

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 330 OF 2017

NICHOLUS NGAVO IMINDE....PLAINTIFF/APPLICANT

VERSUS

HENRY SHIVOKO

FEMINA AYUMA SHIVOKO

TIMOTHY SHIKANGA SHIVOKO

JOHN SHIVOKO.....DEFENDANTS/ RESPONDENTS

RULING

The application is dated 7th September 2020 and is brought under order 51 rule 1 of the Civil Procedure Rules, Section 73 (i) of the Land Registration Act (Act No. 3) of 2012, Section 3a and 63 93 of the Civil Procedure Act seeking the following orders;

1. That this honourable court do issue an order for the removal of a caution placed by the 3rd respondent against land parcel No. South/Kabras/Shamberere/3345 to allow the applicant to utilize his land.
2. That the caution lodge against land parcel No. South/Kabras/Shamberere/3345 by the 3rd respondent herein be and is hereby removed.
3. Costs of this application be provided for.

It is based on the following grounds that the applicant is the registered owner of the land parcel No. South/Kabras/Shamberere/3345. That he filed a case for eviction against the respondent herein which case was concluded and eviction orders were issued by this honourable court against the respondent, the respondents vacated the said suit of land even before he enforced the said orders. That the 3rd respondents who is a stranger to him who had trespassed on his land before eviction orders were issued, had put a restriction on his land when this case was concluded. That the 3rd respondent has illegally and unlawfully lodged cautions on the said parcels of land by trespassing into it before eviction orders were issued. That the caution has no merits and intended to frustrate the applicant from utilizing his land. That the applicant requires that this parcel of land be dis-encumbered to enable him utilize it. The respondents shall suffer no prejudice if the orders sought are granted.

This court has considered the application and the submissions therein. The application was not opposed. I have perused the court record and find that on the 5th November 2019 judgement was entered against the respondents and an eviction order issued. The applicant submitted that the 3rd respondent has illegally and unlawfully lodged cautions on the said parcels of land by trespassing into it before eviction orders were issued. I find that the applicant should be allowed to enjoy the fruits of his judgement. I find the application is merited and I grant the following orders;

1. That the caution or cautions lodge against land parcel No. South/Kabras/Shamberere/3345 by the 3rd respondent prior to 5th November 2019 be and are hereby removed.
2. No orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 27TH OCTOBER 2020.

N.A. MATHEKA

JUDGE