

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

CIVIL APPEAL 55 OF 2006

OMAR JUMA NAMATSI :.....: **APPELLANT**

VS

GABRIEL LUKHALE NAMATSI :.....: **RESPONDENT**

(Arising from Original Bgm Kadhi's CC. No.1 of 2006)

RULING

The applicant has filed this Chambers Summons under section 3A and 63 of the Civil Procedure Act and OXXXIX Rules 1, 2, 3, and 9 of the Civil Procedure Rules Cap 21 of the Laws of Kenya. He is basically seeking 2 orders as hereunder:

- 1. The interim order for injunction be issued restraining the appellant by himself or his agents and or servants from selling the estate in dispute, collecting rents from the rental houses of disputed estate, carrying out any development which would interfere with the estate in dispute generally pending the hearing and determination of this appeal.***
- 2. That orders be issued to compel the appellant not to occupy the land of the estate in dispute and the buildings which form part of the disputed estate.***

It will be noted that what is before the court is an appeal – Civil Appeal No. 55 of 2006 arising from Bungoma Kadhi's CC. No.1/2006. As I informed the applicant in court, this application is misplaced and is not properly before the court. Reason being that there is no suit pending before this court in respect of the subject matter herein. What is before the court is an appeal. Interlocutory orders under Order XXXIX only apply in cases where there is a suit pending and where a party find it necessary to seek preservation of the suit property while awaiting the disposal of the suit. There is no suit before me seeking injunctive orders against any party to enable me entertain an application for interlocutory orders of injunction. I do not therefore even need to go into the merits or otherwise of the application. The same is improperly before the court and is hereby dismissed with costs to the respondents.

W. KARANJA

JUDGE

11/6/2007