



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

E.L.C. NO 57 OF 2014 (OS)

**NGARI NTHUMBI.....PLAINTIFF/
APPLICANT**

VERSUS

FAITH KATHONI M'KANGA.....DEFENDANT/RESPONDENT

RULING

Introduction

Mr Ngari Nthumbi took out this originating summons dated 4th October, 2014 which is expressed to be filed in court in terms of Order 37 rule 1 of the 2010 Civil Procedure Rules, section 1A, 1B, 3, 3A and sections 63 of the Civil Procedure Act, and section 73(1) of the Land Registration Act number 3 of 2012. By that originating summons, he sought the removal of the caution lodged against the suit land reference number Mberi/Kiamuringa/419.

The defendant/respondent was served with the hearing notice but she failed to turn up for the hearing.

After perusing the return of service, I was satisfied that the service was proper and had given her sufficient notice to prepare for the hearing. The hearing proceeded in her absence.

The Case for the Plaintiff/Applicant

The plaintiff/applicant took the witness stand and testified in support of the application for removal of the caution. It is his evidence that he acquired the suit land together with one Njagi Mutandike by virtue of a confirmed grant dated 13th February 2015 issued by the High Court at Embu. The confirmed grant was put in evidence as exhibit "PEX1". Thereafter, the plaintiff closed his case.

The Case for the Defendant/Respondent

The respondent did not attend the hearing of this motion despite having been properly served with the notice of hearing. She also did not file any replying affidavit.

The Applicable Law:

The law that applies to this application is found in section 25(1) of the Land Registration Act number 3 of 2012. The provisions of that section confer on a registered proprietor certain rights and privileges, which are expressed to be free from all other interests and claims except those specified section 28. The only exceptions to these rights include the following:

1. Leases, charges and other encumbrances.
2. Certain conditions and restrictions as may be shown in the register.
3. Liabilities, rights and interests that are declared by Section 28 of the Act that do not require to be noted in the register. Finally the rights and privileges of a registered owner do not relieve him or her from any application to which he is subject as a trustee.

Issues of Determination:

In the light of the evidence of the plaintiff and the confirmation of the grant by the High Court in succession cause number 671 of 2013, the following are the issues for determination:

1. Whether or not the plaintiff is the registered owner of the suit land.
2. Whether or not the caution that is lodged against the title is authorized by section 25 of the Land Registration Act.
3. Who should pay for the costs of this suit.

Evaluation of the Evidence, Findings and the Law:

I have considered the evidence produced by the first plaintiff and the documentary evidence. I find from that evidence that plaintiffs are the co-registered owners of land parcel number Mbeti/Kiamuringa/419. Njagi Mutandike is the other co-owner by virtue of the confirmed grant.

In the circumstances, I find that the lodgement of the caution in respect of the suit land is not justified. First, the plaintiffs do not hold this parcel of land as a trustees. Secondly, the defendant/respondent has not shown that she is entitled to any recognizable interest in that suit land, which may support the restriction she entered in respect of the suit land. In the circumstances the caution is without basis in law.

Verdict and Disposal Order:

In the light of the foregoing matters, I hereby make the following orders:

1. The Land Registrar is ordered to remove the caution entered against the suit land.
2. There will be no orders to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **12th** day of **March, 2015**

In the presence of both the plaintiffs and in the absence of the defendant

Court clerk Mr Muriithi

J.M. BWONWONGA

JUDGE