



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CIVIL APPEAL NO 73 OF 2010

AGNES MUMBI KARUGA.....APPELLANT

VERSUS

KELVIN MUCHIRI KAMAU..... 1ST RESPONDENT

DOMINIC MWANGI RUNJI.....2ND RESPONDENT

R U L I N G

The applicant in the Notice of Motion dated 30.07.2010 is the Appellant in this appeal. Her appeal is against the order of the learned trial magistrate Mr. D.A Ocharo delivered on 8th July 2010 dismissing her application for interlocutory orders of injunction.

In the meantime, while pending the determination of the said appeal, the Applicant filed this notice of motion.

The Appellant/Applicant states that she is the licence holder of rice holding No. 2251 which is the subject of these proceedings. The respondents have staked a claim on the said plot saying that they have leased the same from the legal representatives of the estate of the Applicant's mother. Following the dismissal of the Application for injunction, the respondents are said to have taken possession of the said rice holding. That was in July 2010. As rightly stated by the magistrate therefore, the Respondent is already in possession and injunctive orders would not lie.

Interlocutory injunctions are meant to prevent an act from happening and not to reverse what has already happened. An injunction that is going to have the effect of evicting i.e. ejecting the respondents from the premises would be a mandatory injunction and the same cannot be granted at this stage.

Secondly, the leasehold in question was for the 2010 season and by the time this ruling is delivered, there is a likelihood that the same will have expired or will be about to expire.

Thirdly, the parties herein have two suits before the subordinate court over the same suit premises. It will be more efficacious to pursue those suits that will determine the rights of parties conclusively than engage in appeals over interlocutory orders. This Application lacks merit and the same is therefore

dismissed with no orders as to cost.

W. KARANJA

JUDGE

Signed by the above but:

Delivered and dated by the undersigned at Embu this 1st day of February 2011

H. M. OKWENGU

JUDGE

In presence of:- In presence of:- Ms. Kahara Holding brief for Waweru for Applicant . Respondent absent