



**Kariuki & others v Kariuki (Environment & Land Case 1339 of 2005)
[2024] KEELC 6692 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6692 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1339 OF 2005
MD MWANGI, J
SEPTEMBER 26, 2024**

BETWEEN

RAHAB WARUGA KARIUKI & OTHERS PLAINTIFF

AND

MARY MUGURE DANIEL KARIUKI DEFENDANT

*(In respect of the Defendants' application dated 18th November 2019
praying for the removal of cautions placed on the suit properties)*

RULING

Background

1. The application before me is the Notice of Motion dated 18th November 2019. It is brought under the provisions of Section 73(1) of the [Land Registration Act](#). The Defendants/Applicants seek an order directed at the Land Registrar, Kiambu County, ordering him to remove the cautions registered on the suit properties known as Kabete/nyathuna/2749-2753 on the application of the Plaintiff/Respondent. The Defendants further pray for the costs of the application.
2. The application is premised on the grounds on the face of it and on the supporting affidavit of Rahab Waruga Kariuki sworn on 11th November 2019.
3. The Defendants assert that the cautions were placed on the suit properties during the pendency of this suit. This suit was however determined way back on 14th February 2014.
4. The Defendants further aver that the Plaintiff/Respondent filed Civil Appeal No. 278 of 2014 in the Court of Appeal appealing against the judgement of this court but the appeal was determined in favour of the Defendants/Applicants. In spite of the determination by this court and the Court of Appeal, the Plaintiff has declined to remove the cautions on the suit properties.



5. The Defendants argue that the maintenance of the cautions over the suit properties is not only unreasonable but also unjustifiable and amount to an infringement of their right to property contrary to the provisions of Article 40 of *the Constitution*.
6. The Defendants/Applicants urge the court to order the Land Registrar, Kiambu County to remove the impugned cautions.
7. Despite being served with the application by the Defendants, the Plaintiff did not file a response or participate in the hearing of the application.

Issues for determination

8. Having considered the Defendants' application in its entirety, the sole issue for determination is whether the Defendants have satisfied the conditions for removal of a caution under Section 73(1) of the *Land Registration Act*.

Determination

9. Section 73(1) of the *Land Registration Act* provides that 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.
10. From the copies of the exhibits by the Defendants marked as annexures 'RWK-1', the cautions were registered on 7th May 2009 on all the 5 titles by the Plaintiff herein.
11. A caution as this court has stated elsewhere is a temporary measure to enable the cautioner seek reliefs to protect his interest elsewhere, for example by way of a civil suit or other forms of legal proceedings. It is not supposed to exist in perpetuity.
12. The Court of Appeal in *Boyes v Gathure* [1969] EA 385 stated that a caution/caveat is intended to serve two-fold purposes;-

“On the one hand, it is intended to give the caveator temporary protection, and on the other, it is intended to give notice of the nature of the claim to the person whose estate in the land is affected and to the world at large.”
13. There cannot be any justification whatsoever for maintaining a caution/caveat on someone's title for over fifteen (15) years.
14. The Registrar is indeed empowered under the law to, on his own motion with notice to the parties affected, order the removal of such a caution/caveat. Cautions/caveats in any event ought to be registered for a particular period of time only at the expiry of which period they be removed. They inhibit the full enjoyment of property rights by proprietors of land.
15. In this instance, this suit was determined way back in the year 2014. Accordingly, it is my finding that there is no legal justification for the maintenance of the cautions registered over the titles to the suit properties any longer.
16. I agree with the holding of my brother Judge, E.K. Wabwoto J in the case of *Sammy Ng'ang'a Ngatiri vs George Ngatiri Mbugua & 2 Others* [2021] eKLR that a caution should only serve as a temporary measure and should not be used to limit or deprive the Applicant of his right to property indefinitely.
17. Accordingly, I allow the Defendants/Applicants' application dated 18th November 2019 and hereby order the Land Registrar, Kiambu County to remove the cautions registered on the suit properties



Kabete/Nyathuna/2749, Kabete/Nyathuna/2750, Kabete/Nyathuna/2751, Kabete/Nyathuna/2752 and Kabete/Nyathuna/2753, forthwith.

18. There shall be no orders as to costs.

19. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kiarie Mungai for the Applicants

No appearance for the Respondent

Court assistant - Yvette

M.D. MWANGI

JUDGE

