



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI**

Civ Appli 62 of 2006

GEORGE GIKUBU MBUTHIA.....APPLICANT

AND

DORSILA AYUMA SHIRAKU.....1ST RESPONDENT

L.M. OMBETE *t/a Ombete & Co. Advocates*.....2ND RESPONDENT

BENJAMIN AYIRO SHIRAKU.....3RD RESPONDENT

PENINA A.N OLOO *t/a Penina Oloo & Co. Advocates*.....4TH RESPONDENT

FOZIA MOHAMED (*Trustee for Fordosa Ahmed Abdille*).....5TH RESPONDENT

HON. THE ATTORNEY GENERAL – *representative of* ..

THE REGISTRAR OF TITLES, NAIROBI.....6TH RESPONDENT

(Application for injunction under Rule 5(2)(b) of Court of Appeal Rules from the judgment of the High Court of Kenya at Nairobi (Ransley, J) dated 10th February, 2006

in

H.C.C.C. NO. 2169 OF 2000)

RULING OF THE COURT

This is one of those endless applications by *Mr. Mbutia*, the applicant herein. He applies to the Court under *Rule 5(2)(b)* of the Rules of the Court for various types of injunctive orders, for a stay of execution, for stay of further proceedings in the High Court and for an order.

“----- commanding the officer-in-charge, Pangani Police station to remove the 5th Respondent’s tenants, traders construction workers from their continued illegal occupation and construction on L.R. 36/1/985 Galole Road, Eastleigh, Nairobi”

Why the applicant would want us to make orders affecting other parties who are not the subject of the litigation such as the OCS, Pangani, the tenants, traders and so on, whom we have not even

heard, is a matter wholly beyond our comprehension. The applicant, as a determined and frequent litigant in these courts is of course aware of the principles which guides the court in granting the kind of orders he seeks from us. He has to show that he has an arguable appeal, i.e. an appeal which is not frivolous, and that if the court refused to grant him the orders he seeks and his appeal or intended appeal were to eventually succeed, that success would have been rendered nugatory by the refusal to grant the order.

On the first head, surface it to say that having listened to the applicant's submissions before us, we remain wholly unconvinced that he has an arguable appeal and we think we ought not to go into the details of the matter other than saying we remain unconvinced. That being the position we have taken, it is not necessary for us to deal with the issue of the appeal or intended appeal being rendered nugatory.

The applicant's notice of motion dated 3rd March, 2006 and lodged in this Court on 6th March, 2006 must accordingly fail and our order is and shall be that the motion is dismissed with costs.

DATED and DELIVERED at NAIROBI this 10th Day of November, 2006.

R.S.C. OMOLO

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

E.M. GITHINJI

.....

JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR.