



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

PETITION NO. 29 OF 2014

IN THE MATTER OF ARTICLE 23 AND 27 OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL

RIGHTS AND FREEDOMS PURSUANT TO ARTICLE 23 & 27

OF THE CONSTITUTION OF KENYA 2010

BETWEEN

SEVELINA KAIRIGO M'MIRITI & AGNES NYAI SAMUEL....PETITIONER

VERSUS

JAPHET MIRITI M'MWENGWA.....RESPONDENT

RULING

1. The application before me is dated 19.4.2018 filed by the respondent in the petition, where the said respondent is seeking orders for removal of the cautions lodged against L.R Abogeta/Lower Chure/210 (the suit land) and that costs of the application be provided for.
2. In support of the application, respondent avers that, he is the registered owner of the suit land, but this land was cautioned by his son in year 2001 but the son died on 13.7.2016 hence the caution does not serve any purpose. He further states that the 1st petitioner also cautioned the land in 1997 and hence the same ought to be removed since there is no appeal.
3. The application is opposed vide the replying affidavit of the petitioner where it is averred that she has already filed a notice of appeal against the ruling of the court which ordered the dismissal of the suit. She avers that if the caution is removed, the applicant (Japhet Miriti) will sell the land.
4. I have gone through the record and I find that the suit was dismissed vide the ruling dated 13.12.2017. Both apposite parties have availed certificate of searches for the suit land which indicates that Sevelina (1st petitioner) had cautioned the land on 22.5.1997 while one Eliphas Mbae Miriti cautioned the land on 18.6.2001.
5. This suit was filed on 18.9.2014. It follows that the cautions were not lodged during the subsistence of the suit. This court has no mandate to conduct further proceedings when there is no suit.
6. The applicant ought to follow the laid down legal procedures set out under section 73 of the land registration act to have the cautions removed otherwise the court cannot entertain further proceedings herein when there is no suit.
7. The application dated 19.4.2018 is hence dismissed with no orders as to costs. The file is marked as closed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 17TH DAY OF JULY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Miss Njenga for petitioner

Ogoti holding brief for Kiogora for respondent

HON. LUCY. N. MBUGUA

ELC JUDGE