



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL APPEAL NO. 121 OF 2000

1. MWANGANGI KISYULA

2. ATTORNEY GENERALRESPONDENTS/DEFENDANTS

VERSUS

FRANCIS J MAINGI MUNYAOAPPLICANT/PLAINTIFF

(Being an appeal from the ruling of Gacheru (SRM), Senior Resident Magistrate Machakos dated 24th June 2011)

RULING

The present application dated 1st July 2011 (erroneously referred in oral submissions as 6th July 2011) was filed in person. The prayers in the application are not clear. They are 7 prayers in number.

From what I can decipher from the prayers and the court record, I can guess that the application is challenging a ruling made by Honourable Gacheru SRM Machakos on 24th June 2011 wherein the Applicant was awarded Kshs.34,253/=. The Applicant wants the decision of the learned magistrate set aside so that he can be awarded Kshs.511,607/= which he had claimed in the subordinate court.

Together with the application herein, the Applicant filed a supporting affidavit sworn by himself on 1st July 2011, whose contents are not easy to understand.

The application is opposed. The 1st Respondent MWANGANGI KISYULA filed a replying affidavit sworn on 18th October 2011. It was deponed that the Applicant did not understand the issues before court. That all the issues currently raised by the Applicant were raised during the hearing of the Notice to Show Cause before the Deputy Registrar. It was also deponed that the Applicant failed to show before the Deputy Registrar how the amount of Kshs.511,607 was arrived at.

At the hearing of the application the Applicant asked the court to consider his application with regard to the amount due and payable to him. Mr Mutia for the 1st Respondent relied on the replying affidavit filed.

This application will fail. The first reason is that the Applicant failed to annex a copy of the ruling against which he was making this application. In the result, the court is not able to understand the decision being challenged, and consider the reasons on which that decision was made. The court is therefore handicapped. This court cannot make substantive orders on guesswork.

The second reason why the application cannot succeed is that the prayers in the application are amorphous and not capable of sensible comprehension. A person who comes to court, in my view, has to come with specific complaints and also seek specific reliefs. It is not for the court to speculate or guess on what reliefs a litigant wants. If a court does so, it might end up ordering what the Applicant is not seeking, thus creating an absurdity in the administration of justice and end up committing injustice to parties. Courts should not create reliefs for parties.

For the above reasons, I strike out the application, with costs to the 1st Respondent.

Dated and delivered at Machakos this 22nd day of **February** 2012.

George Dulu

Judge

In presence of:-

Francis Munyao – Applicant

Mwangangi Kisyula – Respondent

Nyalo court clerk.