

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
Civil Case 535 of 2004

IN THE MATTER OF THE APPLICATION FOR LIFTING AND /OR
VACATION OF CAVEAT REGISTERED AGAINST
L.R NO. 209/2960-NAIROBI

BETWEEN
RYNA FLORAH ONYANGO KADASIA.....PLAINTIFF
AND

LILINA GICHIRU.....1ST DEFENDANT
THE PRINCIPAL REGISTRAR OF TITLES.....2ND DEFENDANT

RULING

It seems this matter came before me on the 12/5/2004 pursuant to an order by Mr. Justice Kariuki. What in my view was before me is the Notice of Motion of 29/4/2004 seeking declarations. Mr. Odera now says it was the substantive Originating Summons of 29/4/2004. The substantive application could only be heard after directions had been given and Notice of hearing served on the Defendant.

The order was as result of my written order which stated “I have power to make the order sought for and set aside my previous order and grant the application as prayed”.

In the morning I had ordered that the Applicant to serve the Respondent with a notice under Section 57 of the Registration of Titles Act.

I notice in fact that even if I was wrong, which I think I was in dealing with the question of the removal of the caveat the Origination Summons of the 29/4/2004 sought orders which only questioned and did not seek an order for the removal of the caveat.

I therefore set aside the order made by me on the 12/5/2004.

So far as the question of the injunction is concerned it appears that the property in question has been transferred to a third party if so there would be nothing to stay. I will however allow the applicant to file a Further Affidavit to clarify whether the property still remains in the name of the Respondent to the Application. In any event I stay any sale of the property until these matters are clarified. It may well be that the Applicant has to perfect her rights to the suit premises before making this present application and that is a matter for her. I will reserve the costs.

DATED and DELIVERED at NAIROBI on 10th March 2005.

P.J RANSLEY
JUDGE

