

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 64 OF 2004

1. CHRISTOPHER BAYA
(Chairman Lachani Welfare Dev. Youth Group)
2. ALPHONCE MANGALE
(Secretary Lachani Welfare Dev. Youth Group)
3. ANDERSON KARISA
(Treasurer Lachani Welfare Dev. Youth Group)
Suing as Officers of Lachani Dev. Youth Group.....APPELLANTS

= V E R S U S

1. PHILIP KILUKO.....1st RESPONDENT
2. ABDULRAHMAN NASSIR ABDALLAH.....2ND RESPONDENT

R U L I N G

The Applicants are aggrieved by order of Trial Court and have filed a Memorandum of Appeal. They seek stay pending hearing of the appeal.

The dispute revolves around the occupation of a plot wherein the 2nd Respondent sold the right to occupy and construct a building on his plot to the Applicants. This arrangement is known as “House Without Land” meaning the right to build on another’s land under agreement which does not pass title to the land.

It is clear that the land owner has breached this Agreement and has brought the 1st Respondent who is harassing the Applicants.

This suit raises a serious legal issue and the matter has to be decided in an Appellate Court.

I therefore find that rejecting the application would render the appeal nugatory and cause loss to the Applicants.

I therefore grant stay as the issue to be decided is of public importance in Coast Province.

I order that the Applicants shall proceed to present the appeal with all diligence within the next 45 days from the date hereof.

Costs in the Appeal.

Dated this 19th day of July, 2004.

JOYCE KHAMINWA

J U D G E

19/7/2004

Khaminwa, J.

Chege – Court Clerk

Mr. Okanga

Mr. Odongo – Holding Brief