



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC MISCELLANEOUS APPLICATION NO. E043 OF 2025

FREDRICK KAMAU CHEGE
.....APPLICANT

-VERSUS-

ANKANORY MUDENYO OBUYA1st
RESPONDENT
NAIROBI DISTRICT LAND REGISTRAR2nd
RESPONDENT

RULING

A. Introduction

1. Before this Court is a Notice of Motion dated 3rd March 2025 brought under **Sections 1A, 1B and 3A of the Civil Procedure Act, Sections 73(1) & (6) and 75 of the Land Registration Act No. 3 of 2012** and **Order 51 Rule 1 of the Civil Procedure Rules**, wherein the Applicant, Fredrick Kamau Chege, seeks the following orders:

- a) That this Honourable Court be pleased to direct the Nairobi District Land Registrar to remove the caution registered on 20th November 2000 against land parcel Nairobi/Block 111/1982 by Ankanory

Mudenyo Obuya;

b) That the costs of this application be borne by the 1st Respondent; and

B. Background

2. The application is premised on the grounds set out on its face and supported by the affidavit sworn by the Applicant on 3rd March 2025. The Applicant depones that he is the registered proprietor of Nairobi/Block 111/1982, having been issued with a Certificate of Lease on 7th October 1996.
3. He states that upon conducting an official search on 21st November 2024, he discovered that the 1st Respondent had, on 20th November 2000, registered a caution claiming a lessee's interest against his title. The Applicant avers that the 1st Respondent is a stranger to him, and that his efforts to have the caution removed through the 2nd Respondent were unsuccessful as the Land Registrar advised him to obtain a court order.
4. The Applicant contends that the said caution has unlawfully remained on his title for over twenty-four (24) years, thereby curtailing his right to freely deal with and enjoy his property, contrary to Article 40 of the Constitution. He therefore prays that the Court orders its removal.

C. Response

5. The 2nd Respondent opposed the application through grounds of opposition dated 15th September 2025, contending that the application is frivolous, vexatious and an abuse of court process; that the Applicant failed to issue a notice of intention to sue the Government as required under **Section 13A(1) of the Government Proceedings Act (Cap. 40)**; and that there is **no evidence** of a **formal demand to the 1st Respondent** to remove the

caution as contemplated by **Section 73(1) of the Land Registration Act.**

6. The 1st Respondent did not file any replying affidavit, submissions or appear at the hearing of this Application.

D. **Submissions**

7. The Applicant, through Wakarura Irungu & Co. Advocates, submitted that the caution was irregularly registered and has no legal basis. Counsel argued that under **Sections 71(4), 73(1) and 78(2)** of the Land Registration Act, the Court has jurisdiction to order its removal. Reliance was placed on ***Lepapa Ole Moshono -Vs- Land Registrar, Kajiado & Another [2019] eKLR, In Re Withdrawal of Caution by Mary Njeri Mwaura [2017] eKLR,*** and ***CMM -Vs- Land Registrar, Uasin Gishu County & Another [2021] eKLR,*** where the Courts held that cautions not supported by demonstrable interest should be removed.
8. The 2nd Respondent, through learned State Counsel, maintained that the application is premature for failure to comply with **Section 13A of the Government Proceedings Act**, and that the Applicant has not demonstrated that he made a prior demand or served the cautioner as required under **Section 73 of the Land Registration Act**. It was also submitted that since the caution was registered in 2000, before the enactment of the 2012 Act, the Registrar was not under any statutory duty to notify the proprietor.

E. **Issues for Determination**

9. From the pleadings and submissions, the issues that arise for determination are:

- a) Whether the application is fatally defective for want of a statutory notice under Section 13A of the Government Proceedings Act;
- b) Whether the Applicant has satisfied the conditions for removal of a caution under Sections 71–73 of the Land Registration Act; and
- c) Who Shall Bear the Costs of the Application

F. Analysis and determination

Issue 1: Whether the application is fatally defective for want of a statutory notice under Section 13A of the Government Proceedings Act;

10. The 2nd Respondent has raised a preliminary objection contending that this application is incompetent and premature, on the ground that the Applicant did not issue a Notice of Intention to Sue the Government as required under **Section 13A(1) of the Government Proceedings Act, Cap 40 Laws of Kenya**. The said section provides: *“No proceedings against the Government shall lie or be instituted until after the expiry of a period of thirty days after a notice in writing in the prescribed form has been served on the Government in relation to those proceedings.”*
11. The 2nd Respondent submits that failure to issue such notice is fatal to the proceedings and renders them a nullity ab initio.
12. The rationale behind this requirement has been elaborated in several decisions of our superior courts. The object of Section 13A is not to shield the Government from accountability, but to ensure that the relevant Government departments are notified of intended claims so that matters that can be resolved administratively are handled without recourse to litigation. It is a mechanism for orderly and efficient handling of public claims, not a

procedural snare to defeat justice.

13. It is not disputed that the 2nd Respondent is a public officer represented by the Honourable Attorney General, and that the Applicant did not annex a formal notice in the prescribed form. However, the record shows that the Attorney General was served entered appearance, filed grounds of opposition dated 15th September 2025, and submitted in writing on behalf of the 2nd Respondent. The Attorney General has therefore had full and effective notice of the claim and has been afforded adequate opportunity to respond.
14. No prejudice has been alleged or demonstrated by the 2nd Respondent and indeed, the issues raised are largely procedural and administrative, relating to the rectification of a land register, rather than a monetary claim against the Government.
15. Moreover, the Court is mindful of the transformative spirit of the 2010 Constitution, which obliges courts to adopt an interpretation that promotes access to justice and the efficient and fair resolution of disputes. While compliance with Section 13A remains desirable, it cannot be elevated to a jurisdictional requirement whose absence automatically nullifies proceedings, particularly where the Attorney General has actively participated and suffered no prejudice.
16. Accordingly, I find and hold that the failure by the Applicant to issue a notice of intention to sue **under Section 13A of the Government Proceedings Act** does not render this application incompetent. The Attorney General's participation in these proceedings cures any procedural defect that might have arisen, and no prejudice has been occasioned to the Respondents.

Issue no:2 Whether the Applicant has satisfied the conditions for removal of a caution under Sections 71-73 of the Land Registration Act; and

17. The Applicant seeks the **removal of a caution lodged on 20th November 2000** by the 1st Respondent claiming a **lessee's interest** over **Land Parcel No. Nairobi/Block 111/1982**. The Applicant states that he is the **registered proprietor** of the said parcel, having been issued with a **Certificate of Lease on 7th October 1996**. He further avers that he has **never had any dealings, lease, or contractual relationship with the 1st Respondent**, who is a stranger to him, and that all attempts to have the caution removed through the Nairobi District Land Registry have been unsuccessful, prompting this application. The Applicant further stated that the 1st Respondent is unknown to him, and despite reasonable inquiries, he could not be traced or served personally, making it impossible to invite him to justify the caution.

18. **Section 73 of the Land Registration Act** makes provision for the removal or withdrawal of a caution. This section provides as follows: -

73. (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.

19. Thus, cautions may be removed in three ways.

- a. *By withdrawal of the same by the cautioner.*
- b. *By removal by order of the court.*
- c. *By removal by order of the Registrar.*

20. As Correctly held in **Republic -Vs- Chief Lands Registrar; Ex Parte: Mary Wamaitha Kaitany [2021] eKLR** *“These three ways are independent of each other, such that, it is not necessary for one to demonstrate that he has attempted to have the caution removed by the Land Registrar before moving the Court to remove the caution. It is however always advisable to have the Court arbitrate the matter as a last recourse.”*

21. The Applicant has produced a Certificate of Lease in his name and a Certificate of Official Search dated 21st November 2024, confirming that the caution was lodged by the 1st Respondent. He has also explained, on oath, that the 1st Respondent is unknown to him and could not be traced for service. This fact was not disputed by the 2nd Respondent. In such a scenario, where the cautioner cannot be located and has not maintained contact with the Land Registry for over two decades, the only lawful recourse available to the proprietor is to seek judicial intervention for removal.

22. The caution herein has remained registered for over twenty-four (24) years, yet the cautioner has not taken any steps to perfect or register the alleged lessee's interest. A caution is not intended to subsist indefinitely; it is by design temporary and protective, pending the completion of registration of a legitimate interest. Allowing a caution to subsist for decades without justification defeats the policy of certainty of title under the Land Registration Act and violates the proprietor's constitutional right to property under **Article 40(1)**.
23. The Court of Appeal in **Maria Nganga Gwako -Vs- Charles Mwenzi Nganga, Civil Appeal No. 287 of 2012 (2014) eKLR**, as cited in **Magdalene Wambui Mbugua Muhia & 2 others v Charles King Kigwe & 3 others [2019] eKLR**, held that: *"When a caution is objected to by a proprietor of land affected thereby, the onus is upon the cautioner to justify the lodging of the said caution and the need for it to remain in place. In the absence of any reasonable cause shown by the Respondent as to why the said caution should not be removed, the application for the removal of the same must succeed."*
24. In the present case, the 1st Respondent was not served as he could not be traced, and no evidence exists to demonstrate that he maintains any registrable interest in the property. The effect of this silence and absence is that the cautioner has failed to discharge the legal burden imposed by the above authority to justify the lodging and continued retention of the caution.
25. In **Lepapa Ole Moshono -Vs- Land Registrar, Kajiado & Another [2019] eKLR**, the Court held that a caution not supported by evidence of a registrable or existing right is illegal and must be lifted. The alleged "lessee's interest" claimed by the 1st Respondent is unsupported by any lease agreement, tenancy contract, or other documentary proof, and therefore does not qualify as a lawful caution under Section 71 of the Land Registration

Act.

26. From the foregoing, I therefore find and hold that the caution lodged by the 1st Respondent on 20th November 2000 is unsubstantiated, irregular, and unlawful. The Applicant, being the registered proprietor, has fully satisfied the legal and evidentiary threshold under **Section 73(1) of the Land Registration Act** for its removal. Consequently, the caution lodged by Ankanory Mudeny Obuya over Land Parcel No. Nairobi/Block 111/1982 is hereby declared baseless and liable to be removed forthwith.

ISSUE NO:3 Who Shall Bear the Costs of the Application

27. Although costs of an action or proceedings are at the discretion of the Court, the general rule is that costs shall follow the event in accordance with the proviso to **Section 27 of the Civil Procedure Act (Cap. 21)**. A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise. In the instant case, while the Applicant has succeeded in his application, the 1st Respondent did not file any response, and the 2nd Respondent, though represented by the Attorney General, did not file any affidavit or submissions disputing the facts. The matter was therefore uncontested on its merits, and no conduct has been shown on the part of the Respondents that would warrant the award of costs against them.

28. In the circumstances, and in the interest of justice, I direct that each party shall bear their own costs of these proceedings.

Final Disposition

29. Accordingly, and for the reasons set out above, this Court finds that the Applicant's Notice of Motion dated 3rd March 2025 is merited, and it is hereby allowed in the following terms:

1. The Nairobi District Land Registrar is hereby directed to forthwith remove the caution registered on 20th November 2000 against Land Parcel No. Nairobi/Block 111/1982, lodged by Ankanory Mudenyio Obuya, claiming a lessee's interest.
2. Upon removal of the said caution, the Registrar shall rectify the land register to reflect the Applicant as the sole and unencumbered proprietor of the property.
3. Each party shall bear their own costs of this application.

It is so ordered!

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **13th day** of **November, 2025**.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

..... for the Applicant
..... for the 1st Respondent
..... for the 2nd Respondent
Philomena W...... Court Assistant