

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUISA

CIVIL CASE NO. 27 OF 2000 (OS)

JOHN FRANCIS MUYODI APPLICANT/PLAINTIFF

VS

1. PETER LUNANI ONGOMA

2. MARIKO AYIEKO ONGOMA RESPONDENTS/DEFENDANTS

3. KENNEDY ODHIAMBO OWITI

R U L I N G

John Francis Muyodi, the applicant herein sought for leave to institute proceedings to claim damages for unlawful and malicious committal to Civil jail by the respondents in a summons said to be filed under the provisions of sections 3A, 34 and 91 of the civil procedure Act. The application is supported by the affidavit of the applicant sworn on 25th day of November 2003.

The Respondents opposed the summons on the ground that leave is not necessary in such cases, hence the application is misconceived and amounts to an abuse of the court process. The third respondent also attacked the applicant's application stating that he cannot claim for damages against counsel whose principals or clients are disclosed and well known.

This suit was struck out on the 7th day of December 2000 and the applicant herein was ordered to pay costs as a consequence. It would appear the Respondent applied for execution of the decree to recover the ordered costs. In the process of execution the applicant was arrested and put in for civil jail. It appears he successfully made an application to set aside the committal order. He now seeks for leave to commence an action to claim general damages for the unlawful execution carried out by the Respondents.

I have considered the submissions made by the applicant and the Respondents' advocate. I find that this suit relate to recovery of land and the intended action is in respect of damages arising out of execution of an order to recover costs. The two actions are quite different and cannot fall within the ambit of Section 3 A, 34 and 91 of the civil procedure Act. It is a separate cause of action which the applicant does not need leave to institute. I find this application misplaced and improperly before me. Furthermore the applicant cannot approach this court by way of a chamber summons. He can only be properly before this court by motion under order L rule 1 of the civil procedure rules.

The upshot therefore is that the summons is ordered struck out and dismissed with costs to the Respondents.

DATED AND DELIVERED THIS 9th DAY OF July 2004

J.K. SERGON

JUDGE

