. Furthermore, the applicant has deponed in her supporting affidavit that she is a beneficiary in the estate of the deceased. She has further deponed that the respondent placed a caution against the suit land without any reasonable cause. She has also deponed that the acts of the respondent are only meant to defeat justice as the respondent did not appeal against the order of the court dated 23<sup>rd</sup> June 2009.
4. She has further deponed that the respondent did not raise any claim in the succession cause and that the placing of the caution against the suit land is not justified. The applicant has also deponed that unless the caution is lifted, she will not be able to transfer the suit land into her name. Finally, she has deponed that it is in the interests of justice that the orders sought be granted and that the respondent will not suffer any loss.
5. The respondent has filed a replying affidavit in opposition to the removal of the caution in respect of the suit land. He has deponed that he is opposed to the removal of the caution being lifted. He has also deponed that the grant in this cause was improperly confirmed since the Resident Magistrate did not have powers to confirm the grant. Furthermore he has deponed that the caution placed on the suit land will ensure that the land is not interfered with pending the hearing and determination of this application. Finally, he has deponed that the applicant was not granted letters of administration intestate and therefore cannot therefore administer the estate.

6. It is important to point out that on 22<sup>nd</sup> June 2016, I dismissed the applicant's application (Isaac Njage Njeru) in respect of the same suit land. In that application, the applicant had sought stay of the orders of this court made on 18<sup>th</sup> June 2009. Additionally, the applicant in that application had also sought an order to restrain the respondent (Aphija Igoki Njeru) and the Embu District Land Surveyor from subdividing the suit land, which orders I refused to grant.

7. I have considered the affidavit evidence of the parties and the applicable law. I find that the orders issued by this court directing the Deputy Registrar to execute the necessary documents to enable Aphija Igoki Njeru to have her share of the suit land were not challenged. I therefore I find that the placing of the caution and restriction on the suit land is not justified. I hereby order them to be removed.

8. Furthermore, the Deputy Registrar is hereby authorized to execute the necessary documents to enable Aphija Igoki Njeru get her share of land parcel No. Kyeni/Mufu/1964.

9. There will be no order as to costs.

**RULING DELIVERED, DATED and SIGNED** in open court at **EMBU** this **10<sup>th</sup>** day of **OCTOBER 2016**.

In the presence of Ms Njiru holding brief for Mr. Andande for the petitioner and Ms Muthoni holding brief for the respondent

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**10.10.16**