

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
MILIMANI
ELC SUIT NO. 311 OF 2018

**ELISABETH WILHELMINA BREET KAMANDE (Suing as
the legal representative Adlitem of the Estate of
ALVIN KAMANDE NJENG(DECEASED) 1ST
PLAINTIFF**

**SUSAN WACHUKA RAHAB (Suing as the legal
representative Adlitem of the Estate of
DERRICK KARIUKI NJENGA(DECEASED)..... 2ND
PLAINTIFF**

VERSUS

**ESTHER NJERI NJENGA 1ST
DEFENDANT**

**JUDITH NYORO (Sued as the widow and legal
Representative and Administrator of the
Estate of ANDREW NYORO NJENGA 2ND
DEFENDANT**

**LUCIE WANJIKU MUCHEKEHU 3RD
DEFENDANT**

**JOSPHINE NDUTA KARIITHI 4TH
DEFENDANT**

**BANCY GATHONI MUSA 5TH
DEFENDANT**

SOPHIE KABURA MACHARIA ALIAS

**SOPHIE KABURA NJENGA 6TH
DEFENDANT**

RULING

1. Vide the Motion dated 19th December, 2025 brought pursuant to the provisions of **Section 73** of the **Land Registration Act, Rules 49** and **73** of the **Probate and Administration Rules**, the Applicant, Jane Wanjiku Beatrice seeks the following reliefs:

i. That pursuant to Section 73 of the Land Registration Act, No 3 of 2012, this Honourable Court be pleased to order and direct the Lands Registrar, Kiambu, to remove, lift and/or cancel all cautions registered against the following parcels of land registered in the name of Njenga Mundia (deceased):

LIMURU/NGECHA/1966

LIMURU/NGECHA/1967

LIMURU/NGECHA/1968

ii. That this Honourable Court be pleased to note that the said cautions arose from the instant suit between Alvin Kamande Njenga (deceased) and Esther Njeri Njenga (deceased) which suit has since been withdrawn, and to order that the cautions be removed accordingly.

iii. That the temporary injunction orders previously issued by this Honourable Court restraining dealings with the said parcels of land pending the hearing and determination

of this suit be and are hereby discharged, vacated, and/or set aside, the suit having since been withdrawn.

iv. That upon removal of the cautions and discharge of the injunction, the Applicant, as the duly appointed Administrator of the Estate of Njenga Mundia (deceased), be at liberty to transfer the said parcels of land to the beneficiaries in accordance with the confirmed Grant.

v. That the costs of this Application be in the cause.

2. The Motion is supported by the affidavit of Jane Wanjiku Beatrice, the Applicant of an even date. She deponed that she is the duly appointed Administrator of the Estate of Laban Njenga Mundia (deceased) and therefore competent to swear this Affidavit.
3. She deponed that the deceased died possessed of, among other assets, the following parcels of land: Limuru/Ngecha/1966 Limuru/Ngecha/1967 and Limuru/Ngecha/1968 and that the succession cause relating to his estate was heard and determined and a confirmed Grant was issued distributing the estate of the deceased, which included the above stated parcels of land, to the beneficiaries.
4. She explained that following the confirmation of the grant, a dispute emerged between Alvin Kamande Njenga and

Esther Njeri Njenga, both beneficiaries of the Estate of Njenga Mundia, in respect of the three properties and that the disagreement culminated in the institution of the present ELC suit. In the course of that dispute, Alvin Kamande Njenga caused cautions to be registered against the titles to the suit properties, and the court subsequently issued temporary injunctive orders, which were likewise registered against the respective titles.

5. Consequently, it was deposed, despite the confirmation of the grant, the Applicant has been unable to effect transfer of the said parcels and that the process remains impeded by the subsisting cautions endorsed on the titles and the temporary injunctive orders issued by this court pending the hearing and determination of the ELC suit.
6. She avers that the Estate of Njenga Mundia (deceased) was not a party to the said ELC suit and that the suit has since been withdrawn, and as such, there is no subsisting dispute capable of sustaining the continued existence of inhibition orders registered against the titles.
7. Ms. Wanjiku further depones that Elisabeth Wilhelmina Breet Kamande, the Administrator of the Estate of Alvin Kamande Njenga (deceased), and Sophie Kabura Njenga, the Administrator of the Estate of Esther Njeri Njenga (deceased), have each expressly confirmed that their respective estates have no objection to the removal of the cautions.

8. She urged that this court has jurisdiction under **Section 73 of the Land Registration Act**, to grant the orders sought and that the interests of justice lie in favour of granting the orders sought. The Motion was undefended and no submissions were filed.

Analysis and determination

9. Having considered the motion, the sole issue for determination is whether the court should direct that the caution placed on parcels Limuru/Ngecha/1966; Limuru/Ngecha/1967 and Limuru/ Ngecha/1968 be removed?
10. The Applicant asks this court to direct the removal of the cautions on parcels Limuru/Ngecha/ 1966, 1967 and 1968. She has moved this court pursuant to **Section 73** of the **Land Registration Act**. **Section 73(1)** in particular provides that:

“(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.”

11. **Section 2** of the **Land Registration Act** defines caution to include a caveat. It states:

“caution” includes –(a) a notice in the form of a register to the effect that no action of a specified nature in relation to the land in respect of which the notice has been entered

may be taken without first informing the person who gave the notice; or (b) a caveat.”

12. It is trite that a caution is a temporary measure to enable the cautioner seek reliefs to protect his interest elsewhere, for example by way of a civil suit or other forms of legal proceedings. It is not supposed to exist in perpetuity. As explained by the Court of Appeal in **Boyes vs Gathure [1969] EA 385**, a caveat is intended to serve two fold purpose:

“On the one hand, it is intended to give the caveator temporary protection, and on the other, it is intended to give notice of the nature of the claim to the person whose estate in the land is affected and to the world at large.”

13. The principles guiding removal of cautions are well settled. In **Simon Kimemia Muthondu vs Moses Mugo Maringa [2017] eKLR**, the court held that in considering an application for removal of a caution, it must examine the circumstances under which the caution was lodged, the interest claimed by the cautioner, and the prejudice likely to be suffered if the caution is removed.
14. Similarly, in **Maria Nganga Gwako vs Charles Mwenzi Nganga, [2014] eKLR**, the Court of Appeal held that once a proprietor objects to a caution, the burden shifts to the cautioner to justify its continued existence; absent reasonable cause shown, the caution must be removed.

- 15.** By way of brief background, the present suit was instituted by the Plaintiffs, as against the Defendants, all being family members seeking, *inter alia*, reversion of titles **Limuru/Ngecha/1966-1975** to the original parcel **Limuru/Ngecha/114**. It was alleged that the Defendants had undertaken the sub-division to the exclusion of the Plaintiffs and other legal beneficiaries.
- 16.** As a consequence of the dispute, cautions were registered against the parcels, and this court issued temporary injunctive orders. It is not in dispute that the suit was subsequently formally withdrawn and duly marked as such by the court on 25th March, 2025. With the withdrawal of the suit, there no longer exists any live controversy before this court capable of sustaining the continued subsistence of the said preservatory orders.
- 17.** The Applicant is the duly appointed Administrator of the Estate of Njenga Mundia (deceased) and holds a confirmed Grant issued on the 28th May, 2025 distributing the estate. She has deponed, without contradiction, that despite confirmation of the Grant, she is unable to complete the administration of the estate due to the subsisting cautions and injunction.
- 18.** Further, she has adduced affidavits of no objection by the Administrators of the estates of Alvin Kamande Njenga (deceased) and Esther Njeri Njenga (deceased), who were parties to the dispute, indicating that they have no objection to the removal of the cautions.

- 19.** Ultimately, the court is satisfied that the cautions have become unjustified within the meaning of **Section 73** of the Land **Registration Act**. The continued existence of these encumbrances would occasion unnecessary delay and prejudice in the completion of succession proceedings.
- 20.** The court finds the Motion to be merited and grants the following orders:
- a. An order does hereby issue directing the Lands Registrar, Kiambu, to remove, lift and/or cancel all cautions registered against the following parcels of land registered in the name of Njenga Mundia (deceased):**
LIMURU/NGECHA/1966,
LIMURU/NGECHA/1967,
LIMURU/NGECHA/1968.
 - b. The temporary injunction orders previously issued by this Court restraining dealings with the said parcels of land pending the hearing and determination of this suit be and are hereby discharged, vacated, and/or set aside, the suit having since been withdrawn.**
 - c. There shall be no orders as to costs.**

Dated, signed and delivered in Nairobi virtually this 12th day of March, 2026.

O. A. Angote

Judge

In the presence of:

No appearance for the Plaintiff

No appearance for Defendant

Court Assistant: Tracy

ORIGINAL