



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of Paulo Muduya Mulinya alias Muduya Mulinga Paul (Deceased) (Succession Cause 201 of 2005) [2025] KEHC 19034 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEHC 19034 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 201 OF 2005

RN NYAKUNDI, J

DECEMBER 18, 2025

IN THE MATTER OF THE ESTATE OF PAULO MUDUYA MULINYA ALIAS MUDUYA

MULINGA PAUL(DECEASED)

**IN THE MATTER OF THE REMOVAL OF CAUTION ON
PARCEL NO UASIN GISHU/MILE THIRTEEN SCHEME/257**

AND

IN THE MATTER OF THE ELIMINA ALIONYA FRANCIS (ESTATE ADMINISTRATORS)

IN THE MATTER OF

**IN THE MATTER OF THE ELIMINA ALIONYA FRANCIS (ESTATE
ADMINISTRATORS) APPLICANT**

RULING

1. This is an summons for the removal of caution brought to this court under Section 73(1) Probate and Administration Rule and Section 47 of the [Law of Succession Act](#) Section 1A, 1B and 3A of the [Civil Procedure Act](#) and all the enabling provisions of the law seeking the following orders:-
 - a. That this Honourable court be pleased to order the Land Register, Uasin Gishu County to forthwith remove and/or lift the caution registered against that parcel of land known as Uasin Gishu/mile Thirteen Scheme/257
 - b. That Costs of the application be in the causeWhich Applciaiton shall be grounded following grounds and upon the annexed affidavit of Elimina Allonya Francis (estate Administrator) and other to be adduced at the hearing hereof
 - a. That the applicant is the administrator and beneficiary of the estate



- b. That the letters of administration and certificate of Grant were issued to the applicant on 2.12.2024
 - c. That the LRA 39 and LRA 42 transfer by transmission were executed by the applicant for all the beneficiaries
 - d. That the cautioner is not a beneficiary and has no interest on the suit property
 - e. That the cautioners claim over the suit estate case was concluded vide a ruling dated 28th April 2021 delivered by Hon. Justice S.M Kibunja in ELC case No 391 of 2015, formerly Eldoret HCC No 42 OF 2007 where her claim was paid in full
 - f. That the cautioner has refused to appear before the Land Registrar to remove the caution since last year December 2024 despite several summons issued to her
 - g. That her intention is to waster time delay the process by frustrating the Applicant
 - h. That it is necessary that court orders be issued to the Land Registrar Uasin Gishu County to remove the caution to pave way for transmission to the applicant and the beneficiaries
2. It is annexed by an affidavit sworn by Elimina Alionya Francis which states as follows:-
- a. That I am a female adult of sound mind and the administrator of the Estate of the late Paulo Muduya Mulinya Alias Muduya Mulinga Paulo(deceased) thus competent to swear this affidavit.
 - b. That a certificate of confirmation of Grant was issued to me on 2nd December 2024
 - c. That the deceased was the registered owner of the land known as Uasin Gishu/mile Thirteen Scheme/257
 - d. That I have executed LRA 39 and LRA 42 for transfer by transmission for all beneficiaries and delivered to the Land Registrar and fully pai for title deed to government last year.
 - e. That one Everlyne Chebitok Chelugul registered a caution against the suit property Uasin Gishu/mile Thirteen Scheme/257. The cautioner is not a beneficiary and has no interest over the suit property and/or the deceased estate.
 - f. That the Cautioner's claim over the suit estate case was concluded vide a Ruling dated 28t April,2021 delivered by HON, Justice S.M Kibunja in ELC Case No.391 of 2015, Formerly Eldoret HCCC No.42 of 2007 where her claim was paid in full (Annexed hereto and marked as "EAF-4(a)" and "(b)" are copies of the said Ruling and copy of a bank cheque for payment of refund and costs).
 - g. the cautioner has refused to appear before the Lands Registrar to remove caution since last year December 2024 despite several summons issued for her to do so and that her intention is to waste time delay the process.
 - h. I and other beneficiaries have attempted through counsel to remove the caution at the Lands office to pave way for registration. The attempts have failed since Lands Registrar insists that we must served her with a Court Order for her to remove the caution.
 - i. it is necessary that court order be issued to the Lands Registrar Uasin Gishu County to remove the caution to pave way for transmission to the Applicant and the deceased's beneficiaries.



Decision

1. From the historical perspective, this petition was filed on 21.9.2005 and thereafter, grant of letters of administration intestate issued on 28.2.2006. The petitioners moved the court on 26.9.2006 by filing summons for confirmation of grant which was adjudicated upon and certificate of grant of confirmation issued on 2.11.2024. In the current application filed under certificate of urgency pursuant to Rule 73(1) of the Probate and Administration Rules and Section 47 of the Law of Succession Act, as read with Section 1(A), 1(B) and 3(A) of the Civil Procedure Act, it is contended that an order be issued to the Land Registrar to remove and lift the caution registered against the Parcel of Land known as Uasin Gishu/Mile Thirteen Scheme/257 that in the same register the Land Registrar as the custodian of the Land Registration instruments do move to amend the register accordingly by restoring the absolute proprietor of the Uasin Gishu/Mile Thirteen Scheme/257
2. The key provision on this aspect of the application in Section 73 of the Land Registration Act. In order to appreciate the law in this area the fundamental principles are to be found in the following sample cases from the repository of sources of law:
 - a. Njoroge v Karuku (Civil Appeal E069 of 2022) [2024] KECA: The Court of Appeal affirmed that a validly registered caution prevents any inconsistent dispositions (e.g., transfers, sales) unless the cautioner consents or a court order is obtained. Subsequent registrations made without the caution having been duly removed are unlawful.
 - b. Festo v Gidagwa & 2 others (Environment & Land Case 34 of 2021) [2024] KEELC: In this case, the court determined that the plaintiff, who acquired land from his father, held it in trust for his family (an overriding interest). The caution registered by the defendant son was therefore justified, as the father was attempting to sell the land and disinherit the family.
 - c. Kagau v Kagau (Environment and Land Appeal 15 of 2018) [2023] KEELC: The court ordered a caution removed where the appellant's claim of a "licensee interest" was not supported by evidence. The court emphasized that the interest claimed must be a registrable interest under the Land Registration Act.
3. From the facts of this case, the caution has remained in force for unreasonable period and despite the decision of the court, no efforts have been made by the cautioner to remove the caution. I therefore find no reason why the caution should continue being a barrier to the enjoyment of the Land rights in question.
4. Having scrutinized and examined the evidence I am satisfied that the application dated 13.11.2025 has merit and the Land Registrar is directed to move into the registration documents to lift the caution inserted against the parcel of land referenced as Uasin Gishu/mile Thirteed SchemE/257. In addition to the removal of the caution, the Land Registrar amends the register to restore the applicant as the absolute proprietor of the suit land. I make no orders as to costs.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 18TH DAY OF DECEMBER, 2025

.....

R. NYAKUNDI

JUDGE

