



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII**

Miscellaneous Application 55 of 2009

JAMES OGATA NYANTENGA.....APPLICANT

-VERUS-

1. THE CLERK KEROKA TOWN CUNCIL)

2. KEROKA TOWN COUNCIL).....RESPONDENTS

RULING

On 14/7/2001 the Chief Magistrate's court at Kisii gave judgment for the applicant against the respondents in the following terms:

“the Defendants, their agents or servants are hereby restrained from demolishing the plaintiff's premises on plot no. East Kitutu/Mwamangera/1376. In the alternative full compensation should be made before the demolition. Costs of the suit to the plaintiff.”

Following that the respondents demolished the premises. A contempt application was successfully made in the High Court in respect of which a fine of Kshs. 20,000/= was imposed.

The applicant sought to be compensated for the demolition and engaged a quantity surveyor to work out the value. It came to kshs. 3,745,200/=. This was beyond the monetary jurisdiction of the subordinate court. This is why an application is now being made before this court under *sections 3 and 34(1) and (2) of the Civil Procedure Act* to have an order made to withdraw and transfer to itself the subordinate court case for the purposes of the execution of the decree.

This court listened to Mr. Momanyi on the application and also to Mr. Ntabo in response.

The subordinate court ordered for compensation but did not asses the amount of compensation. Mr. Momanyi informed court that after the quantity surveyor came up with his figure notice was sent to the respondents to pay, but that there was neither response nor payment. There is no decree in respect of the mount of damage as there has been no assessment. Mr. Momanyi thought the subordinate court could not deal with the assessment because of issue of jurisdiction. He needed to come to this court under *section 18 of the Civil Procedure Act*. *Sections 3 and 34 of the Civil Procedure Act* are not applicable to the circumstances of this application. It follows that the application incompetent and is struck out with costs.

Dated, signed and delivered at Kisii this 11th day of November, 2009.

A.O.MUCHELULE

JUDGE

11/11/2009

11/11/2009

Before A.O.Muchelule-J

Court clerk-Mongare

Mr.Moracha for Respondent

COURT: Ruling in open court.

A.O.MUCHELULE

JUDGE

11/11/2009