



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. CIVIL APPLICATION NO. 176 OF 2018

JAPHETH CHITERI.....APPLICANT

VERSUS

BROOKWAY NYONGE.....RESPONDENT

R U L I N G

1. The applicant has filed an application dated 29th November, 2018 seeking for orders that:-

1. Spent

2. That this honourable court be pleased to set aside, vacate and or review eviction court orders issued on the 23rd day of November, 2018 in Butere SPMCC No. 184 of 2001 pending the final hearing and determination of this suit.

2. The grounds in support of the application are that:-

(a) The applicant herein stands to be rendered homeless in case the exparte execution orders obtained by the respondent herein in Butere SPMCC No. 184 of 2001 issued on the 23rd day of November, 2018 are not set aside.

(b) That the applicant herein is bound to suffer irreparable loss and damage in case the exparte orders are not set aside.

3. The application was supported by the affidavit of the applicant in which he states that there is a pending hearing in Kakamega High Court Appeal No. 9 of 2017.

4. On the 29th November, 2018 this court issued temporary orders of injunction against the respondent pending the hearing of the application inter partes.

5. The application was opposed by the respondent who states that the cited Appeal case No. 9 of 2017 is an Environment and Land Court case that was dismissed by Matheka J. on the 14th May, 2018 for want of prosecution. The respondent annexed the order of the court in ELC Appeal No. 9 of 2017 that clearly indicates that the said matter is an Environment and Land Court case and not a High Court appeal case as indicated by the respondent. It is then apparent that the applicant obtained the ex parte orders by misleading the court that the cited case is an appeal pending before the High Court.

In the foregoing the application dated 28/11/2018 should not have been filed with this court but with the Environment and Land Court. The application is dismissed with costs to the respondent.

Signed:

J. NJAGI

JUDGE

Delivered, dated and signed in open court at Kakamega this 2nd day of May, 2019.

W. MUSYOKA

JUDGE

In the presence of:

Applicant - present

Respondent - present

Court Assistant – Eric/Polycarp