

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL APPEAL NO. 282 OF 2004

AGNES MORAA OMWENO APPELLANT/APPLICANT
VERSUS
GRACE MORAA OMWENO) RESPONDENTS
HENRY NYABUTO KIROCHI)

RULING:

I have considered the application and the submission by counsel for the applicant. I think the applicant has come to this court the wrong way. He is applying for a temporary injunction. However Order 41 rule 4(1) and (6) CPR deals with stay of execution of the lower court's order pending the hearing of appeal. Injunctions are provided for under Order 3a CPR. That is not the order the applicant is proceeding on.

The proper route the applicant should have taken is to apply for stay of execution of the order given by the magistrate discharging the temporary orders until the appeal is heard. He has already an application for injunction pending before the magistrate's court.

That application has not been fully determined and yet he has applied for another injunction before this court. This will lead to confusion for if the application for injunction is heard and determined by this court she did not tell court what will happen to the application already pending in the lower court. Her appeal is against a specific order made by the court. There is no application to stay that order as provided for under order 41 rule 4(1) CPR. It would therefore appear that to apply for a second injunction before the first application is dealt with one way or another is an abuse of court's process. In any case the application for injunction is brought under the wrong order and rule.

From the above therefore I decline to issue orders for temporary injunction. Applicant may be given a date on priority basis for inter parties hearing.

It is so ordered.

Dated at Kisii this 25th October 2004.

KABURU BAUNI

JUDGE

25/10/2004