



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU**

**E.L.C. JUDICIAL REVIEW 39 OF 2014**

**IN THE MATTER OF THE LAW REFORM ACT, CHAPTER 26 OF THE LAWS OF KENYA**

**IN THE MATTER OF DISTRICT LAND DISPUTE TRIBUNAL**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE HON. THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND DISPUTE TRIBUNAL EMBU WEST.....2<sup>ND</sup> RESPONDENT**

**CHIEF MAGISTRATE EMBU.....3<sup>RD</sup> RESPONDENT**

**AND**

**JOHN NTHIGA ZACHARIA.....INTERESTED PARTY**

**DANIEL NJAGI (*As Legal Representative of***

***Paul Njagi Kapingazi (Deceased)*.....EX-PARTE APPLICANT**

**RULING**

1. By a notice of motion dated 7<sup>th</sup> August 2018 brought under **section 3 and 3A of the Civil Procedure Act** and all other **enabling provisions of the law**, the interested party, John Nthiga Zacharia, sought an order for the Land Registrar to lift the caution or restriction registered against *Title No. Gatari/Nembure/307* (hereinafter the *suit property*).
2. The said application was based upon the grounds enumerated on the face of the motion. It was contended that the interested party was the registered owner of the suit property and that he was the successful party in the litigation which was concluded by the judgement of this court dated 26<sup>th</sup> July 2018. He was, however, unable to deal with the suit property as he wished due to the existing encumbrance.
3. The said application was supported by an affidavit sworn by the interested party on 7<sup>th</sup> August 2018 in which he reiterated the grounds set out in the motion. He annexed to the supporting affidavit copies of the certificate of official search for the suit property, the decree dated 26<sup>th</sup> July 2018 and a copy of the death certificate of the original applicant in the judicial review application.
4. The said application was opposed by the *ex-parte* Applicant, Daniel Njeru Njagi, who filed a replying affidavit sworn on 5<sup>th</sup> October 2018. The main grounds of opposition were that the *ex-parte* Applicant had filed a notice of appeal against the decree dated 26<sup>th</sup> July 2018; that if evicted he had nowhere else to go; and that he needed a grace period of at least one year to purchase alternative land.
5. When the said application was listed for hearing on 8<sup>th</sup> October 2018, the interested party prosecuted the same orally whereas Mr. P.N. Mugo opposed the same on the basis of the replying affidavit on record.
6. The court has considered the interested party's said application and the *ex-parte* applicant's opposition thereto. The court has also considered the respective oral submissions of the parties.

7. The court has noted that the application for judicial review was dismissed on 26<sup>th</sup> July 2018 by this court. Although the *ex-parte* Applicant appears to have filed a notice of appeal against the said judgement and decree, no steps have been taken towards prosecution of the said appeal or even towards seeking some interim orders from the Court of Appeal. As things stand now, there is no legitimate reason to maintain the existing caution against the suit property.

8. The mere fact that the *ex-parte* Applicant may not have alternative land cannot be a good reason for maintaining the caution against the suit property. He knew all along of the pending litigation and of the possibility of either succeeding or losing in the litigation. In any event, there is no guarantee that he would succeed on appeal.

9. The upshot of the foregoing is that the court finds merit in the interested party's notice of motion dated 7<sup>th</sup> August 2018 and the same is hereby allowed in terms of order No. 1 thereof. The *ex-parte* Applicant shall bear the costs of the application.

10. It is so decided.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **31<sup>ST</sup>** day of **JANUARY, 2019**.

In the presence of the *Ex-parte* Applicant and the Interested Party and in the absence of the Respondents.

Court clerk Mr Muinde

**Y.M. ANGIMA**

**JUDGE**

**31.01.19**