



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**CIVIL APPEAL NO. 204 OF 2016**

SAULI MAUNDU MUTUA.....APPELLANT/APPLICANT

VERSUS

MARY MUNGUTI.....1<sup>ST</sup> RESPONDENT

KASYOKI MARY.....2<sup>ND</sup> RESPONDENT

*(Being an Appeal from the Judgment of Makueni Principal Magistrate's*

*Court in Civil Case No. 113 of 2013 delivered on 1<sup>st</sup> December, 2015*

*by Hon. R. Koech -(SRM))*

**RULING**

1. What is before me is the Application dated 16<sup>th</sup> February, 2016 in which the Appellant is seeking for the following orders:

*a. That a temporary order of injunction be issued restraining the Respondents, their agents and/or their servants and/or anyone claiming under them from entering, constructing, cultivating, selling, transferring and/or in any other manner interfering with the Plaintiff's Land parcel No. Kalawa/Kathulumbi/225 pending hearing and determination of the appeal.*

*b. That the costs of this Application be provided for.*

2. The Application is premised on the grounds that the Applicant is the registered proprietor of parcel of land number Kalawa/Kathulumbi/225; that the Respondents have illegally remained on the suit property and that the Appellant has filed a Memorandum of Appeal.

3. The Appellant deponed that the suit property was a subject of Makueni PMCC No. 113 of 2013 which suit was determined in favour of the Respondents; that the Respondents have proceeded to lease the suit property to third parties and that the Respondents' actions are calculated at defeating his interest in the land.

4. In his Replying Affidavit, the 1<sup>st</sup> Respondent deponed that if the Application is allowed, it would amount to an eviction because they are in occupation of the suit land and that the Applicant has never been in possession of the suit land.

5. The Applicant's counsel submitted that the purpose of injunctions is to maintain *status quo*; that in this

case, *status quo* would translate to the Respondents remaining on the land but not to undertake any developments or leasing it out and that the balance of convenience tilts towards preserving the suit property.

6. The Respondents' advocate submitted that the proper way of dealing with the issues that the Appellant is raising is by setting down the appeal for hearing.

7. Counsel submitted that the Applicant made a similar Application in the lower court which was dismissed and that the Applicant did not appeal against the Ruling.

8. The Appellant has filed a Memorandum of Appeal to challenge the Judgment of the learned Magistrate.

9. The Appellant has not annexed on his Supporting Affidavit a copy of the impugned Judgment. This court cannot therefore state, on the face of the Judgment, whether the Appellant has an Appeal with chances of success.

10. In any event, the Appellant has admitted that it is the Respondents who have always been in possession of the suit land.

11. The Appellant has not denied that he sought for an order of injunction in the lower court which was dismissed. He never appealed against the said Ruling.

12. In the circumstances, I find that the Appellant has not placed sufficient evidence before this court to warrant this court to issue an injunction at this stage.

13. I agree with the Respondents' counsel that an injunction as framed in the Application will amount to the eviction of the Respondents. That in itself will be a determination of the intended Appeal in favour of the Appellant before hearing the Appeal. That is unprocedural.

14. For those reasons, I dismiss the Application dated 16<sup>th</sup> February, 2016 with costs.

**DATED AND DELIVERED AT MACHAKOS THIS 3<sup>RD</sup> DAY OF MARCH, 2017.**

**OSCAR A. ANGOTE**

**JUDGE**