



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL APPEAL NO. 102 OF 2014

MOSES ESI MALOBAAPPELLANT

VERSUS

BUBERWA D KEMIBARO

MUJUNI L. KEMIBARO.....RESPONDENTS

RULING

1 MOSES ESI MALOBA has filed a Notice of Motion dated 5th August 2014 which is under consideration. Maloba seeks the following prayer:

That this honourable court be pleased to stay and/or set aside the Ruling delivered by honourbe M. N. Gicheru on the 30th July 2014 pending the hearing and determination of an appeal filed by the applicant against the said Ruling.

2 The Ruling sought to be stayed by this application made on order to the effect that, the application dated 27th August 2013 before the Chief Magistrate's court, in Mombasa CMCC No. 1628 of 2013, was dismissed and the application dated 21st January 2014 before the same court was allowed. There seems to be no order which was extracted of that Ruling.

3 That being so Maloba was under a duty to supply to this court the pleading and the application of 27th August 2013 and 21st January 2014. He did not do so.

4 It follows I am unable to fathom the prayers in both those applications before the Chief Magistrate. This court by the present application is being asked to stay a ruling of applications that it does not know the ramnification of their prayers.

5 On that ground alone the notice of Motion dated is dismissed for being vague.

6 What however seem to be at stake reading from the affidavits before this court is Maloba's plea in the chief magistrate's court that he should not be evicted from hose No Plot No 3174 Section 021 New Nyali where the respondents are the administrators of the estate of the deceased owner of the land. It is alleged that Maloba has not paid rent for that house for sometimes now and the arrears accumulated are Ksh 3,139,850 as at October 2014. Maloba's response is to deny that claim of arrears and to further to argue that he repaired the house of the deceased to the tune of Ksh 7 million and that, that entitles him to continue to occupy the house to recoup those expenses.

7 That argument by Maloba is tantamount to one taking the law into their own hands. In other

words he is the judge who has determined the amount he allegedly spent on the alleged repairs and he proceed to decide how he is to recover the alleged amount. The law does not support such an action.

8 In view of what I have stated above and because I am handicapped by lack of pleadings before the chief magistrate's court the Notice of Motion dated 5th August 2014 is dismissed with costs to the respondents.

Dated and delivered at Mombasa this 24th day of August 2015

MARY KASANGO

JUDGE

24.8.2015

Coram

Before Justice Mary Kasango

C/Assistant –

For: Appellant:

For Respondent:

Court

The judgment is delivered in their presence/absence in open court.

MARY KASANGO

JUDGE