



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL APPEAL NO. 3 OF 2018

(Being an appeal from the Judgment Decree of the Senior Principal Magistrate Hon. P.C. Biwott in Kitale Civil suit No. 186 of 2016)

SAMUEL SAWE NYANGENA.....APPELLANT

VERSUS

JAPHET KISAJE.....1ST RESPONDENT

SAMUEL LOSEM.....2ND RESPONDENT

RULING

1. The applicant herein prays vide his notice of motion dated 19/4/2018 that this matter be transferred to Eldoret. The Applicants grounds are that since his application for stay was not granted which led to his property being demolished, he is of the view that this court does not understand his plight and has thus lost faith, and this appeal should be transferred to Eldoret. His affidavit sworn on 19/4/2018 speak as much.
2. The Respondent on his part has filed grounds of opposition arguing that the application herein is frivolous and vexatious and cannot be granted. That the applicant has not preferred any appeal on the ruling dismissing his application for stay.
3. I have carefully perused the application and the only reason the applicant desires to have this matter transferred to Eldoret is that he has lost faith in this court after the ruling of 8/3/2018.
4. I have equally seen the attachments to his affidavit sworn on 19/4/2018 in support of this application especially annexure SS 2 showing some demolition taking place. Apparently the same was not placed before this court in the earlier application culminating into the ruling of 16/4/2018. Needless to say, this court is *functus officio* as regard that application. Apparently the appellant did not prefer any appeal against the same.
5. Turning now to the application at hand, I do not think that the applicant has sufficiently proved any impropriety on the part of this court. The issues which he has based the application are to do with the intended appeal and not why this matter ought to be transferred outside this jurisdiction.
6. As a matter of fact his claim was of Kshs 3,374,590 together with costs and interest. He lost it. How then does biasness from this court arise? His appeal is yet to be heard. He has not demonstrated that this court would not be able to adjudicate his appeal fairly.
7. In my view, the applicant is mixing up issues. The question of demolition of his property did not feature infact in the application which was dismissed.
8. Consequently, I do not see any cogent reason to warrant this matter to be transferred to Eldoret.
9. The application is dismissed with costs.

Delivered, signed and dated at Kitale this 17th day of July 2018.

H.K. CHEMITEI

JUDGE

17/7/18

In the presence of:

Mfutu for Respondent

Applicant present

Kirong – Court Assistant

Ruling read in open court.