



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 200 OF 2009

KIPTOO ARAP

CHELULE:.....PLAINTIFF
VERSUS

JEROP TAPRANDICH NGETICH:.....1ST
DEFENDANT

SELLY JEPKIRONG NGETICH:.....2ND
DEFENDANT

CHRISTOPHER BETT:.....3RD
DEFENDANT

SAMUEL KIPLIMO BETT:.....4TH
DEFENDANT

RUTH JEPKOECH NGETICH:.....5TH
DEFENANT

JOHN KIPKEMEI CHEPTARBEI:.....6TH
DEFENDANT

P.K. SIBUCHI,

DISTRICT LANDS REGISTRAR:.....7TH
DEFENDANT

RULING

This application expressed to be made under sections 3, 3A of the Civil Procedure Act, Order 51 Rule 1 of the civil Procedure rules and Section 133 (1) of the Registered Land Act, seeks one main order of the Court, that the Orders granted by this court on 9th December, 2009 be set aside. The application is by the defendants.

The main reasons for the application are that on 9th December, 2009, the respondent/plaintiff sought and obtained restraining orders against the applicants in respect of LR. No.s Nandi/Lessos/559, 660, 661, 662 and 663. However, on 8th February, 2011 the plaintiff’s suit was dismissed for being *res judicata*. According to the applicants, that decision confirmed that they are the rightful owners of the said titles, yet a caution the respondent lodged against the titles still subsists and can only be removed by the Land Registrar if there is an order to that effect.

The respondent’s counsel filed Grounds of Opposition contending, in the main, that there is no suit upon which the order sought may be granted. Counsel did not however file written submissions in response to the submissions filed on behalf of the defendant by their advocates.

The submissions filed on behalf of the defendant were an elaboration of the grounds of the application and the averments in the supporting affidavit.

I have considered the application the supporting affidavit and the submissions of counsel. Having done so, I take the following view of the matter. The preliminary objection which guillotined the plaintiff's suit was predicated on one main ground namely that the respondent's suit was *res judicata*. The ruling did not mention any caution. The written statement of defence also made no reference to any caution. I have also perused the respondent's application for interim orders of injunction. There was no mention of a caution. Even the order which was subsequently issued on 9th December, 2009 made no reference to a caution.

So, if any caution was ever registered against the subject titles, the same was not so registered pursuant to any orders made in the dismissed suit. In the premise, the applicants' claim is a claim which cannot be entertained in this suit. They are at liberty to appropriately move the court for orders removing the caution.

This application, although heard *ex parte*, is without merit and is dismissed. There will be no orders at to costs.

Orders accordingly.

**DATED AND DELIVERED AT ELDORET
THIS 30TH DAY OF NOVEMBER, 2011**

**F. AZANGALALA
JUDGE**

**Read and delivered in the presence of:
Ms. Oduor H/B for Ms. Mugure for the applicant.**

**F. AZANGALALA
JUDGE**

30TH NOVEMBER, 2011