



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Criminal Appli 392 of 2007**

**PETER WAMBUA MULI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Before me is a Chamber Summons filed by the applicant PETER WAMBUA MULI. The substantive order sought from this court in the application is that the court be pleased to order the applicant's step brother to stop selling the applicant's plots. The application is supported by an affidavit in which the applicant depones that he is an inmate at Kamiti Prison and that he has learnt that his step brother is selling his plots in Kitui.

At the hearing of the application, the applicant submitted that he filed this application as a criminal application because he was advised at the prison that if he did not take action, his step brother would sell all his plots.

Learned State Counsel, Mrs. Gakobo, objected to the application on the ground that the criminal process could not be used to stop sale of property.

This application has been filed as a miscellaneous criminal application. It is purported to have been brought under C.A. Rule 48. This application cannot succeed. Firstly, the application appears to have been brought under rule 48 of the Court of Appeal Rules. That rule applies to applications to the Court of Appeal that can be heard by a single Judge of Appeal. That rule is not applicable to the High Court applications.

Secondly, the application has been filed as a miscellaneous criminal application but seeks for orders which are not criminal in nature. The orders sought are for the civil court. They cannot be issued in a criminal cause. The applicant therefore is advised, if he so wishes, to file proper proceedings in the civil court for the orders sought. On my part, I have to strike out this application, as it is incompetent.

Consequently, I strike out the application.

Dated and delivered at Nairobi this 31<sup>st</sup> day of October 2007.

**George Dulu**

**Judge**

**In the presence of –**

Applicant in person

Mrs. Kagiri for State - absent t

Eric - court clerk