



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**MISC. APPLICATION NO. 11A OF 2020**

**GERALD MUGIIRA.....APPLICANT**

**VERSUS**

**SALESIO IRITE MUKINDA & ANOTHER.....RESPONDENT**

**R U L I N G**

1. This is a ruling is on the Chamber Summons dated 31/1/2020. In that Summons, the applicant sought orders as follows: -

- “1. This Hon. Court be pleased to grant leave to file application for interpretation of law legality to dispense Justice.**
- 2) Whether the accruing period of limitation starts from the date of discovery of the cause of action was discovered in the year 2019.**
- 3) Whether the applicant application filed after discovery of the cause of action within a period of 2 weeks is admissible and if so what is the remedy.**
- 4) Whether the applicant can suffer irreparable loss and damage for applicant advocate misrepresentations and professional negligence.**
- 5) Whether the applicant is entitled to recover his illegal attached properties per the Judgment of 3/10/2008.**
- 6) Unless the limitation of action starts accruing from the date of the discovery of action the Ruling the chief magistrate court of 3/10/2008 be reviewed varied quashed and set aside for want of perversion of the cause of justice.**

**An order to return the applicant properties be granted to dispense Justice”.**

2. The application was supported by the affidavit of **Gerald Mugiira** who averred that he was not informed of the judgment in CMCC No. 144 of 2008. He was surprised when he applied for the proceedings to find that the case had been closed because of non-attendance by his advocate.

3. That after his discovery, he applied for reinstatement but the same was dismissed. He averred that if the orders sought were not granted, he stood to suffer irreparable damage.

4. The application was opposed by the replying affidavit of **Salessio Irite**. He deposed that **Civil Suit no 144 of 2008** was instituted by the applicant who was his tenant and in rent arrears. The suit had been instituted against him and Quickline auctioneers who had levied distress upon the applicant.

5. He contended that, the applicant had not attached the proceedings of the lower court which would show that it made a sound judgment on the said matter. The applicant had been initially represented by the Firm of Maitai Rimita & Co. Advocates and afterwards by the firm of Nelima and Company Advocates.

6. That the applicant had had 6 years within which to prosecute his case but he failed to do so. That equity aids the vigilant and not the indolent. That the applicant was barred from filing the present application.

7. I have carefully considered the affidavits on record and the submissions of the parties. From the outset, I should state that I did not

understand the orders the applicant was seeking. It was not clear whether this was an Originating Summons, whereby the Court is required to consider set up questions, or it was an appeal against a particular decision of the lower court.

8. The application as brought does not lie. Lacking clarity, the application is incurably defective and is for striking out.

9. A close scrutiny of the affidavits will show that what the applicant was seeking was to appeal against an unspecified decision. It is not clear whether it was the judgment of 3/10/2008 or the dismissal order of 25/7/2019 or the order dismissing his application for reinstatement dated 6/8/2019. Whichever the decision he is challenging, none was properly pleaded or produced in evidence.

10. This Court is alive to the provisions of **Article 159 (2) (d) of the Constitution** which directs the courts not to determine matters on technicality. However, the defect before me is not one of form or technicality but of a substantive nature for the following reasons: -

- a. It is not clear what orders the applicant is seeking from the Chamber Summons under consideration;
- b. The statements he sets out in the Chamber Summons cannot be said to be prayers capable of being granted;
- c. The application is so convoluted that no meaningful deduction can be made of it.

11. In view of the foregoing, I strike out the application with costs to the respondent.

12. However, noting that the applicant is acting in person, I hereby grant him leave to appeal against whichever order he desires from **Meru CMCC No. 144 of 2008**. Any such appeal should be filed within 14 days of this ruling.

**SIGNED** at Nairobi.

**A. MABEYA, FCIArb**

**JUDGE**

**DATED** and **DELIVERED** at Meru this 10<sup>th</sup> day of December, 2020.