



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 211 OF 2016

CHARLES KARANI RUIRIE.....PLAINTIFF

VERSUS

ROSE WAMBURA KARANI.....DEFENDANT

JUDGMENT

The plaintiff **CHARLES KARANI RUIRIE** filed this suit on 30th November 2016 seeking the main order that the defendant **ROSE WAMBURA KARANI** be ordered to remove a caution lodged on land parcel No. KIINE/KIANGAI/3586 and in the alternative, the Land Registrar be ordered to remove it. He also sought an order for costs.

From the pleadings, the plaintiff is the registered proprietor of the land parcel No. KIINE/KIANGAI/3586 (the suit land herein) but the defendant has without any colour of right placed a caution thereon thus giving rise to this suit.

Though served by the process server **ANNE E. WACHUKA** on 1st December 2016, the defendant did not enter appearance or file a defence and this suit was therefore listed for formal proof on 23rd January 2017 when **MR. MACHARIA** advocate appeared ostensibly as holding brief for **MR. ANDANDE** advocate for the plaintiff.

I need to digress at this point to comment on some strange happenings in this case.

In the course of this trial, it occurred to me that **MR. MACHARIA** advocate may not have really been holding brief for **MR. ANDANDE** advocate and when I put that to him, he conceded that he may have been misled and **MR. ANDANDE** was not really on record for plaintiff in this case. I directed that the Deputy Registrar write to the Police to investigate this matter and that has been done and the Police have since collected several files from the office of **MR. MACHARIA** involving matters filed at this Court without the knowledge of the parties involved. That notwithstanding, and since the plaint herein was filed by the plaintiff in person and the Court having confirmed from the process server that indeed she is a licensed process server and served the defendant on 1st December 2016, this Court found it prudent to allow the plaintiff prosecute his claim. The extra caution I took was to ensure that indeed I was dealing with a genuine process server given what had transpired involving **MR. ANDANDE** advocate. Meanwhile, **MR. MACHARIA** advocate is cautioned to ensure that his name is not linked to fraudulent cases being filed in this Court or any other Court for that matter.

The plaintiff's case is not really rebutted because the defendant did not file any defence nor enter appearance. His evidence is that he bought the suit land in 1969 before marrying the defendant who is his wife. He produced the search certificate (Exhibit 1) showing that it is registered in his names but in October 2016, the defendant placed a caution thereon. He said he has no intention of selling the suit land

and all he wants is to use the title to secure a loan but the defendant objected and moved to Nairobi. He added that he needs the loan to develop other property.

It is clear that the suit land is registered in the plaintiff's names as per the certificate of search. His case is that the defendant has placed a caution thereon for no reasons. It is not clear if the plaintiff had moved the Registrar to remove the caution as provided under **Section 78 (1) of the Land Registration Act** which empowers the Land Registrar, on application and upon giving notice to persons affected, to remove or vary any restriction on the land. In the circumstances of this Court, I find it prudent to direct that the plaintiff moves the Land Registrar as per the provisions of **Section 78 (1) of the Land Registration Act** which provides as follows:

“The Registrar may, at anytime and on application by any person interested or at the Registrar’s own motion, and after giving the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction”

There is nothing to suggest that the plaintiff has made any application to the Land Registrar Kirinyaga to remove the caution lodged on the suit land and with what results.

In the circumstances therefore, I make the following orders:

- 1. The plaintiff to make an application to the Land Registrar for the removal of the caution lodged on the suit land i.e. KIINE/KIANGAI/3586.***
- 2. The Land Registrar shall then consider it as provided under Section 78 (1) of the Land Registration Act and make any appropriate orders as he may deem fit.***
- 3. No order as to costs.***

B.N. OLAO

JUDGE

31ST MAY, 2017

Judgment dated, delivered and signed in open Court this 31st day of May 2017

Plaintiff present in person

Defendant absent

Right of appeal explained.

B.N. OLAO

JUDGE

31ST MAY, 2017