



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT KISUMU**

**ELC MISC. APPL. CASE NO.16 OF 2016**

**RISPA OWUODO ATEGO.....APPLICANT**

**VERSUS**

**AJODHI AJULU.....1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR BOND DISTRICT.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. **Rispa Owuodo Atega**, the Applicant, filed the notice of motion dated 16<sup>th</sup> September 2016 seeking to have **The Land Registrar, Bondo** ordered to remove the caution lodged on land parcel **North Sakwa/Maranda/1002**. The application sets out seven grounds on its face and is supported by the affidavit sworn by the Applicant on the 16<sup>th</sup> September 2016.

2. The application is oppose by Ajuodo Ajulu, the 1<sup>st</sup> Respondent through the replying affidavit sworn on the 21<sup>st</sup> October 2016.

3. The application came up for hearing on the 27th October 2016 when the Applicant and Mr. Mwaisibua, learned counsel for the 1<sup>st</sup> Respondent made their rival oral submissions.

4. The issues for determination are as follows:

- a. Whether the 1<sup>st</sup> Respondent has a reasonable cause to maintain a caution filed over the said land.
- b. Whether the caution is hindering the Applicant use of her portion of land.
- c. Whether the caution should be lifted.
- d. Who pays the costs.

5. The court has considered the grounds on the notice of motion, the affidavit evidence by both parties, oral submissions by the Applicant and counsel for the 1<sup>st</sup> Respondent and come to the following determinations;

- a. That land parcel **North Sakwa/Maranda/1002** measuring 20.5 hectares was registered on the 1<sup>st</sup> August 1978 in the names of Atego Agola, Ojuodhi Ajulu, Agola Ajulu and Ajulu Ajulu.

b. That Atego Agola passed on the 26<sup>th</sup> December 1996 and the Applicant filed Kisumu H.C. Succession Cause No.214 of 2015 in which she was appointed the administratrix of the deceased's estate. That the Applicant's grant was confirmed on the 18<sup>th</sup> January 2016 and the schedule attached to the certificate of confirmation indicates that the Applicant is to get a quarter ( $\frac{1}{4}$ ) share of land parcel **North Sakwa/Maranda/1002**.

c. That the 1<sup>st</sup> Respondent is one of the four registered proprietors of the said land and on 13<sup>th</sup> October 2015, he filed a caution against the said land claiming beneficiary interest. That the caution is the one the Applicant approached the Land Registrar Bondo, to remove as confirmed by the letters dated 14<sup>th</sup> June 2016 and 25<sup>th</sup> July 2016.

d. That upon the Land Registrar's failure to have the caution lifted, the Applicant filed this miscellaneous application. The 1<sup>st</sup> Respondent objection to the application is based on three grounds as follows;

i. That other than himself, the other three proprietors of the land are all deceased and their respective share of the estate over the land has not devolved to their lawful beneficiaries.

ii. That the Applicant did not disclose to the succession Court that she was only seeking a quarter share of the land.

iii. That the Applicant filed the succession cause without obtaining the consent of the other beneficiaries of the estate of Atego Agola, like himself, and he has since instituted summons for revocation of the grant.

c) That having perused the certificate of confirmation of grant in favour of the Applicant issued on 18<sup>th</sup> January 2016 in Kisumu H.C. No.214 of 2015, it is clear what the Applicant, was granted was a  $\frac{1}{4}$  (quarter) of **North Sakwa/ Maranda/1002** and not the whole parcel. The claim by the 1<sup>st</sup> Respondent that the Applicant did not disclose to the succession Court that the interest of the estate was only a quarter share is therefore without basis.

f) That the summons for revocation of Grant is dated 21<sup>st</sup> October 2016 and filed on the same date which clearly shows it was filed after the 1<sup>st</sup> Respondent was served with the notice of motion dated 16<sup>th</sup> September 2016 seeking to have the caution lifted. That until and unless the grant in favour of the Applicant is lifted, this court would have no reason or basis of allowing the caution to remain in force.

g) That the Applicant has established that she had petitioned the Land Registrar to have the caution lifted in accordance with the provisions of **Section 73** of the **Land Registration Act No.3 of 2013**. That the Land Registrar Bondo, is the 2<sup>nd</sup> Respondent in this Application but has neither entered appearance nor filed any replying papers to explain why the caution should not be removed.

6. That flowing from the foregoing the court finds that the notice of motion dated 16<sup>th</sup> September 2016 has merit and is allowed in the following terms;

a. That the Land Registrar, Bondo (2<sup>nd</sup> Respondent), is hereby directed to lift the caution filed by the 1<sup>st</sup> Respondent on the register of land parcel **North Sakwa/ Maranda/1002** on the 13<sup>th</sup> October 2015 to enable the Applicant get registered as proprietor of a quarter ( $\frac{1}{4}$ ) share of **North Sakwa/Maranda/1002** in accordance with the certificate of confirmation of grant issued on 18<sup>th</sup> January 2016 in Kisumu H.C. Succession Cause No.214 of 2015.

b. That the 1<sup>st</sup> Respondent do pay the Applicant's costs in this application.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 15<sup>TH</sup> DAY OF FEBRUARY 2016

In presence of;

Applicant Present

Respondents 1<sup>st</sup> Respondent Present

Counsel Mr Mwansibwa for 1<sup>st</sup> Respondent

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**15/2/2017**

15/2/2017

S.M. Kibunja Judge

Oyugi court assistant

Applicant present

Mr. Mwaisibwa for 1<sup>st</sup> Respondent

Corut: Ruling dated and delivered in open court in presence of the Applicant and Mr Mwaisibwa for 1<sup>st</sup> Respondent.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**15/2/2017**