



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT BUNGOMA
ELC CASE NO. 62 OF 2014

JOHN JUMA MUCHELESI.....PLAINTIFF

VERSUS

GRACE MANG'ENI NABUKIYABI.....DEFENDANT

RULING

The Notice of Motion dated 22nd March 2022 and filed by **JOHN JUMA MUCHELEZI** (the plaintiff) has been placed before me for directions. It came up earlier today before the Deputy Registrar but there was no appearance by Counsel for the plaintiff.

By the Notice of Motion, the plaintiff seeks the following orders: -

- 1. Service be dispensed with in the first instance.**
- 2. There be a stay of execution of the orders emanating from the Honourable Deputy Registrar made on 9th March 2022 pending hearing and determination of this application.**
- 3. The proceedings and orders emanating from the Honourable Deputy Registrar running from 24th February 2022, 1st March 2022 and 9th March 2022 be vacated and set aside.**
- 4. Costs be provided for.**

The application is premised on the grounds set out therein and is supported by the plaintiff's affidavit also dated 22nd March 2022.

The plaintiff's grievance, as I can glean from the face of the application and the supporting affidavit, is that he is aggrieved by the proceedings that went on before the Deputy Registrar on 24th February, 1st March and 9th March 2022 which he feels were "***shrouded in whims and caprice,***" "***lased with threats and intimidation***" and were "***ultra vires.***"

The plaintiff has also averred in paragraph 3 of his supporting affidavit that "***the main issue is taxed costs which were deposited in Court by the defendant without any due notice***" to him and which have not been released to him due to some "***shenanigans.***"

From my perusal of the application, what the plaintiff seeks is that the orders of the Deputy Registrar be "***vacated and set aside.***" That is a matter well within the jurisdiction of the Deputy Registrar but since

the plaintiff did not appear before him as directed earlier today, I take it that the plaintiff prefers that I determine the same. I shall therefore determine it. And looking at the prayers sought, I do not deem this to be an application for which I need to direct that it be served for inter – parte hearing.

The jurisdiction to **vacate** and **set aside** a Court's orders is vested firstly in the Court that made the orders. Thereafter, the matter can only come to this Court on appeal. There is no appeal before me and so there is no basis upon which I can make any orders for stay of execution as sought.

If the plaintiff's grievance relates to the taxed costs, the law is clear on what procedure the plaintiff ought to use in approaching this Court.

This application is incompetent. It is accordingly struck out. No orders as to costs.

Boaz N. Olao.

J U D G E

23rd March 2022.

Ruling dated, signed and delivered on this 23rd day of March 2022 at **BUNGOMA** by way of electronic mail.

Boaz N. Olao.

J U D G E

23rd March 2022.