



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Civil Appeal 71 of 2009

JULIUS KITHINJI NKANATA 1ST APPELLANT
GERALD GIKUNDA NKANATA 2ND APPELLANT
VERSUS
M'NKANATA M'MUTUNGI RESPONDENT

RULING

An appeal has been preferred against the ruling of the lower court where the lower court ruled that the appellant's case did not disclose a reasonable cause of action. Whilst this appeal was pending the respondent sought in the subordinate court the lifting of the caution/inhibition and/or encumbrances placed on parcel number NKUENE/URUKU/4. The inhibition and caution had been issued by the lower court pending the hearing of that case which was dismissed. The appellant in this appeal have filed an application dated 15th September 2009 seeking to inhibit the parcels of land that have been sub divided from NKUENE/URUKU/4 pending the hearing of this appeal. The argument for the orders to be granted are based on the claim by the appellants that the respondent will sell the property before the conclusion of this appeal and thereby defeat the appellant's appeal. The respondent in opposition argues that the lower court removed the caution and inhibition on his application in the lower court which was not opposed by the appellant. It is section 128 of the Registered land Act which gives the court power to order inhibition. In his case, the appellants are appealing against the dismissal of their suit by the lower court which was dismissed for not disclosing reasonable cause of action. If the appellant does succeed in this appeal, and they are given an opportunity to proceed to the lower court, which case is based on a claim that the respondent holds the land on trust, their claim would fail if the property is sold to a third party. The respondent is a father of the appellant. I am however aware from reading the affidavits that there has been inordinate delay in concluding the dispute between the parties. That delay cannot entirely be blamed on any party. Having considered the appellant's application dated 15th October 2009, the replying affidavit and submissions made before me, I am minded to grant orders of inhibition but limit that order to ensure that parties do proceed with their matter with haste. The following are the orders of the court:-

1. ***The court orders that inhibition be and is hereby issued in respect of parcels NKUENE/URUKU/1653 and 1665 or NKUENE/URUKU/4 stopping M'NKANATA M'MUTUNGI from disposing those properties.***
2. ***The order of inhibition in number 1 above shall subsist up to 1st December 2010 on which date it shall automatically be vacated without further orders of this court.***
3. ***The costs of the application dated 15th October 2009 shall abide with this appeal.***

Dated and delivered at Meru this 12th day of March 2010.

MARY KASANGO
JUDGE