

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO 724 OF 2012

IN THE MATTER OF THE ESTATE OF NANGABO CHIBRE ONGERI-
(DECEASED)

AND

IN THE MATTER OF JACKSON CHIBWIRE NANGABO---- PETITIONER/
RESPONDENT

AND

STEPHEN ONGERI NANGABO----- 1ST
APPLICANT/PETITIONER

LEONARD SUMBA NANGABO-----2ND APPLICANT /
PETITIONER

RULING

1. The Applicant filed a Notice of Motion application dated 13th May 2022 praying that the restriction be placed on parcel of land no. East Wanga /Eluche /887 be removed to pave the way for registration.
2. In his supporting affidavit, the Applicant, who is a son and beneficiary of the deceased, avers that a restriction had been placed on the deceased parcel of land by the Respondent and that the reasons that led to the restriction being placed have since been overtaken by events.
3. He contends that the family had agreed to have the restriction removed so that they could continue with the succession and registration of the grant.
4. The 2nd Applicant swore an affidavit dated 19th December 2024 supporting the assertion of the 1st applicant that the reasons for

placing the caution on the land had been sorted. He states that his brother, who had filed the application on 13th May 2022, had since died.

5. He states that the respondent had refused to remove the caution, and they are unable to transact on the piece of land despite having completed the whole succession process.
6. At the time of writing this judgment none of the parties had filed their submissions.

Analysis and determination

7. The main issue for determination is whether the Applicant had established enough reasons for this court to remove the restriction and or caution registered against Land Parcel No. East Wanga/Eluche/887.
8. Cautions and restrictions under the Land Registration Act, 2012 serve as protective mechanisms to safeguard interests in land. However, they are not intended to remain on title indefinitely once the underlying reason ceases to exist or where parties have resolved the dispute.
9. Section 73 of the Land Registration Act provides that a caution may be withdrawn by the cautioner or removed by order of the court or, on application, by order of the Registrar after notice and an opportunity to be heard.
10. It states 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(1) A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the Registrar.

(2) The Registrar, on the application of any person interested, may serve notice on the cautioner warning the cautioner that the caution will be removed at the expiration of the time stated in the notice.

(3) If a cautioner has not raised any objection at the expiry of the time stated, the Registrar may remove the caution.

11. This court has carefully considered the uncontroverted evidence placed before me. The 1st and the 2nd Applicant had demonstrated that they were beneficiaries in the succession process and further that the family has agreed to the removal of the restriction. The Respondent, though served, has elected not to contest the application. In the absence of any demonstrated ongoing legitimate interest or prejudice that would justify the continued registration of the caution, it would be inequitable to allow the restriction to subsist and thereby paralyse the administration of the estate.

12. In **Vereria Wanjiru Munga v Haron Nyakundi [2020] KEELC 3389 (KLR)**, the Court held that a caution is not a permanent fixture on title and that where the purpose for which it was lodged has been spent or where the cautioner declines to justify its continued existence, the Court may order its removal.

13. Similarly, in **Maria Ngangi Gwako v Charles Mwezi Ngangi [2014] eKLR**, the court underscored the need to remove

cautions that impede legitimate succession and registration processes once the underlying concerns have been addressed.

14. That being said, this court is satisfied that the Applicants have made out a case for the removal of the restriction. The death of the 1st Applicant does not abate the application; the 2nd Applicant, as a surviving beneficiary, is properly before the court and can prosecute the same.

15. In the result, I make the following orders:

- a) The Notice of Motion dated 13th May 2022 is allowed.*
- b) The restriction/caution registered against Land Parcel No. East Wanga/Eluche/887 is hereby ordered removed forthwith.*
- c) The Land Registrar, Kakamega is directed to effect the removal of the said restriction upon presentation of this Ruling and any other requisite documents.*
- d) The parties shall proceed with confirmation of the grant and registration/transmission without further delay.*
- e) Each party shall bear its own costs of this application.*
- f) Right of Appeal 30 days explained.*
- g) Mention 30.7.2026 for further directions.*

DATED, SIGNED and DELIVERED at KAKAMEGA this 6TH day of MAY, 2026.

S.N. MBUNGI

JUDGE

In the presence of:

Court Assistant: Agong'a/Velma.

Parties absent though aware of the Ruling date Court Assistant to upload the ruling in the CTS forthwith.