



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 75 of 2007

1. Land and Environmental Law Division
2. Subject of main suit:- Eviction
 - i) Sale by public auction
 - ii) New purchaser wish the defendant be evicted from the premises
 - iii) Related file Milimani CMCA13795/06 suit. Defendant and 3rd party.
3. Application 8.10.07
 - a) Certificate of urgency
 - b) Seeking orders to have defendant vacate premises.
4. Reply 9.7.07
 - c) Respondent seeks time to counter claim against 3rd party
 - d) Application – premature
- 5 Held: Injunction to issue
6. Case law – Nil
6. Advocate:

A. Kwengu of Kwengu & Co. Advocate s for the plaintiff/applicant – present

Oindoo & Associates advocates for the defendant/respondent - absent

PAXTON MAINA MUGO 1ST PLAINTIFF

JANE WAMBUI MAINA 2ND PLAINTIFF

VERSUS

MAURICE CHRISWA WANEKAYA DEFENDANT

RULING

I: Background

1. The two plaintiffs bought a house in an auction. They now wish that the defendant, the former owner who occupies the said land premises be evicted from the suit premises.
2. They file suit to seek these prayers of eviction on 27 April 2007. They file application of 8.10.07 seeking injunctive orders to evict the defendant.
3. In reply the defendant state he wishes to enjoin HFCK. There is a related case CMCC 13795/06 Milimani court which was struck out and not dismissed as stated by the advocate for the applicants on grounds that the suit was filed in the wrong court having no jurisdiction.

II: Should injunctive orders issue?

4. Where you require to evict the defendant, after the defendants premises had been sold in a public auctioneer, then as far as possible formal proof of the eviction should be heard of parties by the court.
5. I direct that the application be and is hereby dismissed with costs in the cause.
6. Parties to go to full trial. The defendant be and is hereby given leave to file further amendments but subject to costs.

Dated this 5th day of March 2008 at Nairobi.

M.A. ANG'AWA

JUDGE

A. Kwengu of Kwengu & Co. Advocate s for the plaintiff/applicant – present

Oindoo & Associates advocates for the defendant/respondent - absent