

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE NO. 210 OF 2013

ELIAS KABURU MURIITHI.....PLAINTIFF

VERSUS

HAWKINS MUTEKI KAMUNDI.....1ST DEFENDANT

MILESMIND LIMITED.....2ND DEFENDANT

CONSOLIDATED BANK OF KENYA LIMITED.....3RD DEFENDANT

RULING

1. This suit was initially filed as HCC No 128 of 2011 (Nakuru) but was later transferred to this court hence its new case number. By Notice of Motion dated 24th May 2018, the 2nd defendant seeks an order that the order registered on 22nd November 2012 as a caution against title number Nakuru Municipality/Block12/229 (the suit property) be removed from the register. The application is supported by an affidavit sworn by Nyaga Mwendwa, a director of the applicant company. He deposed that the applicant is the registered proprietor of the suit property having purchased it from the plaintiff. That the 1st defendant obtained ex parte orders which he used to register a caution against the suit property. He annexed a copy of a Certificate of Search as at 6th March 2017. He added that the caution is a complete misrepresentation of the orders that were granted and that it is unjust to allow the caution in place.

2. On 20th June 2019 when the application came up for inter parte hearing, only the applicant and the 1st defendant were represented in court. Counsel for the 1st defendant indicated that he does not oppose the application. Additionally, counsel for the applicant presented a letter of consent dated 27th May 2019 and executed by counsel for the applicant and counsel for the plaintiff. There is also another letter of consent dated 18th June 2019 executed by counsel for the applicant and counsel for the 3rd defendant. Both consents were filed on 20th June 2019 and to the effect that the plaintiff and the 3rd defendant do not oppose the application. In effect therefore, none of the parties appear to oppose the application. I however reserved a ruling to enable me peruse the old voluminous record herein so as to be certain that the orders sought should issue. In matters concerning land, consents may affect other parties not before the court and it is therefore necessary that prudence be exercised.

3. I have now had occasion to peruse the record. From the material placed before the court, it is apparent that a caution was registered against the suit property on 22nd November 2011 on the strength of an order made in this case. There being no opposition to the application and in view of the consents, the orders sought should issue.

4. In the end, I hereby order that the caution registered on 22nd November 2012 against title number Nakuru Municipality/Block12/229 be removed from the register. Costs in the cause.

Dated, signed and delivered in open court at Nakuru this 24th day of June 2019.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the 2nd defendant/applicant

No appearance for the plaintiff/respondent

Ms Sambu holding brief for Mr Kisila for the 1st defendant/respondent

No appearance for the 3rd defendant/respondent

Court Assistants: Beatrice & Lotkomo