



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Nelson Ngethe Nganga (Deceased) (Succession Cause E118 of 2022) [2025] KEHC 14780 (KLR) (17 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14780 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E118 OF 2022**

A MSHILA, J

OCTOBER 17, 2025

BETWEEN

JOHN MBUGUA NG'ETHE 1ST PETITIONER

BERNARD NG'ANG'A NGETHE 2ND PETITIONER

AND

JOSEPH NJOROGE KIRIRU 1ST RESPONDENT

JOHN MBUGUA NG'ANG'A 2ND RESPONDENT

RULING

1. Before court is an application by way of Summons to remove caution/inhibition or restriction dated 16th May, 2025 premised under Section 47 of the [Law of Succession Act](#), Rule 49, Rule 73 of the Probate and Administration Rules and any other enabling laws. The Petitioners/Applicants sought for orders :-
 - a. Spent
 - b. That the caution/inhibition and or any restriction placed on the parcel numbers Kiambaa/Thimbigwa/8980 and Kiambaa/Muchatha/T.297 be removed unconditionally to pave way for the transmission process.
 - c. That the Respondents be served through the Area Chief of Karuri Location Kiambaa Sub-County.
2. The Summons is premised on the grounds that the Respondents placed a caution on the two properties as such the caution has prevented the process of transmission by the administrators who have already confirmed the grant and are ready to finalise the process of transmission.
3. John Mbugua Ng'ethe and Bernard Ng'ang'a Ng'etheswore their supporting affidavit as the administrators of the deceased's estate. They listed the beneficiaries of the deceased's estate stating that



there are no other known beneficiaries. They deposed that the documents for transmission presented at the land registry were declined due to the registered caution by the Respondents. They contended that the parents to the Respondents were the brothers to the deceased and that each family stays on its own land. The cautioners do not reside on the properties where they have placed the caution and that they never objected to the grant as such the administrators would like to complete the transmission process. The administrators aver that after their initial application to remove caution was struck out by this court, they wrote a letter dated 16/5/2025 to the Registrar for the removal of the caution and they were advised that an order of the court removing the caution was the way to go as such their documents were rejected at the lands registry. The caution was said to be prohibiting dealings on the properties the grant having been confirmed over a year ago.

4. Joseph Njoroge Kirirui in his replying affidavit dated 30th June, 2025, deposed that the application herein is res judicata as a similar application dated 18th March, 2024 seeking similar orders has been determined vide its ruling dated 9/5/2025. And the said ruling has not been set aside as such the Applicants are inviting the court to sit on its appeal. Further, the court was said to be functus officio. They averred that the Respondents have an interest on the suit properties as dependants herein hence they will suffer prejudice if the court will allow the Petitioners to remove the caution as the properties will be sold and this will extinguish any meaning for their intended summons for revocation of grant.
5. Parties did not file written submissions

Issues For Determination

6. Having considered the application, the supporting affidavit and the replying affidavit, the main issue arising for determination is whether the court herein should allow the application for removal of caution.

Analysis

7. Section 73 of the Land Registered Act Cap No. 3 of 2012 states as follows;
 - “(1) A caution may be withdrawn by the cautioner or removed by order of the Court or, subject to subsection (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 expiration 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.
 - (5) After the expiry of thirty days from the date of the registration of a transfer by a chargee in exercise of the chargee’s power of sale under the law relating to land, the Registrar shall remove any caution that purports to prohibit any dealing by the chargee that was registered after the charge by virtue of which the transfer has been effected.



- (6) On the withdrawal or removal of a caution, its registration shall be cancelled, and any liability of the cautioner previously incurred under Section 74 shall not be affected by the cancellation”.
8. From the above section of the law, a caution may be withdrawn by the Cautioner, the Court or by the Registrar.
 9. In the case herein the administrators seek to remove the caution as the same is prohibiting the process of transmission, the grant herein having been confirmed over a year ago.
 10. On their part, the Respondents contend that they have an interest in the suit properties being dependants of the estate herein as such removing the caution will extinguish the meaning of their summons for revocation of grant.
 11. The Respondents also contend that the application herein is res judicata, a similar application having been struck out by this court vide its ruling delivered on 9/5/2025.
 12. This Court takes note that indeed, the administrators had previously filed a similar application for removal of caution dated 18/3/2024, which was struck out by the court and the parties were directed to first apply for removal of the caution by the Land Registrar. Further the court directed the parties were at liberty to re-apply if need be hence this application cannot be rendered to be res judicata as alleged by the Respondents.
 13. Be that as it may, the Respondents have since filed their summons for Revocation of Grant dated 4th August, 2025, and it is in the interest of justice that both sides await the outcome of the instant application before this Court addresses the application for removal of caution by the administrators so as to protect the court from issuing orders in vain.

Determination

14. This instant application is held in abeyance pending the outcome of the application for Revocation of Grant.
15. Mention on 31st October, 2025 to fix hearing for the Summons for Revocation of the Grant.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 17TH DAY OF OCTOBER, 2025.

A. MSHILA

JUDGE

In the presence;

Sanja – Court Assistant

Uploaded in the presence of Court Assistant

