



Muiruri v Land Registrar-Murang’a Lands Registry (Environment and Land Miscellaneous Application E007 of 2023) [2024] KEELC 1305 (KLR) (7 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1305 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E007 OF 2023
LN GACHERU, J
MARCH 7, 2024**

BETWEEN

MUGIRA MUIRURI APPLICANT

AND

THE LAND REGISTRAR-MURANG’A LANDS REGISTRY RESPONDENT

RULING

1. The matter for determination is the Notice of Motion Application dated 23rd November 2023, wherein the Applicant has sought the following Orders:
 - I. That, this Honourable Court be pleased to lift the Orders erroneously placed on Land Parcel No. Kakuzi/Kirimiri Block 7/247, issued on 17th August 2018, in ELC Case No. 67 of 2018.
 - II. That, this Honourable Court be pleased to order and/or direct the Land Registrar – Muranga to remove the orders dated 17th August, 2018, placed and/or lodged on Land Parcel No. Kakuzi/Kirimiri Block 7/247.
 - III. That, the costs of this application be in the cause.”
2. The Application is premised on the grounds stated thereon and on the Supporting Affidavit of Mugira Muiruri, the Applicant, sworn on 23rd November 2023.
3. These grounds are;
 - I. That, ELC Case No. 67 of 2018 was filed in the year 2018, and the Applicant, Mugira Muiruri was not a party to it and his parcel of land number Kakuzi/Kirimiri/Block 7/247, was not a subject to the claim therein.
 - II. That, an Order was issued on 17th August 2018 on Land Parcel No. Kakuzi/Kirimiri Block 7/247, restraining any dealings which we believe was typographical error.



- III. That, the said order was discovered when the Applicant presented the transmission forms numbers R.L 39 and R.L. 42 to Murang'a Lands Office to be registered in favour of the Applicant.
 - IV. That, the said Mugira Muiruri purchased the said parcel of land from the registered owner who is now deceased and the administrators of his estate have executed all necessary transfer documents to have Land Parcel No. Kakuzi/Kirimiri Block 7/247, transferred to his name.
 - V. That, the Court order dated 17th August 2018, was to be placed on Land Parcel No. Kakuzi/Kirimiri Block 7/249, but a typographical error occurred and the said order was mistakenly lodged on Land Parcel No. Kakuzi/Kirimiri Block 7/247.
 - VI. That, unless an order for removal and/or lift of the orders erroneously placed in Land Parcel No. Kakuzi/Kirimiri Block 7/247, is granted, the Applicant herein will suffer irreparable loss and damages.
 - VII. That, it will only be fair and just and to the interest of justice for this Honourable Court to grant the Orders hereinabove sought as the said Mugira Muiruri was not a party to this suit and his parcel of land was not subjected to the claim herein.
4. In his Supporting Affidavit, the Applicant averred that sometimes in May 2023, he presented transfer documents in respect of Kakuzi/kirimiri Block 7/247, (the suit property) to the Lands Office, Murang'a County for registration, whereupon he was informed that a Court Order had been issued restraining any dealings with respect to the suit property, as evident from MM3.
 5. It was his contention that he was not a party to the proceedings in ELC CASE NO. 67 of 2018 (Murang'a ELC), whereby, the Court issued the Orders dated 17th August 2018; and further, the Land Parcel No. Kakuzi/kirimiri Block 7/247, was not subject to the proceedings in ELC CASE NO. 67 of 2018 (Murang'a ELC).
 6. He contended that this Court issued an order dated 17th August 2018, whereby, a mistake occurred at the typing of the said order. That the aforesaid Order of the Court refers to Land Parcel No. Kakuzi/kirimiri Block 7/247, whereas, the correct title number is Land Parcel No. Kakuzi/kirimiri Block 7/249.
 7. The Applicant annexed a sale agreement dated 16th March, 2007, in support of his averment that he holds a legal interest in Land Parcel No. Kakuzi/kirimiri Block 7/247, which he purchased from the registered owner Ngugi Mwai (deceased) in year 2007.
 8. Further, the Applicant maintained that the administrators of the estate of the late NGUGI MWAI, the vendor of the suit property, have executed transfer forms in his favour, and there is no contest over the suit property.
 9. He annexed a copy of the Decree dated 16th November 2022, issued by the Court in respect of ELC Case No. 67 of 2018 (Murang'a ELC).
 10. It was his further contention that he stands to suffer irreparable loss and damage unless the Court lifts the Orders which were placed on the suit land in error via the Orders dated 17th August 2018.
 11. The Application was not responded to by the Respondent. There is an Affidavit of Service on record sworn by Charles K. Irimu, (Licensed Court Process Server) on 17th January 2024, stating that he served the instant Motion upon the Land Registrar, Murang'a on 10th January 2024. The said Return of



Service tendered by the Court Process Server bears the stamp of the Lands Registry, Murang'a County, with the word "Received on 10th Jan 2024", and a signature thereon.

12. The court is thus satisfied that the instant Notice of Motion Application, was properly served upon the Respondent, who failed to Enter Appearance, and /or file a response to the same. Thus, this Application is not opposed.
13. Having considered the instant Notice of Motion, the court finds the single issue for determination is whether the Applicant is entitled to the orders sought.
14. The court notes that the Applicant attached a Certificate of Official Search, in respect of the suit land, Makuyu/ Kirimiri Block 7/ 247, dated 28th August 2023. The aforesaid Certificate contains the following entry, numbered "3" of 3/ 5/2019, on the sub-Section titled "Part B – Inhibitions, Cautions and Restrictions:

“5. 2.19 Order No Dealings On This Parcel Of Land Until The Case Is Heard And Determinined Vide Elc Case No. 67 Of 2018, At Murang'a”.

15. This Court has perused the Decree dated 16th November 2022, issued in ELC Case No. 67 of 2018, has reviewed and analyzed the pleadings and documents annexed by the Applicant herein in support of the instant Application and has noted as follows; Paragraph "i" of the aforesaid Decree refers to Land Parcel No. KAKUZI/KIRIMIRI BLOCK 7/249, among other title numbers and does not mention the suit property.
16. Paragraph "ii" of the same Decree refer to Land Parcel No. Kakuzi/kirimiri Block 7/249, among other title numbers and does not make any reference to the suit land. Further, Paragraph "iii" of the foregoing Decree refers to only one title number, namely, Land Parcel No. Kakuzi/kirimi Block 7/37.
17. On the face of the Decree dated 16th November 2022, the title number for the suit property is not stated. Accordingly, the Court is satisfied that the suit property was not subject of proceedings in ELC CASE NO. 67 of 2018.
18. The issue of removal of caution is found in section 73 of the [Land Registration Act](#), 2012, which provides as follows;

“73.

- (1) 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.
- (2) The Registrar, on the application of any person interested, may serve notice on the cautioner warning the cautioner that the caution will be removed at the expiration of the time stated in the notice.
- (3) If a cautioner has not raised any objection at the expiry of the time stated, the Registrar may remove the caution.
- (4) If the cautioner objects to the removal of the caution, the cautioner shall notify the Registrar, in writing, of the objection within the time specified in the notice, and the Registrar shall, after giving the parties an opportunity of being heard, make such



order as the Registrar considers fit, and may in the order provide for the payment of costs.”

19. In the case of Milkah Muthoni Wagoco...Vs...County Council of Kirinyaga & 2 Others [2017] eKLR, the court held inter alia that:

“Further, a caution can only be lodged and maintained on a parcel of land by a party who can demonstrate a right or interest in the land, lease or charge. The 1st Respondent has not advanced any interest in the suit property or any reason why the caution lodged thereon should remain on the register. I would therefore make a finding that the 1st and 2nd Respondents have violated the Petitioner’s rights under Article 47 of *the Constitution* and further order the removal of the caution lodged on the suit property.”

20. This Court has noted a striking similarity between the following descriptions, namely: Kakuzi/kirimiri Block 7/247; and, Kakuzi/kirimiri Block 7/249; the two are distinguishable only on account of the last digit in each.

21. The Land Registrar was served with the Application, but did not file any Response. There was no evidence of caution placed on the suit land and no objection by any cautioner.

22. The Court holds and finds that indeed, a human error occurred resulting in the placing of a caveat and or Caution over the suit property whereas, the Court in its order dated 17th August 2018, directed that a caveat be placed on Kakuzi/kirimiri Block 7/249, which parcel of land was the subject of proceeding in ELC CASE No. 67 of 2018. The instant parcel of land was not subject of the said court proceedings.

23. Consequently, this court finds and holds that the Applicant herein has demonstrated and convinced the court that indeed the caveat/ caution was placed on the suit land erroneously, and the same should not subsist.

24. Having carefully considered the instant application, the annexures thereto and brief written submissions, this court finds and holds that the said application is merited. Consequently, the court allows prayers no 1 and 2 of the Notice of Motion Application dated 23rd November 2023, with no orders as to costs since the Application is not opposed.

25. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 7{TH}DAY OF MARCH, 2024.

L. GACHERU

JUDGE

Delivered online in the presence of:

M/s Njeri Kiarie for the Applicant

Absent - Respondent

Joel Njonjo – Court Assistant

