



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MILIMANI**

**ELC.MISC. CIVIL APPLICATION NO. 569B OF 2016**

**IN THE MATTER OF TITLE NO. NAIROBI/BLOCK 110/531**

**IN THE MATTER OF LAND REGISTRATION ACT NO. 3 OF 2012**

**MAMUT HARDWARE STORES LIMITED.....APPLICANT**

**VERSUS**

**CHIEF LAND REGISTRAR, NAIROBI.....1<sup>ST</sup> RESPONDENT**

**MARGARET WAKURU NYUTHO.....2<sup>ND</sup> RESPONDENT**

**RULING**

The Notice of Motion dated 19<sup>th</sup> October, 2016 brought under Section 73 of the Land Registration Act and Order L Rule 1 of the Civil Procedure Rules seeks an order for the removal of the caution placed on the parcel of land known as L.R. No. Nairobi/ Block 110/531 (hereafter “the Suit Property”).

The application is supported by the affidavit of Martha Ituha Kiere sworn on 19<sup>th</sup> October, 2016.

The Court granted the Applicant leave to serve the 2<sup>nd</sup> Respondent through an advertisement in the daily newspaper since she could not be traced for service. The 2<sup>nd</sup> respondent was served through an advertisement published in *The Standard* of 31<sup>st</sup> October, 2016 while the 1<sup>st</sup> respondent was duly served and acknowledged service by stamping a copy of the application. The Respondents did not file any responses to the application.

The application is premised on the grounds that the Applicant is the registered proprietor of the Suit Property and that the 1<sup>st</sup> Respondent has refused to remove the caution placed against the Suit Property despite requests being made to do so. The Applicant maintains that the caution was wrongfully and unlawfully placed against its title over the Suit Property since it does not know the 2<sup>nd</sup> Respondent who is the Cautioner. The Applicant further argues that the 1<sup>st</sup> Respondent never notified it that a caution had been registered against its parcel of land as stipulated by Section 72 of the Land Registration Act.

The Applicant annexed a title deed to the supporting affidavit showing that it is the registered proprietor of the Suit Property. The title deed was issued on 16<sup>th</sup> December, 2005. On the same date, a charge in favour of Family Bank Limited to secure the sum of Kshs. 10 million was registered and noted under the encumbrances section of the title deed. Before it purchased the Suit Property, the Applicant did a search which confirmed that Dominic Kibingo Karanja and Maurine Kawira Kibingo were registered as proprietors of the suit property in February 2005.

The Applicant learnt of the existence of the caution in October, 2016 when it presented an application for the registration of a further charge over its property and its application was rejected on the basis that a caution had been placed against this land. The Applicant annexed copies of receipts issued to it on payment of the land fees and stamp duty in respect of the further charge it had presented for registration against the Suit Property.

It then did a search which confirmed that indeed Margaret Wakuru Nyutho had placed a caution against the Suit Property on 23<sup>rd</sup> August, 2016 claiming “beneficiary interest”. The search still reflected the earlier charge in favour of Family Bank Limited under part C of encumbrance section.

Section 72 of the Land Registration Act enjoins the Registrar to notify a proprietor whose land is affected by a caution of the existence of the caution in writing. The 1<sup>st</sup> Respondent failed to notify the Applicant that a caution had been placed over its land.

The issue to be determined is whether the Applicant is entitled to have the caution that was placed over its land removed by the Court pursuant to Section 73 of the Land Registration Act. Under this provision, a caution may be withdrawn by the Cautioner or removed either by an order of the Court, or of the Land Registrar.

The Section also sets out the procedure that the Registrar ought to follow in removing a caution upon an application being made by an interested person. The Applicant made requests to the Registrar to remove the caution but the Registrar did not proceed as envisaged by Section 73 of the Land Registration Act.

Under Section 71 of the Land Registration Act, a person claiming a right to obtain an interest in any land, lease or charge, capable of creation by an instrument registrable under that Act may lodge a caution with the Registrar forbidding the registration of dispositions of the land.

The Applicant relied on its Written Submissions and the decision in *Maria Ngangi Gwako –v- Charles Mwenzi Ngangi [2014] eKLR* in which the court removed the caution after finding that the respondent in that case had not demonstrated any basis for lodging the caution against the suit property. The court observed that for the respondent to be able to lodge and maintain a caution against the title to suit property, the respondent had to show the he had an interest in the nature described by Section 71 of the Act. The court observed that the caution should not have been accepted for registration in the first place.

There is no evidence to show that the 2<sup>nd</sup> Respondent has a right to obtain an interest over the Suit Property capable of being created through an instrument registrable under the Act which would have entitled her to lodge the caution in the first place. The Applicant has demonstrated that it is the registered proprietor and there was no basis for the Respondents to have placed a caution over the Suit Property. In the absence of any reasonable cause being shown by the Respondents as to why the caution should not be removed, the application must succeed. The 1<sup>st</sup> Respondent is directed to remove the caution lodged against L. R. No. Nairobi/Block 110/531. The Applicant will have the costs of this application.

Dated at Nairobi this **9<sup>th</sup> day of March 2017**

Delivered at Nairobi this **13<sup>th</sup> day of March 2017**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Thimba for the Applicant

No appearance for the Respondents

Vincent Owuor- Court Assistant