

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 809 of 2006

DAVID MUCHEMIAPPELLANT

V E R S U S

1. MAINA NDUNYU

2. MARGARET NYAKARURA BARAGU

3. KANGERI WANJOHI (t/a Kindest Auctioneers).....RESPONDENTS

R U L I N G

This is an application by the Appellant under Order 41, rule 4 (6) of the Civil Procedure Rules (the Rules) seeking a temporary injunction to restrain the Respondents from selling or advertising for sale or withholding or interfering with the Appellant's right to quiet possession of House No. 73, Buru Buru Estate (Phase V) pending determination of the appeal herein. The appeal itself is against the order of the lower court of 15th November, 2006 which dismissed the Appellant's application for a temporary injunction to restrain the Respondents from selling the Appellant's properties attached in distraint for rent. At the hearing of the application it was conceded by learned counsel for the Appellant that the distrained properties were sold when the Appellant failed to meet conditions for a stay of sale granted by the lower court, and that therefore the temporary injunction sought will not serve any purpose. In these circumstances I fail to understand why the Appellant's learned counsel prosecuted the application all the same.

In any event the Appellant is not deserving of the order sought. He owes a huge amount of money in arrears of rent. He is in effect staying in rented premises for which he is not paying rent. He offers the excuse that there is a dispute between the Respondents over ownership of the premises, and that therefore he does not know to whom to pay rent. From the materials placed before the court, this claim by the Appellant is patently false; the Appellant knows perfectly well to whom to pay rent as ordered by a succession court. At the same time the Appellant has claimed that he has been paying rent for which he has not been issued with receipts, and that he owes only a little sum in arrears. Again, from the material placed before the court, this is false. How can he claim to have been paying rent when at the same time he claimed he did not know to whom to pay? And why has he not exhibited any evidence of demand for receipts for the rent already paid?

I have said enough to show that the Appellant's application totally lacks in merit. It is hereby dismissed with costs to the Respondents. Orders accordingly.

DATED AT NAIROBI THIS 23RD DAY OF JULY 2007

H. P. G. WAWERU

J U D G E

DELIVERED ON 27TH DAY OF JULY 2007