



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL NO. 66 OF 2001

*(An appeal from the Decision and Ruling of Kakamega CMCC Misc. Application
No. 157 of 1999 delivered on 24/7/2001 (Mrs. R. A. Oganyo, RM))*

RODAH BURUDI APPELLANT/RESPONDENT

VERSUS

GIDEON SHIRANDULA RESPONDENT/APPLICANT

R U L I N G

The Application by way of Chamber Summons dated 16.2.11 seeks orders that the caution placed on “**L.P. No. KAKAMEGA/CHEMUCHE/1708**” be certified removed and/or withdrawn.

The application is supported by the affidavit of the Respondent/Applicant, GIDEON SHIRANDULA sworn on 16.2.11.

The application is opposed and as per the replying affidavit of the Appellant/Respondent, RODAH BURUDI sworn on 6.4.11.

The background of the application is that on 25.10.07, the Judgment on appeal herein was delivered and dismissed the appeal by the Appellant/Respondent who had sought orders made on 16.6.1999 in the CM’s court in Kakamega Misc. Appl. No. 157/98 adopting the findings of the MALAVA LAND DISPUTES TRIBUNAL affecting land Title No. S/KABRAS/CHEMUCHE/1708 be set aside and the court’s order made on 27.9.00 declining to entertain the verdict of the Provincial Appeals Committee proceedings be reviewed and or set aside.

The Respondent/Appellant had placed a caution on the land parcel in question on 18.1.99 claiming a purchaser’s interest. The Respondent/Appellant contends that since the appeal herein has been decided he intends to execute documents relating to the land but the caution placed on the Land is an impediment.

The Appellant/Respondent on the other hand asserts that the court is now *functus officio* and cannot entertain the application herein as the Judgment on the appeal has already been delivered. It is also argued that the substantial appeal had nothing to do with the issues raised in the current Chamber Summons application and the Respondent/Applicant ought to have filed a substantive suit to seek orders for the removal of the caution. The Appellant/Respondent avers that she still holds a purchaser’s interest in the suit property which interest is yet to be addressed by the Respondent/Applicant.

I have considered the application, the reply to the same and the submissions made by the counsels. I have also perused the Judgment herein delivered on 25.10.07. The said Judgment did not did not determine the

proprietary rights of the parties to the said property. The appellant/Respondent seems to have lost the appeal on technicalities of procedure.

There is no determination in the said judgment on appeal upon which the Respondent/Applicant can anchor his application for the removal of the caution.

The application is therefore incompetent and the same is struck off with costs to the Appellant/Respondent.

Dated, delivered and signed at Kakamega this 15th day of November, 2011.

B. THURANIRA JADEN
J U D G E