



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**LAND AND ENVIRONMENTAL DIVISION**  
**ELC CIVIL SUIT NO. 225 OF 2008**

**PAULINE NJERI NDIHO.....1<sup>ST</sup> APPLICANT**  
**SARAH WANJIRU NDIHO ..... 2<sup>ND</sup> APPLICANT**  
**VERSUS**  
**MUNGAI NDIHO ..... 1<sup>ST</sup> RESPONDENT**  
**LANDS REGISTRAR KIAMBU ..... 2<sup>ND</sup> RESPONDENT**  
**REUBEN VINCENT MUGO ..... INTERETED PARTY**

**RULING**

The plaintiffs Notice of Motion dated 7<sup>th</sup> August 2014 and filed in court on 11<sup>th</sup> August 2014 the subject of this ruling seeks inter alia an order that:-

**“That the 2<sup>nd</sup> Respondent do remove caution, inhibition and restriction on Land parcel NO. Kabete/Lower Kabete/2581 registered in the name of Pauline Njeri Ndiho and Kabete/Lower Kabete/2582 registered in the name of Serah Wanjiru Ndiho”.**

The application inter alia is based on the grounds set out on the body of the application and the affidavit sworn in support of the application by **Pauline Njeri Ndiho** the 1<sup>st</sup> plaintiff herein on 7<sup>th</sup> August 2014. The 2<sup>nd</sup> plaintiff, **Sarah Wanjiru Ndiho** also has filed an affidavit in support of the application dated 7<sup>th</sup> August 2014. The plaintiffs application amongst other grounds is predicated on the following grounds:-

1. That the plaintiffs are the registered proprietors of land parcels **Kabete/Lower Kabete 2581 and 2582** respectively,
2. That the said land parcel are the resultant subdivisions of land parcel **Kabete/lower Kabete/1814** following a consent judgment entered between the parties in this suit on 27<sup>th</sup> May 2008.
3. That **Reuben Vincent Mugo** after the entry of judgment sought to be enjoined in the suit as an interested party but was unsuccessful.
4. That **Reuben Vincent Mugo** registered a caution on Land parcels **Kabete/Lower Kabete/2581 and 2582** claiming purchaser’s interest yet the sale agreement relied upon by him to register the caution related to land parcel **Kabete/Lower Kabete/1814** which no longer exists.

5. That the said **Reuben Vincent Mugo** was never a party to this suit and lacks any locus standi.
6. That the Land Registrar Kiambu has failed and/or neglected to remove the unlawful cautions despite repeated demands that he does so and has not given any reasons for failure to remove the said cautions.

**Reuben Vincent Mugo** filed a replying affidavit dated 26<sup>th</sup> August 2014 in opposition to the plaintiffs application dated 7<sup>th</sup> August 2014. The said **Reuben Vincent Mugo** in the replying affidavit reiterates the facts that he states give rise to his interest in the suit properties and cites the agreement entered into between himself and his wife, **Susan Karanguri Mugo**, on the one part and the 1<sup>st</sup> Defendant/Respondent on the other part whereby the 1<sup>st</sup> Defendant agreed to sell to them a portion of land parcel **Kabete/Lower Kabete/1884**. Agreement dated 24<sup>th</sup> April, 2008 is annexed and marked “**RVM1**”. The said **Reuben Vincent Mugo** states that the sale transaction was not completed and that when he became aware of the instant suit he filed an application seeking to be enjoined as a party vide a chamber summons application dated 15<sup>th</sup> September 2009 and filed in court on 17<sup>th</sup> September 2009. Following various court attendances the parties invited **Hon. Lady Justice Gitumbi** to give directions/ruling on the application by **Reuben Vincent Mugo** to be enjoined as an interested party in the suit.

The learned Hon. Judge in her directions stated thus:-

**“I have confirmed that the parties to this suit filed a consent judgment on 26<sup>th</sup> May 2008 stipulating the subdivision of the suit land into two equal shares of 0397 Hectares each to the plaintiff and Sarah Wanjiru Ndiho.**

**The said consent judgment was adopted as an order of this court on 27<sup>th</sup> May 2008 and a decree extracted on 3<sup>rd</sup> June 2008.**

**This judgment remains in place to this date. This suit has therefore been concluded”.**

The effect of this direction by the court is that there is now no pending suit in which the said **Reuben Vincent Mugo** could be enjoined as an interested party and thus his application dated 15<sup>th</sup> September 2009 for joinder was not capable of being granted since a party can only be enjoined in a suit that is pending. The said **Reuben Vincent Mugo** therefore lacks a locus standi in this suit as he is not a party and cannot be enjoined after judgment unless the judgment is set aside.

The court has decreed the suit parcels of land Title NO. **Kabete/Lower Kabete/2581 and Kabete/Lower Kabete 2582** to the plaintiffs respectively and the plaintiffs have been registered as the proprietors of the parcels of land and in terms of sections 25 and 26 of the Land Registration Act NO.3 of 2012 their rights of ownership are absolute and indefeasible and can only be challenged on the limited grounds set out under section 26(1) (a) & (b). Section 26(1) of the Land Registration Act provides:-

**26.(1) the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate and the title of that proprietor shall not be subject to challenge, except:-**

- a. **On the ground of fraud or misrepresentation to which the person is proved to be a party, or**
- b. **(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.**

The plaintiffs were registered as owners of the suit properties pursuant to a consent judgment by the parties to the suit. That judgment has not been set aside and/or varied and thus remains valid. For as long as the judgment has not been successfully impugned by a relevant party it remains binding on the parties.

The cautions the plaintiffs seek to be removed from their parcels of land were lodged by the said **Reuben Vincent Mugo** claiming a purchaser's interest. The agreement of sale he relies on was with the 1<sup>st</sup> Defendant and not the plaintiffs and it is in the circumstances doubtful if he would have any cause of action against the plaintiffs. His cause of action it would appear would lie against the 1<sup>st</sup> Defendant/Respondent and not against the plaintiffs.

In the premises I find absolutely no basis to sustain the cautions registered against the plaintiffs parcels of land by the said **Reuben Vincent Mugo** and I accordingly order that the same be removed. The upshot is that I find the plaintiffs Notice of Motion dated 7<sup>th</sup> August 2014 has merit and I grant the same in terms of prayer Number (2) thereof. I direct that each party meet their own costs of the application.

Ruling dated signed and delivered this.....**15<sup>th</sup>**.....day of.....**May**.....2015.

**J. M. MUTUNGI**

**JUDGE**

**In the presence of:**

..... For the Plaintiff

..... For the Defendants