



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT 350 OF 2005**

**WILSON NJOROGE KAMAU .....PLAINTIFF**

**VERSUS**

**NG'ANG'A MUCERU KAMAU ..... DEFENDANT**

**RULING**

On the 2<sup>nd</sup> day of March 2011, this suit was dismissed for want of prosecution with costs to the Defendant.

On 12<sup>th</sup> April, 2011, the Defendant who is acting in person filed a Chamber summons application seeking for an order of eviction against the Plaintiff from **L.R. No. Loc. 2/Kangari/506**. He also sought for an order that the O.C.S. Kigumo Police Station do provide security and the District Land Registrar, Muranga, to remove a caution lodged over the suit land.

This application was opposed by the Defendant on the grounds that the Plaintiff filed *H.C.C.C. No. 22 of 2011 [OS]* at Nyeri in which he is claiming ownership of the suit premises by virtue of the principle of adverse possession. The Plaintiff has annexed a copy of an interim order of injunction that was issued against the applicant restraining him from interfering with the suit land. Thus, an order of eviction will contradict the order by the High Court in Nyeri.

Besides the above order, this is a strange application that is seeking for very substantive orders. The applicant is the Defendant in this suit which was dismissed for want of prosecution.

The order that can be executed arising out of the order by Muchelule, J, of 2<sup>nd</sup> March, 2011, that dismissed the suit for want of prosecution is only for recovery of costs.

I have perused the pleadings especially the defence by the applicant. There was no counter claim and therefore, the orders that are sought for eviction were not made by the court.

For the aforesaid reasons, I decline to allow the application. There will be no orders as to costs.

**Ruling read and signed this 3<sup>rd</sup> day of February, 2012.**

**MARTHA KOOME**  
**JUDGE OF APPEAL**

**Note:**

*This application was heard and concluded on 30<sup>th</sup> November, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed a Judge of the Court of Appeal. I proceed to write and append my signature thereto in my new capacity.*