

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELC CASE NO. 156 OF 2017 (OS)

SIMON NTHIGA
GICUBI.....PLAINTIFF/RESPONDENT
VERSUS
MUGO
NTHIGA.....DEFENDANT/APPLICANT

RULING

1. Vide the Notice of Motion application dated 01/09/2025, the Applicant is seeking to have the caution lodged on land parcel No. Nthawa/Riandu/3298 by Simon Nthiga Gicobi be removed and; that the inhibition restricting dealings in the said land issued on 12/07/2018 by this court be discharged.
2. The application is based on grounds on the face of the application supported by the affidavit of the Applicant, Mugo Nthiga, sworn on 01/09/2025. He deposed that he is the registered proprietor of the suit land and that the Respondent lodged a caution in respect of the land claiming purchasers' interest. He averred that the Respondent subsequently filed Civil Case No. 66 of 2021 at Siakago seeking for transfer of 1 ½ acres out of the suit land to his names, by virtue of an agreement entered into in 1994, which suit was dismissed. He averred that on 09/10/2017, the Respondent also filed ELC

Case No. 156 of 2017 against him seeking to be declared the owner of the 1 ½ acres portion of the suit land by way of adverse possession and on 12/07/2018, the Court issued an order of inhibition preventing all dealings on the suit land pending hearing and determination of the case.

3. He contended that the suit was heard and determined on 25/06/2025 and the Court dismissed the Respondents Originating Summons. He averred that it was in the interest of justice that the said caution and inhibition be removed so that he is free to deal with his land. He annexed to the supporting affidavit, a copy of the title deed for land parcel 3298, a copy of the green card for the said land and copies of the Rulings in Civil Case No. 66 of 2012 and ELC Case No. 156 of 2017.
4. The record shows that, as at the date of this Ruling, the Respondent had not filed any response to the application. Although the Respondent, acting in person, filed the Plaintiff's trial bundle, the same does not constitute a response. Accordingly, the Court shall treat the application as unopposed.
5. The issue for determination is whether the Court should order the removal of the caution lodged by the Respondent and the discharge of the inhibition placed on land parcel No. Nthawa/Riandu/3298.
6. It is not disputed that the Applicant is the registered owner of the suit land. The record shows that the suit herein was determined through a judgment dated 25/06/2025, wherein the Plaintiff's claim for 1½ acres out of land parcel No.

Nthawa/Riandu/3298 by way of adverse possession was dismissed. The record further shows that the Plaintiff had previously filed Siakago Civil Case No. 66 of 2012 seeking to enforce a sale agreement for the purchase of 1½ acres out of the suit land, which suit was also dismissed for being time-barred, having been filed out of time without leave of the court. It is also evident from the record that a caution was registered on 31/10/2022 by the Respondent claiming a purchaser's interest in the suit land. An inhibition was also earlier registered pursuant to a ruling of this Court dated 12/07/2018, restraining any dealings with the suit land pending the hearing and determination of the suit.

7. Cautions are registered pursuant to section 71 of the Land Registration Act which provides that:

(1)A person who—

- a. claims 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. is entitled to a licence; or
- c. has made an application for a bankruptcy order against the proprietor of any registered land, lease or charge.

(2)A caution may either—

- a. forbid the registration of dispositions and the making of entries; or
- b. forbid the registration of dispositions and the making of entries to the extent expressed in the caution.

(3)A caution shall be in the prescribed form, and the Registrar may require

the cautioner to support the caution by a statutory declaration.

(4)The Registrar may reject a caution that is unnecessary or whose purpose

can be effected by the registration of an instrument under this Act.

(5)Subject to this section, the caution shall be registered in the appropriate

register.

Section 73 (1) of the Land Registration Act empowers this Court to order for the removal of cautions and states that:

“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.”

8. On the other hand, Section 68(1) of the Land Registration Act empowers the Court to order for the registration of inhibitions. It states that;

“The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”

9. Section 70 of the Land Registration Act provides for the circumstances in which an inhibition may be lifted. It provides that:

“The registration of an inhibition shall not be cancelled except in the following cases—

- a. on the expiration of the time stated in the inhibition;
- b. on proof to the satisfaction of the Registrar of the occurrence of an event stated in the inhibition;
- c. on the land, lease or charge being sold by a charge, unless such sale is itself inhibited; or
- d. by a consequent order of the court.

10. In this case, the caution lodged by the Respondent was premised on a claim of purchaser’s interest over 1½ acres out of land parcel No. Nthawa/Riandu/3298. However, the record shows that the Respondent’s claim based on the alleged sale was dismissed for being time-barred. Further, the Respondent’s claim for adverse possession over the same portion of land in ELC Case No. 156 of 2017 was heard and determined on merit and dismissed by this Court vide judgment dated 25/06/2025. In light of the dismissal of both suits in which the Respondent sought to assert rights over the suit land, there is no legal basis exists for the continued subsistence of the caution and inhibition.

11. In the circumstances, on, the Court is satisfied that the Applicant has made out a proper case for the removal of the caution and the discharge of the inhibition.

12. Accordingly, the Court allows the application and orders that the caution lodged by the Respondent on land parcel No. Nthawa/Riandu/3298 be removed and that the inhibition issued on 12/07/2018 be hereby discharged.

13. There will no orders as to costs.

DATED, SIGNED AND DELIVERED AT EMBU THIS 19TH DAY OF MARCH, 2026.

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HON.E.C CHERONO
JUDGE

ENVIRONMENT AND LAND COURT

In the presence of;

M/S Ombongi H/B M/S Rugaita for Defendant/Applicant

Plaintiff/Respondent-present

Diana Kemboi C/A