Mulu v Land Registrar Mkueni County & another (Miscellaneous Civil Application E001 of 2023) [2025] KEMC 255 (KLR) (7 October 2025) (Ruling)

Neutral citation: [2025] KEMC 255 (KLR)

REPUBLIC OF KENYA

IN THE MAKINDU LAW COURTS

MISCELLANEOUS CIVIL APPLICATION E001 OF 2023

YA SHIKANDA, SPM

OCTOBER 7, 2025

BETWEEN

PASCAL MUIA MULU ..... APPLICANT

AND

LAND REGISTRAR MKUENI COUNTY ..... 1ST RESPONDENT

BONIFACE MWANZIA MUINDI ..... 2ND RESPONDENT

RULING

1. Before me is a suit commenced by way of a miscellaneous application dated 10/2/2023. The application seeks the following main orders:

   a. The 1st respondent be directed to lodge a caution in relation to land parcel number Makueni/ Nguu Ranch/ 21;

   b. The Honourable court do issue an inhibition stopping further dealings, registration and transaction over the parcel known as Makueni/Nguu Ranch/21;

   c. The costs of the=is application be provided for.

2. The application is supported by an affidavit sworn by the applicant and is premised on the following general grounds:

   i. The applicant is a son to one Muia Mulu (deceased) who was a member number 459;

   ii. The 2007 survey was carried out in the area and he was registered and allocated land parcel No. 21;

   iii. When title deeds were being issued, his title went missing;

   iv. Upon further inquiry, it was discovered that the title had been issued to the 2nd respondent;

v. It is in the interest of justice that this application is allowed and the order sought granted.

3. In the affidavit in support of the application, the applicant reiterated the grounds appearing on the face of the application and attached documents in support thereof. The applicant further deposed that he had made efforts to lodge a caution at the land offices in Makueni but was advised to move to court. That he wished to protect the property from being disposed of to unsuspecting third parties pending further inquiry as to how the plot was obtained.

Response By The 1St Respondent

4. The 1st respondent did not file any document in response to the application.

Response By The 2Nd Respondent

5. The 2nd respondent opposed the application by filing a replying affidavit sworn by himself. He was later allowed to file a further replying affidavit sworn by one Lucy Kanini Musau. The 2nd respondent deposed that he was the registered owner of the suit parcel of land which he bought from Lucy Kanini Musau. That Lucy received and accepted a letter of allotment for the land. The 2nd respondent further deposed that he took possession of the land and developed the same. That he had been in possession and use of the land for over 20 years. The 2nd respondent argued that the applicant had not exhibited a letter of allotment, acceptance of the offer, receipt for payment of the requisite fees and the title allegedly issued in the name of his father.

6. The applicant further argued that the claim was time barred and the applicant lacked the requisite locus standi. That there was no survey in 2007 as the land had already been registered in the name of the 2nd respondent by then. The 2nd respondent urged the court to dismiss the application with costs. Lucy Kanini Musau deposed that she bought the suit land from the applicant's father on 7/4/1996. She gave a history of how she bought the land and had it registered in her name. The deponent confirmed that she later sold the land to the 2nd respondent herein. She attached copies of documents in support of her position.

Main Issues For Determination

In my view, the main issues for determination are:

7.

i. Whether the court can direct the Land Registrar Makueni to lodge a caution on land parcel No. Makueni/Nguu Ranch/ 21 in favour of the applicant;

ii. Whether the court can issue an order of inhibition stopping further dealings on the said land;

iii. Who should bear the costs of this application?

Submissions By The 2Nd Respondent

8. The parties agreed and were given time to file their respective submissions but only the 2nd respondent filed. The 2nd respondent submitted that the pertinent issue is whether the applicant has established that the 2nd respondent obtained his title fraudulently or by misrepresentation. With all due respect to the 2nd respondent and his counsel, that was a misdirection. The issue does not arise in this case. That being the case, I will disregard the submissions on the issue. The 2nd respondent argued that the

applicant had no locus standi to file the proceedings. That the applicant did not furnish a grant of letters of administration in respect of his father's estate.

9. The 2nd respondent further submitted that the claim was time barred. That the 2nd respondent has had uninterrupted use and occupation of the land for over 20 years. It was submitted that the application has been overtaken by events. That the 2nd respondent sold the land to one Benjamin Munuve Makau, who obtained a title deed on 12/11/2022. The 2nd respondent urged the court to dismiss the application with costs and relied on the following authorities:

   a. Benja Properties Limited v H.H. DR. Seydna Mohammed Burhannudin sahed & 4 others [2015]eKLR;

   b. Julian Adoyo Ongunga & another v Francis Kiverenge Bondeva [2016] eKLR;

   c. Isaya Masira Momanyi v Daniel Omwoyo & another.

Analysis And Determination

10. I have considered the application together with the response by the 2nd respondent.

    Section 71 of the *Land Registration Act* provides:

> "(1) 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 made an application for a bankruptcy order against the proprietor of any registered land, lease or charge.
>
> (2) A caution may either—
>
> (a) forbid the registration of dispositions and the making of entries; or
>
> (b) forbid the registration of dispositions and the making of entries to the extent expressed in the caution.
>
> (3) A caution shall be in the prescribed form, and the Registrar may require the cautioner to support the caution by a statutory declaration.
>
> (4) The Registrar may reject a caution that is unnecessary or whose purpose can be effected by the registration of an instrument under this Act.
>
> (5) Subject to this section, the caution shall be registered in the appropriate register."

11. The foregoing reveals that a caution can only be lodged through the Land Registrar (hereinafter referred to as Registrar). The Land Registrar has powers to reject a caution that is unnecessary or whose purpose can be effected by the registration of an instrument. The applicant attached a form which indicates that he made an application for the caution to be registered. The applicant alleges that the Registrar declined to register the caution and advised him to move to court. The copy of the application for registration of the caution annexed to the supporting affidavit has words to the effect

that the applicant had failed to prove any beneficial interest in the land. It is not clear whether the words constituted the rejection by the Registrar. There is no name nor signature of the person who wrote the words.

Rule 35 of the Land Registration (General) Regulations provides:

> "(1) The Registrar may reject an application that appears to the Registrar—
>
> (a) to be substantially defective; or
>
> (b) to have been submitted for registration without the requisite documents required under the Act or these Regulations.
>
> (2) The Registrar may reject an application under paragraph (1) when the application is lodged for registration or at any time thereafter, and communicate the rejection in Form LRA 22 set out in the Sixth Schedule and state the reason for the rejection."

12. The foregoing reveals that the rejection by the Registrar must be formal and in the prescribed form. The form is reproduced below.

Form Lra 22	(r. 35(2))
Republic Of Kenya	
The *Land Registration Act* (cap. 300)	
The Land Registration (general) Regulations	

Refusal To Register An Application For Registration	
Title NO:	
Date of Application	
Applicant	Give full name(s)
ID/Passport/Company Registration No of Applicant (if any)	
Instrument(s)presented for registration	.....

13. The Land Registrar Hereby Notifies the Applicant that the above-mentioned instrument(s) cannot be registered on the following grounds:.....

.....

Dated this ..... day of ..... 20 .....

Signed by the Land Registrar

Name:

Signature:.....

14. The applicant did not attach such a form to show that his application was rejected by the Registrar. Without a formal communication, it would be difficult to find that the Registrar rejected the application. In other words, there is no evidence to show that the Registrar made a decision, which then should be the subject of any proceedings seeking the opinion of the court. In my view, for the court to render its opinion, there must be, at the very outset, a formal decision by the Registrar. That decision is lacking in this case. On that ground alone, the application ought to fail.

15. Assuming that there was a decision to reject the application for lodging a caution by the applicant, what happens when a party is aggrieved by the decision of the Land Registrar? Section 86(1) of the *Land Registration Act* provides:

> " If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the Court, and thereupon the Court shall give its opinion, which shall be binding upon the parties."

16. It therefore follows that upon rejection of the application to lodge a caution, the applicant ought to have filed the matter for the opinion of the court. The Act does not state how an aggrieved party ought to state the case for the opinion of the court. However, Rule 37 of the Land Registration (General) Regulations provides thus:

> " 1) A person whose application has been rejected under regulations 34 or 35 may appeal to the County Registrar and thereafter the Chief Land Registrar, if not satisfied.
>
> (2) The County Registrar or the Chief Land Registrar as the case may be, shall hear and determine the appeal under paragraph (1) within fourteen days of receiving the appeal.
>
> (3) There shall be a stay of registration and no instrument affecting the interest under review shall be considered for registration over the affected parcel during the fourteen days under paragraph (2).
>
> (4) Despite paragraph (3), an applicant or any other person who is dissatisfied by the rejection of an application by the Registrar may appeal directly to the Court.
>
> (5) A party who has made an appeal to the County Registrar or the Chief Land Registrar under this regulation shall not make a concurrent appeal to the Court until after the decision by the County Registrar or the Chief Land Registrar as the case may be, or after the fourteen days specified under paragraph (2), whichever shall occur first."

17. From the above provisions, it is clear that upon the purported rejection of his application to lodge a caution, the applicant had two options:

    a. Appeal the decision to the County Registrar and thereafter the Chief Land Registrar, if not satisfied;

b. Appeal directly to the court.

18. The Rules do not provide for the procedure to be adopted when one files an appeal in court, from the decision of the Registrar. Rule 80 of the same Rules provides that a person who wishes to register a caution, under section 71(3) of the Act, shall make an application in Form LRA 67 set out in the Sixth Schedule. That the Registrar shall issue, upon receipt of an application to register a caution, notice of caution, under section 72(1) of the Act to the proprietor whose land is affected by the caution in the Form LRA 68 set out in the Sixth Schedule.

19. The only persons who are involved in the application for registration of a caution are the applicant and the Registrar. The registered proprietor of the land is merely notified of the registration of the caution. My opinion is that regardless of the form of appeal, the only parties to the appeal should be the Appellant (Applicant) and the Registrar. The registered proprietor of the land may be a respondent to the appeal if the appeal is from a decision to remove a caution on application by the registered proprietor, pursuant to section 80 of the *Land Registration Act*. It therefore follows that it was wrong and irregular for the applicant to join the 2nd respondent to the application, which in any event, ought to have been an appeal.

20. Instead of filing an appeal, the applicant purported to canvass his perceived interest in the land. He even made an additional prayer for an inhibition. Clearly, the applicant adopted the wrong procedure. If the applicant had wanted to assert his rights over the parcel of land in issue, he ought to have filed a substantive suit. In the affidavit in support of the application, the applicant states that the caution is necessary to stop any dealings on the parcel of land pending an inquiry on how the title was obtained. No evidence was attached to the affidavit to show that an inquiry concerning the parcel of land was being conducted by any authority. It has been over two years since the application was filed and no evidence or even an allegation was made in the intervening period to show that any inquiry or investigation was being conducted in respect of the land in issue. It would appear that the applicant wanted the caution to be placed on the parcel of land in perpetuity. I think I have said enough to show that the application is untenable. The same must of necessity fail.

Disposition

21. The upshot of the above considerations is that the application is devoid of merit. I proceed to dismiss the same with costs to the 2nd respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKINDU THIS 7TH DAY OF OCTOBER, 2025.

Y.A SHIKANDA

SENIOR PRINCIPAL MAGISTRATE.