



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CIVIL APPEAL NO. 6 OF 2017

BETWEEN

CALVIN OCHIENG.....APPELLANT

AND

GILBERT OUYO.....RESPONDENT

(Being an Appeal from the Ruling in Busia Chief Magistrate's Court Civil Misc. Application No.2 of 2017 by Hon. J. N Maragia- Resident Magistrate).

JUDGMENT

1. **CALVIN OCHIENG**, the appellant herein, was the respondent in the Busia Chief Magistrate's Court Miscellaneous Civil Application Number 2 of 2017. The application was seeking to have an order by the Business Premises Rent Tribunal adopted by the court so as to facilitate execution.

2. The application was premised on the following grounds:

- a) That the order was issued at Kakamega in Bungoma BPRT case No. 111/2016.
- b) The premises is situated at Bar Ober Marachi, Busia County.
- c) The respondent has given vacant possession but failed to comply with the rest of the orders.
- d) It is imperative to adopt the order to enable execution as the respondent is now no longer a tenant.
- e) That it is in the interest of justice for the orders sought to be granted.

The application was allowed. The appellant was dissatisfied and filed this appeal.

3. The grounds of appeal were as follows:

- a) That the learned trial magistrate erred in law and fact in hearing and determining the matter without giving the appellant sufficient time to prepare for defence.
- b) That the learned trial magistrate erred in law and fact in disregarding the issues raised by the appellant.
- c) That the learned trial magistrate erred in law and fact by failing to demand that the proceedings and ruling of Bungoma Tribunal case No. 111 of 2016 be presented to court.
- d) That the learned trial magistrate erred in law and fact by adopting an order whose proceedings were not furnished in court.
- e) That the learned trial magistrate erred in law and fact in failing to take into account the testimony of the appellant that he was not served with the notice of termination of the tenancy.

4. The appeal was opposed and it was contended that it lacked merits.

5. On 5th February 2018 both parties entered a consent that this appeal be disposed of by way of written submissions. The parties gave themselves timelines up to 1st March 2018 to have filed and served the submissions.

6. The application before the Chief Magistrate's Court, Busia was filed on 20th January 2017 by way of Notice of motion. The return of service on record indicate that the appellant was served with the said Notice of Motion on 31st January 2017. On 28th February 2017 when the matter came for hearing, the appellant applied for an adjournment on grounds that he had just instructed an advocate. The adjournment was granted. When the matter came for hearing on 21st March 2017, the appellant again sought for an adjournment but the court declined.

7. By 21st March 2017, the appellant had not filed any response to the application. The court was therefore justified in declining to allow an adjournment. The application was unopposed. There was therefore no reason on record for the magistrate to decline to adopt the award of the tribunal.

8. I have noted that the appellant is keen to delay this matter and lay the blame elsewhere. In the magistrate's court he never filed any grounds to oppose the application. This was a period of one month and three weeks. In this court he filed his submissions on 18th May 2018. This was one month and eighteen days after the parties' consent deadline of 1st March 2018.

9. The learned magistrate did what was prudent for her to do. The appeal is devoid of merits and I accordingly dismiss it with costs.

DELIVERED and SIGNED at BUSIA this 17th day of July, 2018

KIARIE WAWERU KIARIE

JUDGE