



**REPUBLIC OF KENYA**

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

**ELC SUIT NO. 356 OF 2012**

**NANCY GATHONI.....1<sup>ST</sup> PLAINTIFF**

**ANN NJERI.....2<sup>ND</sup> PLAINTIFF**

**GEOFFREY MWAURA MUTHONI.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**RUTH NJAMBI NDURURU.....1<sup>ST</sup> DEFENDANT**

**FAITH WANJIRU MUYA.....2<sup>ND</sup> DEFENDANT**

**RAHAB WANJIRU NDUNG’U.....3<sup>RD</sup> DEFENDANT**

**GODFREY MBUGUA MWAURA.....4<sup>TH</sup> DEFENDANT**

**JOHNSON NJOGU MUGO.....5<sup>TH</sup> DEFENDANT**

**REGISTRAR OF TITLES KIAMBU.....6<sup>TH</sup> DEFENDANT**

**RULING**

The application before this court for determination is a Notice of Motion dated 25<sup>th</sup> October 2013 by the 1<sup>st</sup> Defendant herein, seeking orders that the District Land Registrar, Kiambu be ordered to lift the restrictions registered against the land parcel number Karai/Karai/1667 (hereinafter “the suit property”). The application is supported by an affidavit sworn by the 1<sup>st</sup> Defendant on 25<sup>th</sup> October 2013, wherein she states that the Plaintiff’s suit has been dismissed by this court, yet the *ex parte* restraining orders they obtained against the Defendants are still registered against the suit property. Therefore, that it is in the interests of justice that the restrictions against the suit property be lifted.

This Court directed the 1<sup>st</sup> Defendant to serve the Plaintiffs with the said Notice of Motion and hearing notice which was done, but the said Plaintiffs did not file any response. The 1<sup>st</sup> Defendant reiterated that she wanted the caution to be removed, and to be awarded costs during the hearing of the Notice of Motion on 6<sup>th</sup> August 2014.

**The Issue and Determination**

I have carefully considered the pleadings filed and submissions made by the 1<sup>st</sup> Defendant. The issue for

determination is whether the restriction lodged against the title to the suit property should be withdrawn. I note in this regard that the 1<sup>st</sup> Defendant did not bring any evidence of such restriction. However, I also note from the court record that there were *ex parte* orders granted in this suit on 20<sup>th</sup> June 2012 restricting dealings with the suit property and any subdivisions thereof, upon the filing of an application by the Plaintiffs dated 19<sup>th</sup> June 2012.

The applicable law on the issue before the court is section 73 of the Land Registration Act of 2012 (Act No 3 of 2012) which provides that a caution may be withdrawn by the cautioner or removed by order of the court or, by order of the Registrar. Section 2 of the Act defines a caution to include a caveat. The exercise of the court's power in this regard must be undertaken with the provisions of section 71 of the Act in mind, which section provides for the circumstances when a caveat may be lodged and therefore subsist as follows:

**“A person who—**

**(a) claims the right, whether contractual or otherwise, to obtain an interest in any land, lease or charge, capable of creation by an instrument registrable under this Act;**

**(b) is entitled to a licence; or**

**(c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge, may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the land lease or charge.”**

Upon perusal of the court record, I note that although the suit herein is still subsisting, the Notice of Motion dated 19<sup>th</sup> June 2012 which was the basis for the *ex parte* orders restricting dealings with the suit property was dismissed on 8<sup>th</sup> November 2012 for non-attendance. The circumstances for the lodging of the restrictions and/or caveat against the suit property therefore no longer apply, as their substratum, which was the Notice of Motion dated 19<sup>th</sup> June 2012, no longer exists.

The 1<sup>st</sup> Defendant's Notice of Motion is therefore allowed for the above reasons, and it is accordingly ordered that the District Land Registrar of Kiambu do forthwith remove any restrictions and/or caveat registered against the title to the property known as Karai/Karai/1667 and/or the sub-divisions thereof. The 1<sup>st</sup> Defendant shall meet the costs of the Notice of Motion dated 25<sup>th</sup> October 2013.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this 9<sup>th</sup> day of October, 2014.

**P. NYAMWEYA**

**JUDGE**