



IN COURT OF APPEAL

AT MOMBASA

(CORAM:CHESONI, C.J, KWACH & OWUOR, JJ.A.)

CIVIL APPLICATION NO. NAI. 153 OF 1998

BETWEEN

FARAJ MAHARUSAPPELLANT

AND

J.B. MARTIN GLASS INDUSTRIES

KENYA SUIT CASE MANUFACTURERS LTDRESPONDENTS

(An application for Injunction Pending Appeal from a Ruling of the High Court of Kenya at Mombasa (Mr. Justice Waki,J.) dated 15th May, 1998 in

H.C.C.C. NO. 447 OF 1995)

RULING OF THE COURT

This is an application under **rule 5(2)(b)** of the Court of Appeal Rules for a temporary injunction restraining the respondents from evicting Faraj Maharus from a piece of land on **Plot LR No. 1043/111/54** Mazeras also known simply as **Plot No.26**.

The applicant filed a suit in the superior court against those respondents and the Urban Council of Mariakani and the Commissioner of Lands seeking inter alia an order of injunction and an order compelling the Commissioner of Lands to cancel the title he issued to the first respondent and compelling him to issue a title to the applicant. The applicant filed the suit as the administrator of the estate of his late mother Khadija Rajab Suleiman (the deceased).

None of the defendants filed a defence but these respondents applied by Chamber Summons under Order 6 rule 13 of the Civil Procedure Rules to strike out the applicant's suit as frivolous, vexatious and an abuse of the process of the court. The application was supported by an affidavit sworn by Sailesh Dayalal Shah the Managing Director of the first respondent. He deponed that the first respondent applied for and was allocated the suit land by the Commissioner of Lands in 1978.

Waki J who heard the application relied on **section 23(1)** of the Registration of Titles Act (**Cap 281**) and the case of **Michael Kimotho v Nicholas Mugo** (Civil Appeal No.53 of 1995) (unreported) and dismissed the applicant's application as he felt the first applicant had an unimpeachable title. But we have seen a Letter of Allotment dated 21st June, 1995 by which the Commissioner of Lands offered the same

property to the applicant upon payment of Shs 74,140/- which the applicant paid in full on 22nd August, 1995. On the face of this evidence, we cannot accept Mr Gikandi's submission that the applicant's case is so hopeless, it should not go to trial. The applicant and his family have been living on the suit property since 1926 and it is unacceptable that they should just be thrown into the cold without being told where they should go.

If the injunction is issued, we do not see in what respect the respondents will be prejudiced but if it is not granted, the applicant and his family will suffer great hardship because they will be evicted from the suit premises and rendered homeless, without being heard.

We are accordingly satisfied that the applicant has an arguable appeal. We allow the application an issue and order of injunction restraining the respondents, their servants and agents, from evicting the applicant from the suit property or interfering with his possession and enjoyment pending the hearing and determination of the intended appeal or further order. Costs of the application to be in the appeal.

Dated and delivered at Mombasa this 17th day of July, 1998.

Z. R. CHESONI

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JUDGE OF APPEAL

R. O. KWACH

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR