



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC NO. 95 OF 2016

ANNA WAIRIMU.....PLAINTIFF

-VERSUS-

MWANGI NJUGUNA.....1ST DEFENDANT

ROBERTSON NJUGU NGARI.....2ND DEFENDANT

CHARLESKANJA GATIGI.....3RD DEFENDANT/APPLICANT

LAETITIA WAKONYU KANJA.....4TH DEFENDANT

JAMES MARIARA RUNGU.....5TH DEFENDANT

MARGARET WAIRIMU MAR.....6TH DEFENDANT

CHARLES GITHAGUI ELIUD.....7TH DEFENDANT

JANE WANJA GITHAGUI.....8TH DEFENDANT

RULING

1. By notice of motion dated **12th May, 2016** and filed on the same day, the 3rd defendant herein, Charles Kanja P. Gatigi (the applicant) moved the court for removal and/or lifting of the caution lodged on the register to the parcel of land known as **Nyeri/Waraza/369** (“the suit property”).
2. The application is premised on the ground that the claim in respect of which the caution was lodged was dismissed and a decree issued against the cautioner.
3. Explaining that he has suffered prejudice owing to continued subsistence of the caution, the applicant urges the court to allow the application as prayed.
4. The application is supported by the affidavit of Simon Wachira Mwai, the Chief, Warazo Location, who has deposed that he was approached by the applicant to provide information to this court concerning the death of the plaintiff/respondent.
5. Through his affidavit sworn on **12th September 2016**, Mr. Mwai confirms that the plaintiff herein died on 16th December, 2006 while undergoing treatment at Nyeri General Hospital and that the 3rd and 4th defendants are the sole owners of the suit property, Land Parcel No.Nyeri /Waraza/369.

6. The sole issue for determination is whether the applicant has made up a case for being granted the orders sought.

7. The court record confirms that the plaintiff died on 11th December, 2006 and that by that time, she had lost the claim she had preferred against the defendants. The court record further shows that by the time she passed on, orders of eviction had issued against her.

8. The judgment of **Juma J.** as he then was, delivered on 16th November, 1999 shows that the applicant is the *bona fide* owner of the suit property having bought it from the 1st and 2nd Defendant.

9. Though the estate of the plaintiff/respondent is not represented in these proceedings, there being nothing in the court record to show that the judgment of the court, dismissing her claim against the defendants' in this matter, was appealed from stayed and/or set aside, I agree with the applicant that the estate of the plaintiff/respondent will suffer no prejudice if the caution is removed or lifted.

10. The upshot of the foregoing is that the application herein has merit and is allowed in terms of prayers (1) and (2).

Dated and signed at Nyeri this 15th day of June, 2017.

L N WAITHAKA

JUDGE

Delivered and signed in Nyeri this 27th Day of June 2017.

NGAAH JAIRUS