

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT ELDORET**

**ELC MISCELLANEOUS APPLICATION No. E055 OF 2025**

**ALPHONCE KIPKEMBOI SOMONGI .....**  
**APPLICANT**

**VERSUS**

**ELIZABETH JEPKEMBOI KIPKEMBOI ..... 1<sup>ST</sup>**  
**RESPONDENT**

**GLADYS JEPKORIR KEMBOI ..... 2<sup>ND</sup>**  
**RESPONDENT**

**MATHEW KIPLIMO KEMBOI ..... 3<sup>RD</sup>**  
**RESPONDENT**

**EDWIN KIBET KEMBOI ..... 4<sup>TH</sup>**  
**RESPONDENT**

**HILLARY KIPKOECH KEMBOI ..... 5<sup>TH</sup>**  
**RESPONDENT**

**LAND REGISTRAR USAIN GISHU COUNTY ..... 6<sup>TH</sup>**  
**RESPONDENT**

**RULING:**

1. This ruling relates to a Notice of Motion Application dated 7<sup>th</sup> November, 2025 filed by the Applicant seeking for orders that:-
  - (a) Spent
  - (b) The caution lodged on land parcel UASIN GISHU/ILLULA SCHEME/1107 by the 1<sup>st</sup> to 5<sup>th</sup> Respondents on 6<sup>th</sup> September, 2017 be removed.
  - (c) The orders issued herein be served upon the Land Registrar Uasin Gishu County for compliance.

(d) THAT costs of this Application be provided for.

2. The Application is supported by the grounds stated on the Motion as well as the Applicant's Supporting Affidavit of the same date. According to the Applicant, he is the registered proprietor of the parcel of land known as Uasin Gishu/Illula Scheme/1107 (the suit property herein), while the 1<sup>st</sup> Respondent is his wife, and the 2<sup>nd</sup> to 5<sup>th</sup> Respondents his children. The Applicant avers that he purchased the suit property on 9<sup>th</sup> July, 2009 and that it was curved out of a larger parcel known as Plot No. 153 Illula Settlement Scheme.
3. The Applicant averred that on 6<sup>th</sup> September, 2017, the Respondents lodged a caution without any legal basis thus violating his constitutional rights under Article 40 of the Constitution. He reiterated that he bought the suit property and it is not ancestral land, so the cautioners' cannot claim interest as beneficiaries since they never contributed to the purchase of the property. The Applicant deponed that the 1<sup>st</sup> to 5<sup>th</sup> Respondents, made an application for withdrawal of the caution by executing the requisite Form LRA 69. The Applicant however claims that the 6<sup>th</sup> Respondent has refused to withdraw the caution despite the 1<sup>st</sup> to 5<sup>th</sup> Respondents filing and paying for the Application.
4. The Applicant averred that the 6<sup>th</sup> Respondent's refusal to withdraw the caution is unlawful under Section 73(4) of the Land Registration Act. Further that it violates his right to property under Article 40 and his right to fair administrative action under Article 47 of the Constitution. The Applicant averred that he intends to use the property as security for a loan facility, but due to his inability to use the land, he has

suffered substantial loss and continues to suffer prejudice including loss of use of the suit land and economic loss.

5. An Affidavit of Service was filed herein sworn by Maureen M. Ilabonga, an advocate of the High Court of Kenya, indicating that she served the Respondents herein on 11<sup>th</sup> November, 2025 and 19<sup>th</sup> November, 2025. However, no response to the instant application has been filed by any of the Respondents.

### **Submissions:**

6. On 8<sup>th</sup> December, 2025 when the matter came up for hearing of the application inter-partes, the Respondents were all absent. Mr. Kimani, Counsel for the Applicant, submitted that the Application was unopposed. Counsel submitted that the Applicant is the registered owner of the suit land and has annexed copies of the relevant documents.
7. Counsel explained that at one time, the Respondents had wanted to withdraw the caution and referred to the annexed receipt dated 18<sup>th</sup> February, 2021. Counsel submitted that it is not clear why the registrar did not withdraw the caution. Mr. Kimani further prayed that in the absence of a response to the current application, the application be granted in terms of prayers (b) and (c). Counsel submitted that the Applicant wants to develop the suit property. With regards to costs, Counsel asked the court to order that costs be in the cause or make no order as to costs.

### **Analysis and Determination:**

8. This Court has carefully considered the instant application and the Affidavit filed in support thereto as well as the oral

submissions by Counsel for the Applicant. The issues that arise for determination are:

(i) *Whether the court ought to order the removal of the caution;*  
*and*

(ii) *Who shall bear the costs of the suit?*

**(a) Whether the court ought to order the removal of the caution**

9. This court has been asked to order the removal of the caution placed on the suit property. While cautions are lodged pursuant to Section 71 of the Land Registration Act, their removal is per the procedure set out at Section 73 of the same Act, which provides that:-

***73. Withdrawal and removal of caution***

***(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.**

10. The above provision gives three ways in which a caution can be removed, which are:-
- (a) *Withdrawal by the cautioner;*
  - (b) *Removal pursuant to an order of the Court; and*
  - (c) *Removal by the Land Registrar on application by any interested party.*
11. The Applicant brings this suit claiming to be the registered owner of the suit property. To prove ownership, the Applicant annexed a copy of the Title Deed to the land with his name appearing as the proprietor thereto. Pursuant to Section 26(1) of the Land Registration Act, this Title Deed is prima facie proof that the Applicant herein, being the person named therein, is the proprietor of the land.
12. The 1<sup>st</sup> to 5<sup>th</sup> Respondents lodged a caution on the suit property. Per the unregistered copy annexed to the instant Motion, the 1<sup>st</sup> to 5<sup>th</sup> Respondents claimed an interest as beneficiaries of the

land. The caution they lodged forbade the registration of dealings or the making of entries in the register to the title. The Applicant claims that the 1<sup>st</sup> to 5<sup>th</sup> Respondents sought to have the caution removed and made an application to that effect.

13. The Applicant annexed an Application for Withdrawal of Caution, which though undated, bears the names of the 1<sup>st</sup> to 5<sup>th</sup> Respondents who duly signed it and affixed their photographs. The Applicant also annexed a receipt dated 18<sup>th</sup> February, 2021 for payment of KShs. 2,500/- being the fee for removal of caution. Notably, the said amount was paid by the Applicant herein. The duly signed application and the said receipt are proof enough of the 1<sup>st</sup> to 5<sup>th</sup> Respondents intention to withdraw the caution, and they paid the requisite fee for the said application.

14. In any event, regarding the three methods for removal of a caution, the court in **Joseph Kibowen Chemjor vs William C. Kiseru [2013] KEELC 140 (KLR)** explained that:-

***“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.”***

15. Therefore, even if the 1<sup>st</sup> to 5<sup>th</sup> Respondents had not expressed any intention to withdraw the caution, this court would still have jurisdiction under Section 73 of the Land Registration Act to consider the Applicant’s instant application. In this case however, there is an application filed before the registrar for

removal of the said caution, but no steps were taken towards removal/withdrawal of the caution. It is for this reason that the Applicant has turned to his court seeking orders to have the caution removed.

16. That being said, as already indicated, the 1<sup>st</sup> to 5<sup>th</sup> Respondents claimed to be beneficiaries of the suit land. It is not clear what manner of beneficial interest the Respondents were claiming over the land, yet Section 71 of the Land Registration Act, there are only three categories of persons that can apply to have a caution lodged against a title to land. Under Section 71, one can only lodge a caution if they:-

- (a) claim 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) are entitled to a licence; or**
- (c) have made an application for a bankruptcy order against the proprietor of any registered land, lease or charge.**

17. There is no evidence that the Respondents held any of the beneficial interests set out at Section 71 of the Act. Nonetheless, the only connection between the parties herein as admitted by the Applicant is that the 1<sup>st</sup> Respondent is his wife, while the 2<sup>nd</sup> to 5<sup>th</sup> Respondents are his children. Since no other interest has been revealed, it would appear that they only claimed to be beneficiaries due to their familial connection.

18. In **Maria Ngangi Gwako vs Charles Mwenzi Ngangi (2014) KEHC 7178 (KLR)**, the Court while dealing with an application for removal of a caution lodged by a son of the registered owner held as follows:-

***“The Caution in favour of the respondent was lodged on 3<sup>rd</sup> August, 2012 after the repeal of the Registered Land Act Cap. 300 Laws of Kenya. The same must therefore have been registered under section 71 of the Land Registration Act, 2012. Section 71 of the Land Registration Act, 2012 (“the Act”), provides for persons who can lodge a Caution on the title of land registered under the said Act. A Caution can only be lodged by a person, who claims a right to obtain an interest in land, lease or charge which is capable of creation by an instrument registrable under the said Act or a person who is entitled to a license over the land or a person who has presented a bankruptcy petition against a proprietor of land, lease or charge. For the Respondent to be able to lodge and maintain a Caution against the title to the suit property, the Respondent has to show that he has an interest in the nature set out above. As I have already stated above, the Respondent lodged the said Caution to protect a “beneficiary/son’s interest” that he claimed to have over the suit property. Under the provisions of section 71 of the Act aforesaid, a beneficiary/son’s interest is not protectable by a caution. I am in agreement with the submission by the advocate of the Applicant that the Respondent’s Caution should not have been***

**accepted for registration in the first place. The Respondent has contended that he is the eldest son of the Applicant... The Respondent has contended that he is entitled to lodge a Caution against the title of the suit property so as to prevent the Applicant from disposing of the same an act that would render him landless. I am unable to appreciate the interest that the Respondent is claiming over the suit property. The suit property is registered in the name of the Applicant... The Respondent may have a claim against the Applicant based on possession or trust but such claims are not protectable by a caution and cannot support the Respondent's plea for the Caution herein to remain in place. 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. It is my finding that the Respondent has failed to discharge this burden. The Applicant has demonstrated that she is the registered proprietor of the suit property and that the Respondent has no basis for continuing to have a Caution lodged against the title to the suit property. 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."**

19. Being the registered owner of the suit property, there can be no doubt that the Applicant herein has sufficient interest in the

land to entitle him to be able to apply for removal of the caution. He has through this suit objected to the caution placed on his title, and as explained in the above authority, it was upon the Respondents to demonstrate why the court should not order its removal.

20. However, despite being served, the 1<sup>st</sup> to 5<sup>th</sup> Respondents did not file responses explaining why the Caution that has been in existence since the year 2017 should be allowed to persist. The Land Registrar also made no effort to explain to this court why the court should not grant the orders sought.
21. Without any objection from any of the Respondents and without any reasonable cause being shown as to why the caution should remain in place, the Court finds that the Applicant, as the registered owner of the suit property, is entitled to the orders sought in the instant suit.

**(b) Who shall bear the costs of the suit?**

22. With regard to the issue of costs, Section 27 of the Civil Procedure Act provides that costs of an action or proceedings are at the discretion of the Court. It further provides that costs shall follow the event. Under this provision, a successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.
23. In the instant case, the Applicant has emerged the successful litigant and would have been entitled to costs of this suit. Per oral submissions by Counsel for the Applicant, the Applicant asked that the court either order that costs of the Application

be in the cause or in the alternative make no order as to costs. Seeing as none of the Respondents opposed the Application, there shall be no orders as to costs.

**Orders:-**

24. The upshot is that the Application dated 7<sup>th</sup> November, 2025 is merited and is allowed as follows:-

(a) The caution lodged on land parcel UASIN GISHU/ILLULA SCHEME/1107 by the 1<sup>st</sup> to 5<sup>th</sup> Respondents on 6<sup>th</sup> September, 2017 be removed forthwith.

(b) The orders issued herein be served upon the Land Registrar Uasin Gishu County for compliance.

(c) There shall be no orders as to costs.

25. Orders accordingly.

**DATED, SIGNED and DELIVERED** virtually at **ELDORET** on this **19<sup>TH</sup>** day of **FEBRUARY, 2026** vide Microsoft Teams.

**HON. C. K. YANO**  
**ELC, JUDGE**

In the virtual presence of;

Ms. Ilabonga holding brief for Mr. Kimani for Applicant.

No appearance for Respondents.

Court Assistant - Laban.