



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Civil Miscellaneous Application 48 of 2009

ABDUL RAHIM YUSUF..... APPLICANT

-VERSUS-

JAMES OLERO LIETA.....1ST RESPONDENT

THE LAND REGISTRAR MIGORI/RONGO.....2ND RESPONDENT

RULING

The applicant has in this Motion filed on 26/2/2009 requested for an order that the caution lodged by the 1st respondent on 4/4/2008 against parcel of land no. Suna East/Wasweta1/11904 be removed. The Land Registrar Migori/Rongo was brought with the application because he is the one who registered the caution. The Motion was shown to be brought under sections 133(1), 2(a) and (b) of the Registered

Land Act Cap 300 and order 50 rule, of the Civil Procedure Rules.

A dispute regarding claim over the land between the applicant and 1st respondent has arisen. It is the dispute that led to the said caution. If the applicant was aggrieved by the caution and he could not persuade the Land Registrar to remove it he was supposed to file a suit in Court for the Court to order the removal. Under sections 2 and 19 of the Civil Procedure Act such suit has to be commenced in any manner that has been prescribed by the rules. It may be commenced by Plaintiff, Originating Summons, Petition or in any other manner. A Motion can only be filed in an existing suit. It cannot originate a suit.

The application is incompetent and is struck out with costs.

Dated, signed and delivered at Kisii this 7 th day of October2009

A.O.MUCHELULE

JUDGE

7/10/2009

Before Hon. A.O.Muchelule-Judge

Court clerk-Mongare

Mr. Mbicha for applicant

COURT: ruling in open court.

A.O. MUCHELULE

JUDGE

7/10/2009