



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

CIVIL APPEAL NO 14 OF 2004

GODFREY MBUBA
KIRAI.....APPELLANT

VERSUS

JULIESTA MARUTA
MBUNGU.....RESPONDENT

RULING

Godfrey Mbuba Kirai hereinafter referred to as the applicant is the appellant in this appeal. His appeal was against the ruling and order of the Resident magistrate in the lower court in which the magistrate ordered the caution, restriction or any inhibition registered on plot **No. MAGUMONI/MUKUUNI/758** (hereinafter referred to as the subject land) to be lifted. Having heard the appeal, Khaminwa J. allowed the Appeal and “set aside the orders complained of”. On the basis of the appeal judgment, the applicant is now moving this court under **Order L Rule 1 of the Civil Procedure Rules** and **Section 3A of the Civil Procedure Act** for orders that the subdivision of MAGUMONI/MUKUUNI/1622, 1623, 1624, 1625, 1626 1627 and 1628 be reverted to the original number MAGUMONI/MUKUUNI/758 i.e. the subject land and that 6 acres be registered in the applicants name.

Apparently, following the order made by the magistrate in the lower court, the Respondent Juliesta Maruta Mbungu subdivided the subject land into 7 parcels and transferred the parcels to 3rd parties who are not party to the present suit. It is further argued that the subject of the appeal was removal of caution and the court cannot give the orders now sought.

I have given due consideration to the application before me. The order issued by the Resident Magistrate which was subject of the appeal was an order lifting the caution, restriction or inhibition registered against

the title to the subject land. This order was issued on 3rd February 2004.

The Appeal judgment which allowed the appeal and set aside the order made by the Resident Magistrate was delivered on 3rd October 2007. In effect, the appeal judgment set aside the lifting of the inhibition/caution by the trial magistrate which meant the restrictions were reinstated. Nonetheless the title to the subject property having been closed on sub-division, there is no title existing upon which the inhibition orders can be reinstated. The application by the applicant is an attempt to close the paddock after the horse has bolted. Such a closure would not be of any effect.

Moreover, the appeal has been disposed of and this court is now *functus officio*. The order sought by the applicant is not an order for execution of the appeal judgment. The applicant is bringing in new issues which cannot be entertained by this court at this stage. For these reasons, I find no merit in the applicant's motion dated 26th July 2010. It is accordingly dismissed with costs.

Orders accordingly.

H. M. OKWENGU

JUDGE

Delivered, dated and signed at Embu this 21st day of January 2011

In presence of:-