



COPY

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

ELC. NO. 250 OF 2012

ELMI MUSA KALIYA (Suing as attorney of HALIMA MUSA KALIYA)...PLAINTIFF

- VERSUS-

1. FRANCIS KASING MUSINGA.....1ST DEFENDANT

2. MARIAM MOHAMED MUASA.....2ND DEFENDANT

RULING

[1] The applicant herein filed his motion dated 2nd November, 2012 praying for a temporary injunction to issue against the respondents restraining them from continuing construction on unregistered land named therein as title number 1666/V1/MN/CR. 11002 and that an injunction do issue against them pending the hearing of this suit.

The applicant through her affidavit says that she has lived on this land and was paying rent and rates. She attached photocopies of rates receipts to the owner since 1983. She states she has built a permanent house. She avers that the land has since been sold to the first defendant Francis Kasing Masila without her knowledge and the land owner has since died. She avers she learnt this from a letter from Port Rietz location chief's office. The respondent disputes these allegations and avers that one Halima Musa has been his tenant in the premises since 2006. He avers the applicant Halim Musa has refused to pay rent and is now in arrears of Kshs. 150,000/-. He denies that the suit land was fraudulently transferred to him. I find that since Halima Musa has been living on the suit land, this motion commends itself for an order of status quo. The same shall be maintained until the suite is heard and determined.

[2] The respondent filed his motion dated 12th March, 2013 praying that this suit be stayed until the said Halima Musa Katoo pays Ksh. 85,790 granted in *CMCC. 1349 of 2012 Elimi Musa Kaliya v Francis Kasing Masila*. Mr. Mwakileti argued this application together with the application of 2nd November, 2012 and argued that the court has jurisdiction to stay the suit brought upon the same cause of action. He argued that the prayers are the same and that requirements under Order 25 rule 4 are satisfied.

[3] I am afraid I do not agree. CMCC. No. 1349 of 2012 is a complete and different suit by itself. The judgment debtor is at liberty to execute the decree on costs on the same the case in this court notwithstanding. This notice of motion dated 12nd March, 2013 is without merit and is dismissed with costs.

It is so ordered.

Dated and delivered in open court at Mombasa this 27th day of March, 2014.

S. MUKUNYA

JUDGE

27.3.2014

In the presence of:

Miss. Bii Advocate for the Respondent

Mr. Mwakileti Ndumia Advocate for the Applicant