



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. MISCELLANEOUS CASE NO. 172 OF 2015

GEORGE KARIUKI.....1ST PLAINTIFF

JOHN GITHIRWA MAINA.....2ND PLAINTIFF

PADDY KAMAU NGANGA.....3RD PLAINTIFF

VERSUS

SUSAN NDUNGE MAINGI..... DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 13th August 2015 in which the Applicants seek for an order that the caution registered against the parcel of land known as Mavoko Town/Block 3/2117 be lifted and or removed and that the costs of this Application be provided for.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the 1st Plaintiff, George Kariuki, sworn on 13th August 2015 in which he averred that he together with the 2nd and 3rd Applicants jointly purchased 30 acres of land which was to be hived out of the parcel of land known as Mavoko Town Block 3/2117 from one Maingi Mukeka Tuto on 11th December 2008 for valuable consideration. He confirmed that he and the other Applicants conducted a search on that parcel of land and confirmed that the same was unencumbered after which they entered into a Sale Agreement with the said Maingi Mukeka Tuto. He annexed copies of the Sale Agreement as well as the search results. He further averred that the said parcel of land was subdivided giving rise to their 30 acre parcel which was renamed as Mavoko Town Block 3/5789. He confirmed that the subdivision and sale to them was done after they appeared before the Athi River Land Control Board which approved the transfer. He further confirmed that they paid the stamp duty fee required and that upon presenting their documents for transfer to the Land Registrar, they realized that the Respondent had lodged a caution against the whole parcel being Mavoko Town Block 3/2117, thereby making it impossible for them to register the transfer in their favour. He further averred that they took possession of the 30 acre parcel and subdivided it into smaller plots which they put up for sale. He sought for the caution registered by the Respondent to be lifted to enable them to utilize and enjoy their parcel of land.

The Application is not contested. Despite being duly served, the Respondent did not file a response to this Application nor attend court.

The Applicants filed their written submissions.

The issue I am called upon to determine is whether or not to order for the lifting of the caution registered by the Respondent upon the parcel of land known as Mavoko Town Block 3/2117. The law on the registration of cautions is found in **section 71(1)** of the **Land Registration Act** which provides as follows:

“A person who-

- a. *Claims the right, whether contractual or otherwise, to obtain an interest in any land, lease or charge, capable of creation by an instrument registrable under this Act;*
- b. *Is entitled to a licence; or,*
- c. *Has presented a bankruptcy petition against the proprietor of any registered land, lease or charge*

May lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entires affecting the land lease or charge.”

Further, **section 73(1)** of the **Land Registration Act** provides as follows:

“A caution may be withdrawn by the cautioner or removed by order of the court or, subject to subsection (2), by order of the Registrar.”

Clearly, the law allows the removal of cautions by order of the court, which is the order that the Applicants are seeking herein. In this matter, the Applicants seek the removal of a caution registered against the parcel of land known as Mavoko Town Block 3/2117 of which they claim 30 acres. However, a close scrutiny of the two Certificates of Official Search annexed by the Applicants to this Application relate to a different parcel of land known as Mavoko Town Block 3/1160. The Certificate of Official Search dated 23rd February 2009 in particular reveals that there was a caution registered against Mavoko Town Block 3/1160 by one Susan Ndunge Maingi who is the Respondent. No evidence has been produced to this court of any caution registered by the Respondent against Mavoko Town Block 3/2117. In light of this, it is not clear to this court which caution the Applicants seek to be lifted or removed by this court. In the circumstances, this Application is bound to fail.

In light of the foregoing, I hereby dismiss this Application. Each party to bear their own costs.

DELIVERED AND SIGNED IN NAIROBI THIS 11TH

DAY OF MARCH 2016.

MARY M. GITUMBI

JUDGE