



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MERU

Civil Appeal 21 of 2006

GATUGI MUGIRAPLAINTIFF

VERSUS

ONESMUS GITOBU.....

DEFENDANT

R U L I N G

The Application is a Notice of Motion dated 25th May, 2012. It has been brought under O.1A and O.1B of the CPR and Sections 3 and 3A of the CPA. The Applicant seeks orders in terms of order 3, 4 and 5 as follows:

1...

2...

3. That the honourable court do order for removal of caution and the two restrictions placed on parcel No. IGOJI/KINORO/1324 and IGOJI/KINORO/1325 upon the register of titles.

4. That the said order be served upon the Land Registrar Meru to effect the same

5. That the costs of this application be in the cause.

The Application is premised on four grounds on the face of the application which are:

1. That the Applicant herein is the registered owner of land parcel Nos. Igoji/Kinoro/1324 and Igoji/kinoro/1325.

2. That on the 8th August 2011 on the said two parcels of land a restriction was placed by the land registrar pending the determination of Civil Appeal No. 44 of 2011 and Civil Application NO. 307

of 2009 is finalized.

3. That the said Applications have been concluded in the Applicants favour.

4. That however due to the caution that was placed by the Applicants and the Land Registrar way back on 8.8.2011 the Applicant is hindered from realizing the said orders.

The application is also premised on the supporting affidavit sworn by the 2nd Respondent/Applicant. The gist of the affidavit is that the Applicant placed a caution and two restrictions on the suit landparcel Nos. **Igoji/Kinoro/1324 and Igoji/kinoro/1325** on 19th January 2009, 21st July 2011 and 8th August 2011, during the pendency of the Civil Appeal No. 44 of 2011 and Nairobi Misc Civil Appl. No. 371 of 2009. The Applicant deposes that both matters have been finalized and judgment passed in favour of the Applicant. He further deposes that the Respondent has already been evicted from the suit land. The deponent avers that the caution and restriction need to be lifted in order for the Applicant to enjoy the fruits of the judgment in both cases.

The Respondent was served with the application. Dispute service, no papers in response to the instant application were filed Mr. Gichunge who held brief for Mr. Mwenda advocate for the Respondent had nothing to say in relation to the application.

I have carefully considered the application by the Applicants. The brief facts are that the orders of caution and restrictions now sought to be removed in this application were actually placed against the two suit properties, **IGOJI/KINOORO/1324 AND 1325** by the Land Registrar and the Applicant. These orders were placed against the two parcels of land while the two cases respecting the two properties were pending in court. The two were the appeal **NO. 44 OF 2011 AND MISC. CIVIL APPLICATION NAIROBI NO. 307 OF 2009.**

The two cases have since been finalized in favour of the Applicant herein and the matters concluded. It is only prudent that the cautions and restrictions placed against the two suit properties be lifted. The purpose of the caution and restrictions was to prevent any dealings over the suit properties while the cases were pending in court and to preserve the subject matter of the two suits in order to prevent the cases being rendered nugatory.

Since the two cases have been concluded there is no longer any need to preserve the suit properties as it is now clear which party owns the same. The application to lift the orders of restrictions and caution is therefore merited. I will accordingly allow the application dated 25th May, 2012 in the following terms:

1. That an order be and is hereby issued removing the caution and restrictions placed on parcel Nos. Igoji/Kinooro/1324 and

Igoji/Kinooro/1325.

2. The order in (1) above be served upon the Land Registrar Meru to give effect to the said order.

3. The Costs of this Application be in the cause.

DATED SIGNED AND DELIVERED THIS 5TH JULY, 2012

**J. LESIIT
JUDGE.**