



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 448 OF 2017**

**BENSON NZIOKA MWANZIA.....PLAINTIFF**

**VERSUS**

**MUTISO WAMBUA KAUMBA.....DEFENDANT**

**RULING**

1. In the Notice of Motion dated 16<sup>th</sup> July, 2019, the Defendant is praying for the review, varying, setting aside and or vacating of the orders of this court issued on 19<sup>th</sup> October, 2018.
2. The Application is premised on the ground that there is an apparent error on the face of the record; that the court ought not to have granted an order not specifically prayed for in the Notice of Motion Application dated 6<sup>th</sup> November, 2017 and that the order that the court granted is extremely prejudicial to the Applicant. The Application was not opposed. The Applicant's advocate relied on the Affidavit in support of the Application.
3. The record shows that on 19<sup>th</sup> October, 2018, this court allowed the Plaintiff's Application dated 6<sup>th</sup> November, 2017. In the Application, the Plaintiff prayed for injunctive orders pending "*the hearing of this Application*". In its Ruling, the court granted the injunctive orders "*pending the hearing of the suit*" and not as pleaded in the Application.
4. The Defendant is aggrieved with the rewording of the word "*Application*" and "*suit*" by the court, and wants the court to review its Ruling.
5. It is true, as deponed by the Defendant, that the court ought to grant a prayer that has been specifically pleaded and proved. Indeed, the Plaintiff in this matter specifically pleaded for a temporary injunction pending the hearing of the Application and not the suit.
6. The Application dated 6<sup>th</sup> November, 2017 has prayers numbers 2 and 3 seeking for similar orders of injunction. The Application dated 6<sup>th</sup> November, 2017 was opposed by the Defendant and was heard inter-partes. It therefore follows that the grant or denial of the orders of injunction could only be in respect of the suit, and not the very Application that was argued inter-partes. The final order of this court could therefore not be issued "*pending the hearing of the Application*" because the Application had been heard inter-partes.
7. This court, while appreciating that it should be guided by the pleadings of the parties at all times, has an obligation to do justice in any dispute before it, without undue regard to procedural technicalities. Indeed, under Section 3A of the Civil Procedure Act, the court is enjoined to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
8. Both parties participated in arguing the Notice of Motion dated 6<sup>th</sup> November, 2017 which sought for a temporary injunction. The sloppiness of the advocate who drafted the Application, where he omitted the word "*suit*" in prayer number 3, cannot be a good reason for the dismissal of the Application or for review of the Ruling of the Court. The inclusion of the word "*Application*" instead of "*suit*" in prayer number 3 of the Notice of Motion dated 6<sup>th</sup> November, 2017 is an undue procedural technicality that this court should ignore.
9. For those reasons, I dismiss the Application dated 16<sup>th</sup> July, 2019 but with no order as to costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2020.**

**O.A. ANGOTE**

**JUDGE**