



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC. APPLICATION NO. 121 OF 2017

WACKSON NJOROGE MBIRIRI.....1ST PLAINTIFF/APPLICANT

MBURU KIBUKU.....2ND PLAINTIFF/APPLICANT

=VERSUS=

THE CHIEF LAND REGISTRAR, NAIROBI.....DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 13th June 2017, brought under Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Section 73(1) of the Land Registration Act, and all other enabling provisions of the law.

2. It seeks orders:-

(1) That this honourable court be pleased to issue an order compelling the respondent to remove the caution placed on the parcel of land known as Dagoretti/Waithaka/T.188 by the late Margaret Wanja Njoroge on 15th October 1981.

(2) That this honourable court be pleased to issue an order compelling the respondent to remove the caution placed on the parcel of land known as Dagoretti/Waithaka/T.188 by the late Mary Njoki Njoroge on 17th October 1981.

(3) That costs of this application be borne by the respondent.

3. The grounds are on the face of the application and are set out in paragraphs a to j.

4. The application is supported by the affidavit of Wackson Njoroge Mbiriri, the 1st applicant herein sworn on the 13th June 2017.

5. The application is opposed. There are grounds of opposition filed on behalf of the respondent dated 28th July 2017.

6. On the 20th September 2018, the court directed that the notice of motion be canvassed by way of written submissions. The submissions were to be filed within thirty (30) days. By 14th November 2018, only the applicant's submissions were on record.

7. It is the applicant's submission that the late Njoroge Mbiriri is the registered proprietor of LR NO. Dagoretti/Waithaka/T.188 and that they (applicants) are the administrators of his estate pursuant to the letters of administration issued in the Succession Cause No. 269 of 2012. That upon confirmation of grant they learnt that caution had been placed on LR NO. Daoretti/Waithaka/T.188 by Margaret Wanja Njoroge and Mary Njoki Njoroge respectively.

8. The said cautions were placed wrongfully/unlawfully given that no prior notice was given to the deceased proprietor Njoroge Mbiriri. No valid reason has been given to justify the placement of the said cautions. The respondent has failed to act despite the applicants' applications for removal dated 15th June 2016 and 9th October 2015.

9. The respondent's office has adduced no valid reason for subsistence of the caution placed on the said parcel. They have put forward the case of **Dinara Properties Limited vs Malcedian Properties Limited & Another [2018] eKLR**. They pray that the application be allowed.

10. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the grounds of opposition. The

issue for determination is whether the application is merited.

11. I note that no replying affidavit was filed on behalf of the respondent stating the justification for registration of the said caution. This application is more or less unopposed. I have seen the two applications made to the respondent to remove the said cautions. It appears this was not done hence necessitating this application.

12. Section 73(1) of the Land Registration Act, 2012 provides that:-

“A caution may be withdrawn by the cautioner or removed by an order of the court or, subject to subsection (2) by order of the Registrar”.

13. In the absence of any justification for subsistence of the said caution, I allow this application.

14. Accordingly, the application is allowed on the following terms:-

(a) That an order be and is hereby issued compelling the respondent to remove the caution placed on the parcel of land known as Dagoretti/Waithaka/T.188 by the late Margaret Wanja Njoroge on 15th October 1981.

(b) That and order be and is hereby issued compelling the respondent to remove the caution placed on the parcel of land known as Dagoretti/Waithaka/T.188 by the late Mary Njoki Njoroge on 17th October 1981.

(c) That costs be in the cause.

It is so ordered.

Dated, signed and delivered in Nairobi on this 4TH day of APRIL 2019.

.....

L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Applicants

.....Advocate for the Respondent

.....Court Assistant