



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 786 OF 2013**

**IN THE MATTER OF L.R. NO. MWERUA/BARICHO/1634 AND 1635**

**AND**

**IN THE MATTER OF THE LIMITATION OF ACTION CAP 22 OF THE LAWS OF KENYA**

**MOSES WARUI GATIMU.....PLAINTIFF**

**VERSUS**

**DOUGLAS MWAI MACHURU.....1<sup>ST</sup> DEFENDANT**

**DANIEL KARIMI WANJOHI .....2<sup>ND</sup> DEFENDANT**

**RULING**

**Introduction**

The applicant in the Notice of Motion dated 17<sup>th</sup> February 2020 sought an order that this Honourable Court be pleased to order the Land Registrar – Kirinyaga to remove all the cautions and/or restrictions placed on land parcel Nos. MWERUA/BARICHO/1635 and 1634. The application is premised on the following two grounds:-

- (1) That the judgment herein was entered on 20<sup>th</sup> day of September 2019.***
- (2) That there is no appeal pending in respect to the subject matter.***

In support of the said application, the applicant filed an affidavit sworn the same date in which he annexed a copy of the said judgment. He further stated that no appeal has been preferred by the respondent against the aforesaid judgment and that there is no other dispute pending before any Court or tribunal in respect to the suit land. The applicant attached a copy of certificate of official search showing that a caution has indeed been placed on land title numbers MWERUA/BARICHO/1635 and 1634. He deponed that it is only fair if the cautions are removed to complete the process of sub-division to enable them enjoy the fruits of the judgment. A copy of the judgment delivered on 20<sup>th</sup> September 2019 is also annexed to the supporting affidavit.

When the application came up for inter-partes hearing on 29<sup>th</sup> September 2020, the respondent and her counsel were absent. Upon confirming that the hearing date was taken by consent of the parties authorized representatives at the Court's registry, the Court allowed the application to proceed ex-parte.

I have considered the affidavit evidence in support of the application and the grounds shown on the face of the said application. I have also considered the applicable law. The **Land Registration Act** (hereinafter referred to as the Act) stipulates an elaborate mechanism of registration and removal of a caution. Under **Section 71(1) (a) of the Land Registration Act**, a person who claims to have a right or interest in any land, lease or charge may lodge a caution against the property in issue for the purpose of forbidding registration of dispositions in relation thereto. The certificate of official search which is annexed to the supporting affidavit by the applicant shows that the subject caution was placed in favour of Moses Warui Gatimu as a purchaser on 01/12/2015. There is no doubt from the materials on record that the cautioner placed the same during the pendency of this suit. **Section 73 of the Act** provides as follows:-

***“1. A caution may be withdrawn by the cautioner or removed by order of the Court or, subject to Sub-section (2), by order of the Registrar.***

***2. the Registrar, on the application of any person interested, may serve notice on the cautioner warning the cautioner that the***

*caution will be removed at the expiry of the time stated in the notice.*

**3. *if a cautioner has not raised any objection at the expiry of the time stated, the Registrar may remove the caution.***

**4. *If the cautioner objects to the removal of the caution, the cautioner shall notify the Registrar, in writing, of the objection within the time specified in the notice, and the Registrar shall, after giving the parties an opportunity of being heard, make such order as the Registrar considers fit, and may in the order provide for the payment of costs”.***

From the materials placed before me, the plaintiff in this case is the same person who placed the caution. He fully participated in the hearing of this suit and lost it fairly and squarely. He has not appealed against the judgment.

The upshot of the foregoing is that the Court is satisfied that the Notice of Motion dated 17<sup>th</sup> February 2020 which is not opposed is merited and the same is allowed with costs. It is so ordered.

***READ, DELIVERED and SIGNED in open Court at Kerugoya this 9<sup>th</sup> day of October, 2020.***

.....

**E.C. CHERONO**

**ELC JUDGE**

*In the presence of:*

1. *Mr. Ngigi for Applicant*
2. *Plaintiff/Advocate – absent*
3. *Mbogo – Court clerk*