

No.181/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL SUIT NO. 245 OF 2013

LYDIA MWIKALI JOSEPH.....APPELLANT

VERSUS

MAITHA MUTHOKARESPONDENT

RULING

1. By an application dated **18th December 2013** brought pursuant to **Order 42 Rule 6(1) (2), Order, 51 Rule 1** of the **Civil Procedure Rules, Section 3A** of the **Civil Procedure Act**, the applicant seeks stay of execution of a judgment in **PMCC 336 of 2010** delivered on **12th November, 2013** pending hearing and determination of the **Appeal No. 245 of 2013**.
2. The application is based on grounds that; the applicant has already lodged an appeal against the judgment; the applicant was given 90 days to vacate the suit property with effect from **12th November, 2013**; the application has been filed without undue delay; if evicted the applicant will suffer substantial loss and the appeal shall be rendered nugatory if orders sought are not granted.
3. The application is supported by an affidavit deposed by **Lydia Mwikali Joseph**, the applicant herein who avers that she was dissatisfied with the judgment of the Lower Court which prompted her to file an **Appeal Number 245 of 2013**. She stated that she was allocated **Plot No. 273 Kiboko**, paid for it and took possession of the same. She has constructed a house thereon and stands to suffer irreparable loss if evicted from the parcel of land. Further, that the appeal has an overwhelming chance of success as the magistrate lacked jurisdiction to determine the matter.
4. I have considered the application. I have also perused proceedings of the Lower Court. Proceedings in the Lower Court, **Makindu PMCC No. 336/2010** were between **Maitha Muthoka** and **Mary Mwikali Joseph**. According to proceedings in the Lower Court, the person who testified as the defendant called herself **Dider Mwikali Muthini**. These proceedings were certified and availed by the applicant. I have also perused annexure "**LMJ**", a letter of offer in respect of **Plot No. 273** the basis upon which the applicant claims ownership of the land. It was issued to one **Lydia Mwikali Muinde**.
5. The question to be answered is whether the applicant has *locus standi* to file an appeal in a matter in which she was not a party? Her name having not featured in the Lower Court as a party, in law she had no right to appear and be heard before the High Court.
6. In the premises, the application is dismissed. No orders as to costs.

DATED, DELIVERED and SIGNED this 28TH day of JANUARY, 2014.

L.N. MUTENDE

JUDGE