

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT ELDORET**  
**ELC CASE NO. 82 OF 2018 (O.S)**

**MARY WAIRIMU MWANGI** .....  
**PLAINTIFF**

**-VERSUS-**

**ANNE WANJIRU MUREITHI** ..... **1<sup>ST</sup>**  
**DEFENDANT**  
**COUNTY LAND REGISTRAR,**  
**UASIN GISHU COUNTY** ..... **2<sup>ND</sup>**  
**DEFENDANT**  
**ATTORNEY GENERAL** ..... **3<sup>RD</sup>**  
**DEFENDANT**

**JUDGMENT:**

1. The Plaintiff herein commenced this suit by way of an Originating Summons dated 16<sup>th</sup> May, 2018 against the Defendants seeking a determination of the following questions:-
  - a. **Whether the applicant is the registered owner of land parcel ELDORET MUNICIPALITY BLOCK 23 (KING'NG'O)/823 pursuant to law.**
  - b. **Whether the placement of the Caution by the 1<sup>st</sup> respondent is lawfully justified at law.**
  - c. **Whether the sustenance of the Caution has infringed on the rights of the applicant without due regard of ownership/enjoyment of proprietorship.**

**d. Whether the court is justified to have the Caution removed on land parcel ELDORET MUNICIPALITY BLOCK 23 (KING'NG'O)/823.**

**e. Who will bear the costs of the case.**

2. The Originating Summons is premised on the grounds and facts outlined in the Plaintiff's Supporting Affidavit sworn and dated 15.05.2018.
3. The plaintiff deponed that she is the legal registered owner of all that parcel of land known as **ELDORET MUNICIPALITY BLOCK 23 (KING'NG'O)/823** (hereinafter referred to as the 'suit land') measuring approx. 0.100Ha, having purchased the same in the year 2014 from one Jane Wanjiku Mureithi.
4. It was her claim that prior to the said purchase, Jane Wanjiku Mureithi, who was the registered owner at the time, showed her the letter of consent confirming that the land had been transferred in her name from one Thomas Yator, who was the previous owner thereof.
5. She thereafter conducted an official search at the Uasin Gishu Lands Registry, which confirmed that the said Jane Wanjiku Mureithi was the registered owner. She thus proceeded with the transaction and pursuant to the sale, she made an application to transfer the suit land in her name and subsequent registration in her name on 21.08.2014.
6. It is her contention that she obtained a good title in respect to the suit land without notice of any defect.

7. It is her claim that sometimes on 27.04.2016, she obtained a copy of the Green Card in relation to the suit land and it is then that she discovered that the 1<sup>st</sup> defendant had registered a caution against the suit land, alleging that she had a co-widow's interest on the suit land.
8. The plaintiff deponed that she was not married to the same man as the 1<sup>st</sup> defendant neither is she related to her. She maintained that the suit land does not form part of the Estate of Peter Mureithi Mbugua.
9. She dismissed the ownership claims and interest made by the 1<sup>st</sup> defendant in respect to the suit land as false and maintained that certified copy of the Green Card indicates that the first owner of the suit land was one, Thomas Kipkosgei Yator, who sold the same to Jane Wanjiku Mureithi.
10. The plaintiff outlined the steps she made and efforts put in trying to secure a hearing before the Lands Registrar for purposes of removing the caution registered by the 1<sup>st</sup> defendant, the various notices for the intention to remove the caution issued to the 1<sup>st</sup> defendant and which did not illicit any response from the 1<sup>st</sup> defendant.
11. Consequently, on 29.09.2016, upon satisfaction that the 1<sup>st</sup> defendant did not respond to any of the notices issued to her, the Land Registrar proceeded and lifted the caution. This was confirmed by the official search conducted in respect to the suit land on 26.10.2016.
12. Her claim against the defendants is that the caution against the suit land has restricted and prevented her full utilization

of the title of the suit land as collateral to secure a financial facility and are as a result adverse to her proprietary interests over the suit land, contrary to Articles 40(2) (a & b) and 47 of the Constitution of Kenya.

13. She reiterated that the 1<sup>st</sup> defendant's claim of a co-wife is immaterial as she is neither related to her nor does the land belong to the estate of Peter Mureithi Mbugua. That the first owner of the suit land was Thomas Kipkosgei Yator who has no relationship with the late Peter Mureithi Mbugua.
14. The plaintiff maintained that the documents from the lands registry in respect to the suit land clearly proves that the suit land was not registered in the name of the late Peter Mureithi Mbugua and therefore the 1<sup>st</sup> defendant's claim is solely meant to frustrate her peaceful occupation and prevent her full utilization of her property.
15. Further, it was her claim that the acts by the 2<sup>nd</sup> defendant of re-registering a caution without according her an opportunity to be heard, particularly after following the due process to have the caution lifted, is contrary to the provisions of Article 50(1) of the Constitution.
16. In conclusion, the plaintiff deponed that there is likelihood that the defendants will continue to restrict her land to her detriment and in violation of her proprietary interests hence the instant suit and the need for court's protection against the said unlawful acts.
17. She thus urged the court to allow her suit and grant the orders sought.

18. The Originating Summons was served upon the Defendants who entered appearance and filed their various Replying Affidavits in response to the Originating Summons.
19. The 1<sup>st</sup> Defendant filed a Replying Affidavit sworn and dated on 29.08.2018, wherein she dismissed the originating summons as being fatally defective and incompetent.
20. It was her claim that the suit land was fraudulently and illegally acquired and thus the plaintiff had the land transferred to her and became the registered owner fraudulently.
21. It is her contention that the suit land was purchased by her late husband Peter Mureithi Mbugua from Tabitha Wanjiku Ndirangu, who had in turn purchased it from Thomas Kipkosgei Yator.
22. The 1<sup>st</sup> defendant deponed that she successfully applied to have the caution registered on the title of the suit land and the same was duly registered.
23. However, she was shocked to learn that the caution had been removed without any notice to her and/or consent, when she carried out a search and further that the register had also been rectified to read Mary Wairimu Mwangi.
24. It is her contention that several requests and attempts to have the documents used to transfer the suit land in favor of the plaintiff availed to her were to no avail.
25. It is the 1<sup>st</sup> defendant's assertion that the plaintiff's title to the suit land is not protected for the reason that she did not acquire the land from the previous registered owner.

26. She contends that from a perusal of the minutes of the Land Control Board, she confirmed that the suit land No. 823 was not discussed in any of the Board's transactions and therefore, no valid LCB Consent was obtained to transfer the suit land to the plaintiff.
27. She further averred that Jane Wanjiku Mureithi was not a registered owner of the suit land at the time it was transferred to the plaintiff and she therefore had no interest over the suit land to pass to the plaintiff.
28. The 1<sup>st</sup> defendant thus maintained that the plaintiff is not an innocent purchaser for value without notice and therefore the title document she holds is not protected.
29. Further, it is the 1<sup>st</sup> defendant's claim that since Thomas Kipkosgei Yator died on 02.07.2004, he could not have been a party to an application for consent of the Land Control Board on 29.09.2011 nor could his application dated 29.09.2011 be assented to on 09.09.2011.
30. Consequently, the consent of the LCB dated 09.09.2011 is therefore a fraud and a nullity.
31. It is her contention that the sale agreement dated 05.07.2013 was a dealing on a deceased's person's estate by somebody who lacked the requisite capacity to do so.
32. Further, it is her claim that the suit land No. 823 was non-existent prior to 28.04.2014 as the land reference No. Eldoret Municipality Block 23 (King'ong'o)/306 was in existence until the year 2014.

33. She maintained that Thomas Kipkosgei Yator never sold the suit land to Jane Wanjiku Mureithi.
34. In conclusion, it was her claim that there is need to protect her rights under the law hence the need to sustain the caution against the title of the suit land.
35. She thus urged the court to dismiss the plaintiff's claim with costs.
36. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on their part also filed a Replying Affidavit sworn by Sheilla Chepkemei Mwei, the Land Registrar, Uasin Gishu County and dated 20.03.2023 in response to the averments made in the Originating Summons as well as the Supporting Affidavit.
37. It is her claim that from their records, the suit parcel known as King'ong'o/823 is registered in the name of Mary Wairimu Mwangi of P.O. Box 6638-30100 Eldoret. That the said registration was effected on 22.08.2014.
38. She further deponed that sometimes on 29.01.2015, a caution was placed on the suit parcel by one Anna Wanjiru Muriithi, claiming to be a co-widow and thus having an interest in the suit land.
39. The said caution was registered pursuant to the provisions of section 71(1) of the Land Registration Act, 2012.
40. It was her contention that on 29.09.2016, at entry No. 7, the caution was withdrawn by the Land Registrar pursuant to section 73(3) of the Land Registration Act, 2012. However, the said withdrawal was later cancelled upon receipt of an objection from the cautioner.

41. She therefore maintained that there is nothing unconstitutional or unlawful in the actions of the Land Registrar in accepting to register the caution since the cautioner tendered evidence in support of her supposed interest in the suit land.
42. She further deponed that the 2<sup>nd</sup> defendant registered the caution as mandated under section 71(5) of the Land Registration Act.
43. She denied any claims of illegality, fraud and/or unlawful actions as alleged by the plaintiff and restated its values and principles as set out in the constitution.
44. The respective Replying Affidavits by the 1<sup>st</sup> and 2<sup>nd</sup> and 3<sup>rd</sup> defendants were duly served upon the plaintiff. However, on a perusal of the court record, I have not seen any Supplementary and/or Further Affidavit in response to the said averments and claims raised by the defence in their respective affidavits.
45. Upon close of pleadings, the matter was marked ready for hearing and it did proceed to trial.

**TRIAL:**

**Plaintiffs' Case;**

46. The plaintiff's case proceeded for hearing on 31.01.2024. The plaintiff testified as PW1. She adopted her witness statement as her evidence in chief.
47. It was also her testimony that in 2013, she purchased a piece of land and made payments thereto in instalments with the

final payment being in 2014. Consequently, she obtained title in respect to the said parcel of land on 21.08.2014.

48. However, it is her claim that sometimes on 29.01.2015, a caution was registered against the said title by the 1<sup>st</sup> defendant Anne Wanjiru Mureithi. That as a result of the said caution, she was unable to use the suit land and/or sell the same as she had intended to do.
49. She also produced the documents in her list of documents dated 16.05.2018 as **Pexhibits 1 - 18** and the documents contained in the further list of documents dated 02.12.2022.
50. She further testified that she wrote to the Land Registrar and the caution was removed but the same was later returned/registered again upon complaint from Anne Wanjiru Mureithi. In conclusion, she urged the court to order the removal of the caution.
51. On cross-examination, it was her testimony that she purchased the suit property from Jane Wanjiku Mureithi in the year 2013 upon conducting her due diligence and carrying out a search. She however admitted that the search carried out in the year 2013 was not produced in court.
52. She confirmed that the vendor, Jane Wanjiku Mureithi obtained title in respect to the suit land in the year 2014. She further admitted that she did not have a transfer form before court.
53. She also confirmed that she wrote a letter to the Land Registrar to remove the caution but conceded that she did

- not attend the office of the land registrar for hearing of the removal of the caution.
54. When referred to Pexh. 1, she confirmed that the transfer form was signed by one Thomas Yator but denied being aware that the said Thomas Yator had died in the year 2004.
  55. On cross-examination by Ms. Tigoi, she stated that the suit land belongs to her, having purchased the same from Jane Wanjiku Mureithi.
  56. She admitted that the caution was placed by the 1<sup>st</sup> defendant, Anne Wanjiru Mureithi. That even though the caution was removed, the same was later restored.
  57. On re-examination, she testified that she purchased the suit property through a lawyer. She stated that the vendor who sold her the suit property is still alive.
  58. She maintained that she has no co-wife and dismissed the claims by the cautioner, the 1<sup>st</sup> defendant herein, that she was her co-wife.
  59. At the end of the re-examination, the witness was discharged.
  60. JANE WANJIKU MUREITHI testified as PW2. She adopted her witness statement dated 15.12.2022 as her evidence in chief. It was her testimony that she sold the suit land, Eldoret Municipality/ Block 23 (King'ong'o)/823 to the plaintiff, Mary Wanjiru Mwangi.
  61. She stated that she purchased the suit land from Thomas Yator in the year 2000 and the said Thomas Yator died in the

- year 2004. It was her testimony that the consent was given in the year 2011 after the original consent was lost.
62. She stated that she does not know Anne Wanjiru Mureithi but only saw her when her husband died. In conclusion, she urged the court to order that the caution be removed so that the plaintiff, Mary Wairimu enjoys her land.
63. On cross-examination, it was her testimony that that the proceedings in relation to the estate of her late husband are still ongoing and confirmed that Anne Wanjiru Mureithi is involved in the succession cause.
64. She reiterated that she purchased the suit land in the year 2000 and obtained the title in the year 2014. She maintained that the consent was given in the year 2011 and that it was Thomas Yator's son who took her to the LCB since the vendor, Thomas died in the year 2004.
65. When referred to a copy of the Green Card, she confirmed that her name was indicated/included in the register in the year 2014.
66. On cross-examination by counsel for the 2<sup>nd</sup> defendant, she reiterated that she is the one who sold the suit property to the plaintiff.
67. She stated that her husband was called Peter Mureithi Mbugua. It was her testimony that she was not aware whether the caution was ever removed.

68. At the end of the cross-examination, there was no re-examination and the witness was discharged. The plaintiff thereafter closed her case.

**Defence Case;**

69. The defence case proceeded for hearing on 08.12.2025. The 1<sup>st</sup> defendant testified as DW1. She adopted her replying affidavit dated 31.08.2018 as her evidence in chief.

70. She also produced the documents on her list of documents dated 09.11.2022 as exhibits in support of her case. The documents were marked as Dexh. 1 – 3 as follows: -

**1<sup>st</sup> defendant Dexh. 1 - copy of a certificate of confirmation of grant.**

**1<sup>st</sup> defendant Dexh. 2 - copy of a green card in respect to L.R. No. Eldoret Municipality Block 23 (King'ong'o)/823**

**1<sup>st</sup> defendant Dexh. 3 - copy of advertisement for grant of letters of administration.**

71. It was also her testimony that she registered a caution on the suit land for the reason that the suit land belonged to her late husband, Peter Mureithi Mbugua.

72. She explained that her late husband had purchased the suit land from one Tabitha Wanjiku Ndirangu, who is since

- deceased. However, prior to her death, the said Tabitha Wanjiku Ndirangu had filed an Affidavit dated 22.08.2018.
73. She confirmed that she found out that the caution had been removed without her involvement hence the reason why the same was placed again/restored.
74. She admitted that the suit land is registered in the name of the plaintiff but averred that the said registration was obtained illegally.
75. It is her claim that there are no documents indicating how the suit land was transferred from one Jane Wanjiku Mureithi, who had sold it to Mary Wairimu Mwangi, the plaintiff herein.
76. She went on to state that Thomas Yator, who allegedly transferred the suit land to Jane Wanjiku Mureithi, died in 2004 whereas the transfer was done in 2011. It is therefore her claim that this court should ascertain who is the lawful owner of the suit land between Thomas Yator and Mary Wairimu.
77. In the end, she maintained that she lawfully registered a caution on the suit land since the same belonged to her late husband.
78. On cross-examination by counsel for the plaintiff, it was her testimony that her late husband, Peter Mureithi Mwangi, died in the year 2011 and that the succession proceedings in relation to his estate were still ongoing.
79. She reiterated that her late husband is the one who purchased the suit land though she conceded that she did

not have any sale agreement to support the said averments. She accused Jane Wanjiru, who is her co-wife, of taking the relevant documents and hiding them.

80. She did admit that the title of the suit land is in the name of Mary Wairimu Mwangi, and the title deed thereto was issued in her favor on 22.08.2014.
81. She maintained that the caution cannot be removed before ascertaining the actual ownership status of the suit land.
82. On cross-examination by counsel for the 2<sup>nd</sup> defendant, she reiterated that she did not know how the suit land was transferred from the name of Thomas Kipkosgei Yator to Jane Wanjiku was done. She maintained that she did not see any transfer documents thereto and efforts to request the same from the Land Registrar was not fruitful.
83. She also reiterated that Thomas Kipkosgei Yator died in 2004 but stated that she was not aware whether his death was notified to the Land Registrar or whether the land registrar was aware of the death of Thomas Yator at the time the suit land was being transferred. She maintained that she was not aware how Jane Wanjiku transferred the suit land to the plaintiff, Mary Wairimu Mwangi.
84. She acknowledged to have registered the caution on the suit land as seen from the Green Card which was produced as Dexh. 2 on Entry No. 6 made on 29.01.2015.
85. On re-examination, it was her testimony that she did not know who went to the lands office and pretended to be one

Thomas Kipkosgei Yator in the year 2014 whereas Thomas Yator was already dead at the time.

86. After re-examination, the witness was discharged and the 1<sup>st</sup> defendant thereafter closed her case.
87. Caroline Sang, the Land Registrar Uasin Gishu County testified as DW2, on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.
88. She produced a copy of the record for parcel No. ELDORET MUNICIPALITY BLOCK 23 (KING'ONG'O)/823 as 2<sup>nd</sup> and 3<sup>rd</sup> Defence Exhibit 1.
89. It was her testimony that where the documents in their custody and those supplied meet the standards to effect a transfer, then the transfer would be effected.
90. It was further her testimony that they have no objection to the prayer by the plaintiff seeking the removal and/or withdrawal of the caution.
91. She explained that before placing a caution, they have to satisfy themselves that the person registering the same has an interest on the land.
92. On cross-examination by counsel for the plaintiff, she confirmed that from the record of the suit land, parcel No. 823, the registered owner of the suit land is the plaintiff, Mary Wairimu Mwangi, and the registration thereto was done on 22.08.2014.
93. It was also her testimony that she has not received any report claiming that the transfer of the suit land was done fraudulently.

94. On cross-examination by counsel for the 1<sup>st</sup> defendant, she confirmed that they do not have any document to confirm that they wrote to the parties to have them attend the registry neither are there any notices that were issued to that effect.
95. She maintained that the caution over the suit land is still in place and further explained that anyone can place a caution and the same can be registered if it is merited.
96. With regard to the transfer of a land parcel, it was her testimony that the attendance of both the purchaser and the seller is required during the transfer process only on special circumstances.
97. However, it was her contention that they mostly interact with documents that they are given. That the consent letter was a copy given to the land registrar at the time and they could not therefore confirm that the said Thomas was deceased or whether the said documents were obtained by fraud.
98. On re-examination, she reiterated that she had not seen a written document/complaint over the alleged fraud.
99. She also restated that the presence of both the transferor and the transferee claiming transfer is only required on special circumstances. She maintained that the instant suit was not one of such special circumstances.
100. It was her testimony that she had not seen any claim against the land registrar by the 1<sup>st</sup> defendant.

101. At the end of the re-examination, the witness was discharged and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants' case was thereafter closed.
102. Upon close of the defence case, parties were directed to file their final submissions. The plaintiffs filed her submissions dated 21.01.2026, the 1<sup>st</sup> defendant filed her submissions dated 06.03.2026 while the 2<sup>nd</sup> and 3<sup>rd</sup> defendants filed their submissions dated 15.02.2026 together with authorities which I have read and considered.

**Analysis and Determination:**

103. I have carefully considered and reviewed the pleadings filed herein, the respective testimonies and exhibits adduced in support of each party's claim as well as the parties' rival submissions in totality.
104. Consequently, it is my considered opinion that the following issues arise for determination: -
- a. *Whether the plaintiff is the registered owner of the suit land herein.*
  - b. *Whether the placement and sustenance of the Caution by the 1<sup>st</sup> defendant is justified and lawful.*
  - c. *Whether the court can order the removal of the caution lodged against the title of the suit land.*
  - d. *Whether the Plaintiff is entitled to the reliefs sought in the Originating Summons*
  - e. *Who shall bear the costs of the suit.*

105. Having identified the above issues for determination, I will now proceed to discuss the same as hereunder.

**a. Whether the plaintiff is the registered owner of the suit land herein;**

106. This first issue seeks to determine the ownership claims made by the plaintiff in respect to the suit land herein.

107. It is the plaintiff's claim that she is the duly registered owner of the suit land and is therefore entitled to all the rights and privileges thereto, including the peaceful occupation and gainful use of her property to the exclusion of others. She produced a copy of the title deed in respect to the suit land, copy of the green card as well as an official search which all supported her claims.

108. The 1<sup>st</sup> defendant on her part admitted that the plaintiff is the registered owner of the suit land but maintained that such registration was fraudulent and illegal and the title deed issued in her name is therefore not a good or protected title.

109. The plaintiff's ownership claims were further confirmed by the witnesses who testified and adduced various evidence. PW2 confirmed that the plaintiff is the duly registered owner of the suit land.

110. DW1 also admitted both in her replying affidavit as well as in her testimony before the court that the plaintiff is the registered owner of the suit land even though she maintained that the said registration was procured illegally

and fraudulently. She also produced DW1 Dexh. 2, which is a copy of the green card which confirmed the registration details.

111. DW2, the Land Registrar also did confirm and acknowledge that from their records, the suit land No. 823 has been registered in the name of the plaintiff. She produced a copy of the records as DW2 Dexh.1 in support of the said registration claims.
112. Section 26 of the Land Registration Act provides that a certificate of title shall be held as conclusive proof of ownership and gives the grounds of impeaching a title document. The section provides as follows: -

**26. Certificate of title to be held as conclusive evidence of proprietorship**

**(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—**

**(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or**

**(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme (emphasis mine)**

113. From the statutory provision above, it is clear that a certificate of title will be held as conclusive evidence of proprietorship of the person named as the proprietor. The same section however also provides the grounds upon which the title of a registered proprietor may be impeached.
114. Section 26(1) (a) above states that a certificate of title may be challenged on grounds of fraud or misrepresentation to which the registered proprietor is proved to be a party, or where the same was acquired illegally, unprocedurally or through a corrupt scheme.
115. Although 1<sup>st</sup> defendant did acknowledge that the plaintiff is the registered proprietor of the suit land, she challenged the said registration as being fraudulent and illegal. The question that therefore follows is whether the 1<sup>st</sup> defendant has given sufficient proof to the required threshold in support of the said fraudulent and illegal claims and further demonstrated to the satisfaction of the court that the plaintiff herein was a party to the said fraud.

116. In *Vijay Morjaria vs. Nansingh Madhusingh Darbar & another [2000] eKLR* Tuno JA (as he then was) stated as follows:

***“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” (Emphasis added).***

117. I have carefully considered the 1<sup>st</sup> defendant’s claims as contained in her replying affidavit, her testimony in court as well as the exhibits she produced and it is the finding of this court that she has not sufficiently proved her allegations of fraud to the required standard against the plaintiff.

118. The alleged fraudulent and illegal conduct on the part of the plaintiff was not specifically pleaded and particularized neither was the same distinctively proved. The issues surrounding the consent to transfer from the first registered owner Thomas Yator to Jane Wanjiku Mureithi cannot in my considered view be inferred and/or taken to mean sufficient proof against the plaintiff as a party to the alleged fraud.

119. Further, the 1<sup>st</sup> defendant neither controverted the said ownership documents in the form of a title deed, copy of the green card and copies of official search as adduced by the plaintiff and DW2 nor produced any contrary document/evidence to challenge the ownership of the plaintiff as the registered proprietor of the suit land.
120. In the absence of any evidence to the contrary, it is the finding of this court that the plaintiff is the actual, beneficial and/or registered owner of the suit property and the title documents adduced above are a prima facie and conclusive evidence that she is the absolute and indefeasible owner of the suit land herein.

**b. Whether the placement and sustenance of the Caution by the 1st defendant is justified and lawful;**

121. The second issue seeks to ascertain and establish whether the placement/lodging of the caution by the 1<sup>st</sup> defendant against the title of the suit land and the subsequent sustenance of the said caution is justified and lawful.
122. Section 71 nad 72 of the Land Registration Act provides for the lodging of cautions. The section states as follows: -

***71. Lodging of Cautions***

***(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) .....**

**(c) .....**

**may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the land lease or charge.**

123. The above section provides the basis and empowers the 1<sup>st</sup> defendant to lodge the caution in the nature herein, seeking to protect her interest over the suit land, whether as a co-wife or a beneficiary in the estate of her deceased husband, Peter Mureithi Mwangi.
124. However, the question that follows and which is at the centre of the dispute herein is whether the proper procedure was followed before lodging the same and whether its continued sustenance against the title of the suit land is lawful and justified.
125. Section 72 of the Land Registration Act mandates the Land Registrar to give a notice in writing of the caution lodged to the proprietor whose land is affected by the said caution.
126. It is the plaintiff's claim that she only found out about the existence of the caution against the title of the suit land when she conducted an official search on the suit land to facilitate the procuring of a financial facility.

127. No such notice was adduced in evidence by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants as proof of compliance with the statutory duty and mandate placed upon the 2<sup>nd</sup> defendant with regards to lodging of cautions.
128. The next question therefore is, whether the sustenance of the caution since the year 2015 to date is justified and lawful.
129. It is common ground that there is no set period of time within which a caution registered against a parcel of land must remain in force and/or be sustained. However, the said registration of a caution is to act as a stop gap measure rather than a long-term or permanent solution thereof.
130. It is the 1<sup>st</sup> defendant's claim that the suit land belongs to her late husband, Peter Mureithi Mwangi. She contends that her late husband purchased the suit land from one Tabitha Ndirangu and who had earlier on purchased the same from Thomas Yator. It is on that basis that she seeks protection of a co-widow's interest over the suit land.
131. Be that as it may, the 1<sup>st</sup> defendant, who is also the cautioner, did not provide any proof that the suit land belonged to her late husband. During cross-examination, she admitted that she did not have any sale agreement in support of the allegations of purchase.
132. Further, no evidence has been provided to prove that the suit land herein was either a matrimonial property to warrant her claim under the co-widow's interest or that the property

formed part of the estate of her late husband, Peter Mureithi to warrant her claim under a beneficiary interest.

133. It is a well settled principle in law that 'he who alleges must prove' and section 107 of the Evidence Act is clear in this regard. The 1<sup>st</sup> defendant bore the burden of proving that the suit land indeed belonged to her late husband and which as a result warranted her registration and sustenance of the caution against the suit land. This burden was not discharged to the required standard.
134. It has been over 10 years since the caution herein was lodged by the 1<sup>st</sup> defendant yet there has been no demonstration of any action she has taken to establish her alleged interest in the suit land. The registration of a caution alone cannot create a registrable interest where there was none.
135. To this end, this court is of the considered view and finding that the sustenance of the caution lodged against the suit land by the 1<sup>st</sup> defendant is not justifiable and legal/lawful.
136. In other words, this court finds no valid, justifiable and reasonable cause to warrant the sustenance of the caution against the title of the suit land and the same must therefore be withdrawn and/or removed.

**c. Whether the court can order the removal of the caution lodged against the title of the suit land;**

137. The third issue seeks to determine whether this court is empowered to issue an order for the removal of a caution, in the nature sought.
138. Section 73 of the Land Registration Act provides for the withdrawal and removal of a caution. Section 73(1) provides as follows: -

***(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. (emphasis mine)***

139. In light of the findings in issues (i) and (ii) above, this court will proceed and issue an order for the immediate removal of the caution lodged by the 1<sup>st</sup> defendant on 29.01.2015 against the title of the suit land herein.

**d. Whether the Plaintiff is entitled to the reliefs sought in the Originating Summons;**

140. In view of the foregoing and having held that the Plaintiff sufficiently proved her claim to the required standard, it therefore follows that she is entitled to the reliefs sought in the Originating Summons.

**V. Who shall bear the costs of the suit;**

141. Although costs of the suit are awarded on the discretion of the court, the general rule is that costs shall follow the event

in accordance with the proviso to section 27 of the Civil Procedure Act, unless the court directs otherwise.

142. In the present suit, having held that the Plaintiff has satisfactorily proved her claim to the required standard, I find that she is entitled to the costs of the suit, to be borne by the 1<sup>st</sup> defendant.

**CONCLUSION:**

143. The upshot of the above is that the Originating Summons dated 16<sup>th</sup> May, 2018 is **merited** and I accordingly **allow** the same on the following terms: -

**a) The Originating Summons dated 16.05.2018 be and is hereby allowed.**

**b) A declaration be and is hereby made that the plaintiff is the actual, beneficial, bonafide and registered owner of the parcel of land known as ELDORET MUNICIPALITY/ BLOCK 23 (KING'ONG'O)/823.**

**c) An Order be and is hereby issued for the immediate withdrawal and/or removal of the caution registered on 29.01.2015 by the 1<sup>st</sup> defendant on the parcel of land known as ELDORET MUNICIPALITY/ BLOCK 23 (KING'ONG'O)/823.**

**d) Costs of the suit are awarded to the plaintiff to be borne by the 1<sup>st</sup> defendant.**

144. It is so ordered.

**DATED, SIGNED and DELIVERED at ELDORET this 30<sup>TH</sup> day of APRIL, 2026.**

**HON. C. K. YANO  
JUDGE**

In the virtual presence of: -

Ms. Otuma holding brief for Mr. Angu for Plaintiff.

Mr. Wainaina for 1<sup>st</sup> Defendant.

No appearance for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

Court Assistant - Laban