

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC CASE No. 93 OF 2020 (OS)

KIMITEI

SAMOEI

.....**PLAINTIFF/RESPONDENT**

VERSUS

MICHAEL NGIGI**1ST**

DEFENDANT/APPLICANT

WILFRED NGANGA**2ND**

DEFENDANT/APPLICANT

BEATRICE WANGUI NGANGA**3RD**

DEFENDANT/APPLICANT

RULING:

1. Before court is an application by way of Notice of Motion dated 20th November, 2025 brought by the Defendants/Applicants herein seeking the following orders:-
 - (1) Spent
 - (2) THAT the caution placed by the Plaintiff against L.R. No. Uasin Gishu/Kaptagat/5 on 31.1.2020 claiming purchaser's interest be removed.
 - (3) Costs of this application be in the cause.

2. The Application is premised on the grounds stated thereon and supported by the affidavit of the 1st Defendant/Applicant sworn on 20th November, 2025. The 1st Defendant deponed that the Plaintiff/Respondent filed the suit herein claiming their land L.R. No. Uasin Gishu/Kaptagat/5 (the suit property herein). That the

Plaintiff also registered a caution on the land claiming purchaser's interest.

3. The 1st Defendant deponed that the Plaintiff died on 19th October, 2022 before he could prosecute the suit. That as a result, the suit abated on 17th October, 2024. The 1st Defendant avers that he applied to the Land Registrar Uasin Gishu on 3rd February, 2025 to remove the caution but the same was returned on 5th March, 2025 with remarks that he seek a court order. The 1st Defendant averred that this court has power to remove a caution over the suit land once a case is determined like in the instance case.
4. The 1st Defendant averred that the Land Registrar is unwilling to perform their statutory duty yet there is no substantive suit in place, thus he sought the court's orders for removal of the caution lodged on 20th January, 2020. The 1st Defendant deponed that the instant application is made in good faith and for completeness of record. He added that he and the other co-owners are prejudiced as the subsistence of the caution means that they cannot deal with their property even after leaving court.
5. Mr. Allan Mbugua Ngigi, Counsel for the Defendants swore an Affidavit of Service on 5th December, 2025 where he deponed that he had served the instant application on the office of the Land Registrar on 1st December, 2025. Mr. Ngingi further depones that on 2nd December, 2025 he effected service of the same application on the Office of the Attorney General. To date, no reply has been filed with respect to the application.

Analysis and Determination;

6. The Defendants herein have fully relied on the filed application itself and the supporting affidavit, which I have considered and I am of the view that the only issues for determination are:-

- (i) Whether the court ought to order the removal of the caution;*
- and*
- (ii) Who shall bear the costs of this application?*

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

7. 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.

8. 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.*

9. As to whether these three methods for removal of a caution are co-dependent, the court in **Joseph Kibowen Chemjor vs William C. Kisera (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.”

10. The chronology of events in the instant case is that the Plaintiff first lodged the caution on 31st January, 2020 claiming a purchaser's interest over the land. I have not seen a copy of the Caution registered by the Plaintiff herein. However, the 1st Defendant annexed a Certificate of Official Search dated 1st April, 2025 to the application as "MN1". The caution appears at the encumbrances section of the said Search, which shows that the Plaintiff claimed to have a purchaser's interest on the suit land.
11. Thereafter, the Plaintiff commenced the instant suit vide Originating Summons dated 26th October, 2020 and filed on 6th November, 2020. In the Supporting Affidavit to the OS, the Plaintiff does indeed claim to have purchased the land from the Defendants. The Defendants/Applicants have brought the application as the registered owners of the suit property. The Certificate of Official Search mentioned shows that the suit property does indeed belong to the three Defendants herein.
12. Before the suit could be set down for hearing, the court was informed on 2nd October, 2023 that the Plaintiff had passed away. After several mentions, on 10th September, 2024 Counsel for the Plaintiff informed this court that the estate had identified a successor. Counsel asked the court to grant him 30 days within which to file an application for revival of the suit and substitution. The matter was then fixed for mention on 17th October, 2024 to confirm filing of the said application. But come 17th October, 2024 neither the Plaintiff were present in court despite the date having been issued in the presence of advocates for both parties. Owing to their absence in court on the material day, this court marked the suit as having abated.

13. Owing to the abatement and closure of file, what then should happen to the caution lodged by the deceased Plaintiff? In the case of **Christian Wafula Omusolo & 2 others vs Pauline Jerotich & Another (2019) eKLR**, the Court held that:-

“...the Applicant is entitled to the removal of the caution as it does not serve any purpose judgment having been delivered dismissing the Plaintiff’s originating summons. I therefore allow the application and direct that the Land Registrar removes the caution lodged on L.R. No. UASIN GISHU/KIMUMU/107.”

14. Although the suit herein has not been heard and/or determined on its merits, as matters stand, the main suit against the Defendants abated a year after the death of the Plaintiff. As already explained above, the court did in fact mark the suit as having abated and directed that the file be closed. To date, there has been no application seeking to revive the case and substitute the Plaintiff with the legal representative of his estate.

15. It has been six years now since the caution was placed on the land. Being the registered owners of the suit property, the Defendants/Applicants are indeed restricted from dealing with the land as they are entitled by law to do owing to the existence of the caution.

16. As to what approach would be best, I have seen the decision in **Mwangi Rukwaro & Another vs Land Registrar, Nyeri (2019) KEELC 3985 (KLR)**, where the court advised parties to go back to the Land Registrar. In that case, the Court held that:-

“19. Whilst this court has power to order for removal of the caution/restriction herein, it cannot do that through a process where the cautioner or his legal representative has not been given an opportunity to

participate. In the special circumstances of this case, I am of the considered view that the applicants should invoke the process provided in Section 73(2) (3) (4) of the Land Registration Act, 2012 as it is only through that process that it may be determined that there is no person with an interest in maintenance of the caution.”

17. The circumstances herein are however different since the Respondent in this application was until his death a party to this suit, and is in fact the one who had instituted it. Counsel for the Plaintiff even informed this court that a successor had been identified in the estate and considered putting in a formal application for substitution of the Plaintiff. It can safely be presumed therefore that the Estate is well aware of this suit, but has no interest in pursuing and/or prosecuting it.
18. That notwithstanding, the 1st Defendant has informed this court that they already approached the Land Registrar and applied for removal of the caution. The 1st Defendant annexed an application for removal of the caution in the Form LRA 70 and a receipt issued by the Department of Lands for payment of KShs. 1,050/- fee for removal of caution. He claims however, that the application was rejected and he was asked to move the court for removal of the caution.
19. It would be unfair to send them back to the Land Registrar especially bearing in mind that they already went that route and it did not bear any fruits. The Cautioner herein is deceased and there is no chance that he will ever be in any position to apply for removal of the caution himself as provided for under Section 73(1) of the Land Registration Act.

20. For this reason, and in view of the abatement order made by this Court on 17th October, 2024, there exists no dispute to warrant the continued subsistence of caution on the title. In simple terms, since there is no pending suit, the Caution cannot be left to endure forever. Consequently, I do find that the Defendants are entitled to an order of removal of the caution placed on the suit land.

(b) Who shall bear the costs of this application?

21. With regards to the costs of the Application herein, the rule under Section 27 of the Civil Procedure Act that costs follow the event applies herein. Under the same Section 27, the Court has discretion to decide whether or not to make an award for costs.
22. In this case, the Defendants/Applicants asked that costs be in the cause. However, the suit having abated, there is no cause pending to warrant the order that the costs be in the cause. I have however considered the fact that the application was unopposed. For this reason, I will make no order as to costs.

Orders:-

23. The upshot is that the Notice of Motion dated 20th November, 2025 is merited. The same is allowed and the following orders hereby issue:-
- (a) The caution placed by the Plaintiff against L.R. No. Uasin Gishu/Kaptagat/5 on 31.1.2020 claiming purchaser's interest be removed forthwith.
- (b) There shall be no order as to costs.
24. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **26TH** day of **FEBRUARY, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;

Mr. Ngigi for Defendants/Applicants.

No appearance for the Plaintiff/Respondent.

Court Assistant - Laban.

ORIGINAL