



Family Bank Limited & 3 others v Land Registrar, Kajiado North & 2 others; Wakaba (Interested Party) (Environment and Land Miscellaneous Application 12 of 2021 & Environment & Land Case E026 of 2021 (Consolidated)) [2023] KEELC 15774 (KLR) (27 February 2023) (Ruling)

Neutral citation: [2023] KEELC 15774 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 12 OF 2021
& ENVIRONMENT & LAND CASE E026 OF 2021 (CONSOLIDATED)

MN GICHERU, J

FEBRUARY 27, 2023

BETWEEN

FAMILY BANK LIMITED APPLICANT

AND

LAND REGISTRAR, KAJIADO NORTH RESPONDENT

AND

ERICK KINUTHIA WAKABA INTERESTED PARTY

AS CONSOLIDATED WITH

ENVIRONMENT & LAND CASE E026 OF 2021

BETWEEN

CATHERINE WAMBUI DUNCAN 1ST PLAINTIFF

MIKE WAKABA KINUTHIA 2ND PLAINTIFF

MONICA WANJIKU KINUTHIA 3RD PLAINTIFF

AND

FAMILY BANK LIMITED 1ST DEFENDANT

TA AUCTIONEERS 2ND DEFENDANT



RULING

1. This ruling is on the notice of motion dated 25/2/2021. It is under section 73(1) of the Land Registration Act, order 51, rule 1, Civil Procedure Rules, sections 1A, 1B and 3A of the Civil Procedure Act, article 159 of the Constitution of Kenya and all other enabling provisions of law. It seeks the following orders.

- (i) That the caution lodged over Title No Ngong/Ngong/59915 (suit land) by Catherine Wambui Duncan on October 19, 2016 be removed.
- (ii) That the restriction registered against the suit land by DCIO Central Nairobi be lifted.
- (iii) That the orders issued herein be served upon the Land Registrar, Kajiado for compliance.
- (iv) That costs of this application be provided.

2. The motion is supported by seven grounds, a twenty five paragraph affidavit and five annexures.

The gist of all the above material is that the interested party is the registered owner of the suit land. In 2014, the interested party approached the applicant for a loan facility of Kshs 10 million. The loan was advanced and the suit land charged on 31/7/2014. The interested party defaulted on the loan monthly payments and fell into arrears.

The applicant issued the requisite statutory notices to the interested party. The interested party filed ELC Case No 562 and 566 of 2017 seeking to stop the sale of the suit land. The application by the interested party was dismissed on 27/4/2017. The suits were also dismissed on 8/10/2018.

The applicant has found a caution registered by one Catherine Wambui Duncan and a restriction by the DCIO Central Nairobi.

Now that the applicant wishes to exercise its statutory power of sale it needs to have the caution and the restriction removed.

3. The application is unopposed because I have not seen any replying affidavit or grounds of opposition on record.

4. I have carefully considered the application in its entirety including the motion, the grounds and the annexures and I find that it has merit for the following reasons.

Firstly, the suit land is in the name of the interested party who has not serviced the loan advanced to him by the applicant as a result of which he is in arrears. He has done nothing at all to redeem the suit land.

Secondly, Catherine Wambui Duncan has not proved that she has any lawful claim to the suit land because she has not replied to the application in any way.

Finally, the respondent though represented in this case has not explained why the caution by Catherine Wambui Duncan and the DCIO Nairobi Central should not be withdrawn or lifted.

For the above stated reasons, I order the caution and the restriction be removed as prayed.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH DAY OF FEBRUARY, 2023.

M.N. GICHERU



JUDGE

