



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAKURU**

**(Coram: Gicheru, Kwach & Pall, JJ.A.)**

**CIVIL APPEAL NO. 164 OF 1997**

**BETWEEN**

**BEATRICE YAGAN.....APPELLANT**

**AND**

**JOSEPH YATOR.....RESPONDENT**

**(Appeal from the Ruling of the High Court of Kenya at  
Nakuru**

**(Rimita, J.) dated 29th July, 1996**

**in**

**H.C.C.C. NO. 324 OF 1996)**

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

This is an appeal against the decision of Rimita J. given on 29th July, 1996 by which he dismissed Beatrice Yagan's (appellant) application for a temporary injunction to restrain the respondent from evicting the appellant from a Government house on Plot L.R. No. Nakuru/Municipality Block 10/185 commonly referred to as Government House No. MG/45, and from carrying on any construction works on the suit premises.

The respondent apparently claims that the suit premises which the appellant occupies as a civil servant have been allocated to him outright by the Government. The superior court declined to grant the order and that refusal prompted the appellant to institute this appeal.

Mr. Sogon, for the respondent, concedes the appeal so that, as he says, and we agree, the matter can be heard and determined substantively in the superior court. Mr. Juma Kiplenge, for the appellant, has no objection but he asks for costs as his client has been put to great expense already. Having regard to the history of this case, we agree with him. Accordingly, we allow this appeal, set aside the ruling and order of Rimita J. dated 29th July, 1996 and substitute therefor an order granting the appellant a temporary injunction in terms of prayers (b) and (c) in the Chamber Summons dated 1st July, 1996 together with costs. The appellant will also have the costs of this appeal.

**Dated and delivered at Nakuru this 25th day of September, 1998.**

**J.E. GICHERU**

**.....**

**JUDGE OF APPEAL**

**R.O. KWACH**

.....

**JUDGE OF APPEAL**

**G.S. PALL**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**