



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

**Civil Case 210 of 2006**

**ELISHA CHEBII CHESIYNA ..... PLAINTIFF**

**VERSUS**

**ISAIAH CHEBII..... DEFENDANT**

**RULING**

The applicant has filed the Chamber Summons dated 30<sup>th</sup> October 2006 seeking for restraining orders against the defendant from building, entering or interfering in any manner with Plot Number **L.R No.9038/213 Karbarnet** pending the determination of the matter.

The grounds in support of the application are stipulated on the body of the application and expounded in greater detail in the supporting affidavit of the applicant.

Briefly stated, the applicant is the registered proprietor of **LR No.9038/213** in Kabarnet Town. He has exhibited a copy of grant which was issued on 1<sup>st</sup> January 1990 and receipts for land rent and rates in respect of the suit premises.

On the part of the respondent, he claims that he was allowed to lease the land by the Kabarnet Municipal Council on 6<sup>th</sup> October 2006 and thus he is a tenant of the County Council who should have been sued. The replying affidavit filed by the respondent is not sworn before the Commissioner for Oaths and thus it is incompetent and should be struck off.

I am satisfied that the plaintiff has been able to establish a *prima facie* case with a probability of success, that he is the legal owner of the suit premises. If the Kabarnet Municipal Council purported to lease the plot to the defendant, they are not the registered owners of the plot and thus they cannot lease the same. If the defendant claims the plot was grabbed from the Kabarnet Country Council, they should follow the laid down mechanism of recovering the land but they cannot do so by leasing the property to the defendant.

Accordingly, the orders sought by the plaintiff in terms of prayer number 2 are hereby granted.

Costs shall be in the cause.

It is so ordered.

**Ruling read and delivered on 14<sup>th</sup> October 2006.**

**MARTHA KOOME**

**JUDGE**

