



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI  
MILIMANI LAW COURTS  
CIVIL APPLICATION NO. NAI.184 OF 1997 (76/97)

MAGDALINE  
WAMBUI  
MUHIA .....

.....  
APPLICANT

VERSUS

JOSEPH  
MWANGI  
WANJAU

EUNICE  
TELYIAN  
WANJAU

NAIROBI CITY  
COUNCIL .....

.....  
RESPONDENTS

(Application for injunction in an intended appeal from a Ruling of the High Court of

Kenya at Nairobi by the Honourable Mr. Justice Mbito given on 21st May 1997

in

H.C.C.C. NO. 2424 OF 1995)

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**RULING OF THE COURT**

The present application is brought under Rule 5(2)(b) for an injunction in an intended appeal by the

applicant. Briefly the applicant sought declaring against the respondents that she was entitled to the possession of the suit premises which belonged to her employer the third respondent that is the Nairobi City Council, and that the purported termination of her tenancy by the 1st and 2nd respondents who are not the owners of the suit premises, was unlawful and null and void.

It was not denied that the applicant had been put in possession of the suit premises by the City Council and that the only interest that the applicant had in the suit premises was only that of a licensee which would be terminated by a month's notice, and not as owner of the suit premises. It is also not denied that though the suit property may have been transferred by the City Council to one Chemirmir who at the time was the Assistant Town Clerk of the City Council, Chemirmir had sold the suit property to the 1st and 2nd respondents in whose names the suit property had been registered under the Registration of Titles Act (Cap.281). The registration of the title, grants to the 1st and 2nd respondents the absolute and indefeasible title to the suit property under s.23 of Cap 281 and in respect of which a certificate of title had been issued. The indefeasible title can of course be defeated if fraud is proved on the part of the vendor in this case Chemirmir, which has not been adverted to at all as it should have been, on the pleadings so far filed in the matter. What is more, the applicant has chosen not to make Chemirmir a party to the suit. We would not like to preempt the decision in the intended appeal, but are constrained to say that the intended appeal is quite unarguable and on this ground alone we are not inclined to grant the injunction sought.

But we must also consider whether the appeal, if successful, would be nugatory. As we have already noted, the applicant was not the owner of the suit property. She was only a licensee of the suit property under an agreement which could be terminated. And in any case, there is no evidence that she will not be provided with another premises by the City Council as the latter is bound by law to do.

On the material before us we are of the opinion that the application does not satisfy the requirements for the granting of the relief sought. In the result, the application is dismissed with costs for the 1st and 2nd Respondents.

Dated and delivered this 25th day of July, 1997.

A.M. AKIWUMI

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

G.S. PALL

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.