



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

Civil Appeal 70 of 2009

DAVID KARIUKI KARINGO.....APPELLANT

VERSUS

STEPHEN MUTURI NJERU.....RESPONDENT

RULING

In his amended Chamber Summons dated 22/9/2009, the applicant is seeking order that the court cancels the inhibition placed by the Senior Resident Magistrate's Court Siakago on 27/8/2007 against land parcel numbers MBETI/KIAMURINGA/2391, MBETI/KIAMURINGA/2392/ and MBETI/KIAMURINGA/2393 save for parcel No. MBETI/KIAMURINGA/2390.

According to the applicant, the magistrate in his Judgment specifically ordered that the applicant transfers parcel No. MBETI/KIAMURINGA/2390. That Judgment has nonetheless been appealed against. According to the applicant, he wishes to deal with the other parcels of land save for 2390 and the inhibitions on the same are therefore prejudicial to him.

In his replying affidavit, the Respondent depones that the applicant is not prejudiced by the inhibitions and the same should not be lifted. He also depones that in his defence the applicant had offered to transfer to him any of the other plots other than 2390. He therefore asks the court not to lift the inhibitions. The court was also informed that plot No.2390 is also the family graveyard for the Respondent (as admitted in his defence) and so if it is the only parcel left by the time the appeal is heard and determined, then the respondent may not get any land transferred to him.

I have considered the application before me along with the rival affidavits. I have also seen the applicant's statement of defence in which he has specifically stated that he was not ready to transfer plot numbers 2390, 2391 and 2389 to the respondent.

In my view therefore, if we lift the inhibitions placed on all the other parcels save for plot no 2390, there is a likelihood that the respondent might be left without redress if the appeal succeeds. I am therefore reluctant to lift the said inhibitions. Let the status quo remain as is until the appeal is heard and determined. This way, all the parties' interests will be safeguarded.

The application dated 22/9/2009 is hereby dismissed with costs to the respondent.

W. KARANJA
JUDGE

Delivered, signed and dated at Embu this 10th day of May 2010

In presence of:-Parties and Ms Kimani and Mr. Kinyua for Mr. Kathungu and Mr. Kagoni respectively.