



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 174 OF 2013**

**KAGAI MWANGI.....PLAINTIFF**

**VERSUS**

**EPHANTUS NGARI MWANGI.....DEFENDANT**

**AND**

**WINNIE WAMARUA.....CAUTIONER**

**RULING**

This ruling arises from the Notice of Motion dated 13<sup>th</sup> February 2019 brought under **Section 1A 1B & 3A C.P.A and Order 51 Rule 1 C.P.R.** The Applicant/Defendant is seeking an order compelling the Cautioner who is the wife of the Plaintiff to remove the caution lodged against the suit land to facilitate the sub-division of land parcel No. KABARE/MUTIGE/160 as ordered by this Honourable Court in its decree issued on 6<sup>th</sup> July 2018. The Applicant is also seeking an order that in default of the Cautioner removing the caution, the Land Registrar be ordered to remove the same or in the alternative maintain the same against the share of land to be retained by the Plaintiff. The Defendant/Applicant is also seeking an order that the costs of the application be provided for. The application is supported by the affidavit of the Defendant/Applicant sworn on 13<sup>th</sup> February 2019 and grounds shown on the face of the said application. In his supporting affidavit, the Applicant deposed that this case was heard and the dispute between them was resolved in his favour as can be demonstrated by the judgment of the Court issued on 6<sup>th</sup> July 2018. The Applicant further deposed that on 21<sup>st</sup> January 2018, this Honourable Court ordered the Plaintiff/Respondent to execute all the necessary documents to give effect to the judgment of the Court by signing all the relevant statutory documents to facilitate the sub-division of land parcel No. KABARE/MUTIGE/160 into two shares. However, it transpired that two cautions were placed, one by the Applicant himself while the second caution was placed by the Plaintiff's wife. The Applicant deposes that unless the Plaintiff's wife removes the existing caution, the judgment of this Court cannot be enforced. He now seeks an order to compel the Plaintiff's wife who has been enjoined to this suit as a party to remove the same. When this matter came up for interparties hearing on 12<sup>th</sup> March 2019, only counsel for the Applicant was present. The affidavit of service filed in Court demonstrated that the Respondent was served through the firm of Macharia Muraguri Advocates but no replying affidavit or grounds of opposition were filed. The plaintiff's wife Winnie Wamarua who is the cautioner was also served with the application but she filed no response. Having satisfied the Court that the Plaintiff and the Cautioner were duly served, the Court allowed the application to proceed Ex-parte.

I have considered the said Notice of Motion, the supporting affidavit and the applicable law. There is a valid judgment of this Honourable Court issued on 6<sup>th</sup> July 2018. That judgment has not been set aside and/or appealed against. That decision dismissed the Plaintiff's claim and entered judgment for the Defendant in his counter-claim. The affidavit of service shows that both the Plaintiff and his wife who is the Cautioner were duly served but did not file any response. I find the application dated 13<sup>th</sup> February 2019 merited. Suffice to add that Court orders are not issued in vain. In the result, I do hereby order that the Land Registrar Kirinyaga County to remove the caution lodged to facilitate the sub-division of the suit land No. KABARE/MUTIGE/160 as per this Court's decree dated 6<sup>th</sup> July 2018.

Since the Cautioner is not a party to this suit, I order each party to bear his own costs. It is so ordered.

***READ and DELIVERED in open Court at Kerugoya this 10<sup>th</sup> day of June, 2019.***

**E.C. CHERONO**

**ELC JUDGE**

**10<sup>TH</sup> JUNE, 2019**

***In the presence of:***

***1. Mr. Muchira for Applicant***

***2. Respondent – present***

***3. Court clerk Mbogo – present***