



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NYERI**  
**MISC. ELC NO. 8 OF 2014**  
**(Formerly NYERI HCMISC. APPL. NO. 41 OF 2014)**

SAMUEL MWANGI KAMAMI.....APPLICANT

-VERSUS-

DANIEL MUCHIRI MWANGI.....1<sup>ST</sup> RESPONDENT

MARY NJERI MWANIKI.....2<sup>ND</sup> RESPONDENT

**RULING**

1. This ruling is on the application dated **13<sup>th</sup> June, 2014** where the applicant seeks orders to compel the Land Registrar, Nyeri to remove the cautions lodged against **Title Number Iriaini/Kiaguthu/593** and **Title Number Mweiga/Block 5/Muthuini/413** (hereafter referred to as the suit properties) and that costs of the application be provided for.
2. The application is premised on the grounds on its face, and is supported by the affidavit sworn by the applicant on **13<sup>th</sup> June, 2014**. He deposes that the respondents (Daniel Muchiri Mwangi and Mary Njeri Mwangi) are his children who have lodged cautions on the suit properties. As a result, he is unable to sell part of the suit properties to cater for his medication as he suffers from diabetes and hypertension. He has annexed copies of certificate of official searches marked SMK 1(a) and SMK 1(b), a letter by Patrick Gichuki, the officer in charge of Kabati Dispensary and receipts of medical expenses incurred, all marked SMK2.
3. The application was heard on **3<sup>rd</sup> March, 2016**. The applicant, who was unrepresented, reiterated the contents of his pleadings, prayed that he be granted the orders he sought and that he be allowed to subdivide the suit properties among his children to enable them cultivate their respective portions.
4. The application is not unopposed. The respondents did not attend court or respond to the application despite being duly served. In an affidavit of service sworn on **26<sup>th</sup> September 2014** by Teobold Maina Kahia, a licensed process server, he deposes that he served the 2<sup>nd</sup> respondent with copies of the Notice of Motion who accepted service on her behalf and on behalf of the 1<sup>st</sup> respondent (who is her son) but she declined to sign on the return copy.

5. **Joseph Githinji Nderi**, a licensed process server in his affidavits of service dated **26<sup>th</sup> January, 2016** and **3<sup>rd</sup> March, 2016** respectively, depones that he again served copies of the application upon the respondents on 19th January, 2016 and 25th February, 2016.

6. The court record reveals that a hearing date was taken by the applicant on 2nd February, 2016. From the affidavit of service filed by Joseph Githinji Nderi, it appears that the respondents were not served with hearing notices for the application coming up on 3rd March, 2016 but were instead served again with the motion.

7. I am not satisfied that proper service was effected upon the respondents and I decline to grant the orders sought. I direct the applicant to take another hearing date for the application and effect service of the hearing notice upon the respondents.

**Dated, signed and delivered in open court at Nyeri this 23rd day of November, 2016.**

**L N WAITHAKA**

**JUDGE**

In the presence of:

N/A by the applicant

N/A by the respondents

Court clerk - Esther