



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT BUNGOMA  
CIVIL MISCELLANEOUS APPLICATION 63 OF 2012**

**OBADIA MICHA NYONGESA.....APPLICANT**

**~VERSUS~**

**MOHAMMED NYONGESA.....RESPONDENT**

**RULING**

On 14/3/2012 a restriction was registered against the Applicant's title no. Kimilili/Kimilili/4476. It was indicated that there would be no dealings on the title until Civil Appeal no.140 of 2010 at Bungoma is determined. The Appeal followed the judgment of the trial court at Kimilili in Civil Case no.77 of 2009 in which judgment was entered for the Applicant against the Respondent in respect of this parcel. The Appeal has not been heard or determined . It is the contention of the Applicant that the High Court in the appeal did not give any order to restrict the title. The present application was made under section 98 (1) of the Registered Land Act (Cap.300) and sections 3 and 3A of the Civil Procedure Act. It was not opposed.

This application was filed in a miscellaneous file. If there is an appeal between the parties the application should have been brought in it, and not in a miscellaneous application. A suit for substantive orders cannot be originated by way of a miscellaneous application. The application is incompetent and is struck out with costs.

Dated, signed and delivered at Bungoma this 24<sup>th</sup> day of September, 2012.

**A. O. MUCHELULE**  
**JUDGE**