



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KERUGOYA**

**ELC CASE NO. 324 OF 2013**

**JOEL GIKUNJU GATUNGU.....PLAINTIFF/RESPONDENT**

**VERSUS**

**KIRINYAGA COUNTY COUNCIL.....1<sup>ST</sup> DEFENDANT**

**JOSEPH MWANGI GAKUYA.....2<sup>ND</sup> DEFENDANT**

**NGIGI GITARI.....3<sup>RD</sup> DEFENDANT**

**FRANCIS MAGONDU.....4<sup>TH</sup> DEFENDANT**

**RULING**

The application before me is the Notice of Motion dated 22<sup>nd</sup> January 2013 brought under **Section 3A and Order L CPA**. The Applicant is seeking the following orders:

***1. That this Honourable Court be pleased to order that District Land Registrar Kirinyaga to remove caution or any restrictions placed on land parcel No. MUTIRA/KAGUYU/50 by either HARUN MURIUKI GITHUA, GEORGE KAGAI, JOB KARIMI MURIITHI, GITARI NJEGA, FRANCIS MAGONDU, Also Deceased, OR ANYONE Else at all to enable the clan members to execute the decree of this Court.***

***2. That the costs of this application be provided for.***

The said application was filed in High Court Nyeri before the case was transferred to the ELC Kerugoya. The application is supported by the affidavit of Joseph Mwangi Gakuya, the 2<sup>nd</sup> Defendant/Applicant. According to the Applicant, the suit property belongs to AMBUI/GICHIMBA Clan. According to the proceedings and decision of the Land Disputes Tribunal at Baricho in LDT No. 67 of 1997 issued and adopted by this Honourable Court on 26<sup>th</sup> June 2007, the Tribunal held that land parcel No. MUTIRA/KAGUYU/50 measuring 63 acres belongs to Ambui a Mbari ya Gichimba Clan which has six sub-clans. The Tribunal also proposed that the land be sub-divided and each of the sub-clans to get 10 acres each and the remaining 3 acres to be used as social amenities e.g. schools, roads and other social facilities. The claimants before the Tribunal were Joseph Mwangi Gakuya, Ngaca Gitari and Francis Magondu Ngaru whose claim was dismissed with each party to bear his own costs. From the green card forming part of the Court proceedings, the caution which is sought to be removed was placed by the Applicant, Ngaca Gitari Njega and Francis Magondu on 17<sup>th</sup> July 1985. The said caution was placed before

the Applicant and his group filed the complaint before the Land Disputes Tribunal.

However, after their claim was dismissed, the Applicant and the same group made several other applications before the High Court in Nyeri seeking to rectify the award which application was also dismissed. The award which was issued by the Baricho Court which was adopted by this Court is not in favour of the Applicant. This Court does not understand how the Applicant intends to enforce the decree of a judgment which is not in his favour. The suit property is registered in the native land trust who are members of Ambui a Mbari ya Gichimba. The Tribunal in their judgment observed that the Applicant who was one of the claimants had no any legitimate claim in the suit property.

It is therefore a mystery how the Applicant wishes to have a caution he registered with others removed after the Court found that they had no legitimate claim over that very same property. It is only parties with interest in the suit property who can legitimately complain against the caution and who wishes to implement the decision of this Honourable Court.

In the final analysis, I find the application dated 22<sup>nd</sup> January 2013 lacking merit and the same is hereby dismissed. I make no order as to costs.

*READ, DELIVERED and SIGNED in open Court at Kerugoya this 19<sup>th</sup> day of July, 2019.*

**E.C. CHERONO**

**ELC JUDGE**

**19<sup>TH</sup> JULY, 2019**

*In the presence of:*

- 1. Ms Ann Thungu holding brief for Mr. Maina Kagio for Defendant/Applicant*
- 2. Respondent – absent*
- 3. Mbogo – Court clerk*