

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

MISCELLANEOUS APPLICATION No. 156 OF 2017

JOSEPH MUNENE.....APPLICANT

VERSUS

GRACE WANJIRU KIIHIKA.....RESPONDENT

RULING

(Application for an order lifting a caution; no evidence of existence of a caution placed before the court; application dismissed)

1. This ruling is in respect of Notice of Motion dated 19th May 2017. The application is brought under Order 51 rule 1 of the Civil Procedure Rules, 2010 and Sections 3A and 63(e) of the Civil Procedure Act. The applicant seeks the following orders:

- 1. THAT the honourable court be pleased to lift a caution placed on the applicant's all (sic) parcel of land known as Naivasha Municipality Block 2/201.*
- 2. THAT the cost (sic) of this application be provided for.*

2. The application is supported by an affidavit sworn by the applicant wherein he deposes that he is the owner of the parcel of land known as Naivasha Municipality Block 2/201. A copy of a Certificate of Lease is annexed. The applicant further deposed that the respondent caused a caution to be registered on (Sic) the said parcel of land. That as a result, the applicant has been deprived of the right to own the property and is also unable to have any economic development on the land.

3. Though there was affidavit evidence that the respondent was served with the application, the respondent neither filed a response nor attended court at the inter parte hearing. Counsel for the applicant thus urged the court to allow the application.

4. I have considered the application, the affidavit in support and submissions of counsel. Though the applicant deposed that the respondent had caused a caution to be registered against the subject property, no evidence was placed before the court to prove existence of such a caution and registration thereof by the respondent or at the instance of the respondent. I have perused a copy of the Certificate of Lease which was annexed to the supporting affidavit and found no caution noted at the encumbrance section. No certificate of official search was annexed to prove existence of any caution.

5. In view of the foregoing, I am not persuaded that the applicant has made out a case to warrant granting the orders sought. Notice of Motion dated 19th May 2017 is dismissed. No order on costs.

Dated, signed and delivered in open court at Nakuru this 19th day of October 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Simiyu for the applicant

No appearance for the respondent

Court Assistant: Gichaba