



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISC. CIVIL APPLICATION NO. 94 OF 2013

SAMSON MWENGA MUSILI.....PLAINTIFF/APPLICANT

VERSUS

KATHEU MBONI.....DEFENDANT/RESPONDENT

RULING

1. The application dated 15th May 2013 seeks orders for the transfer of Civil Case No. 137 of 2011 **Katheu Mboni vs. Samson Mwenga Musili** to another court of competent jurisdiction for hearing and determination.
2. In the alternative, that this court be pleased to call the file in Kitui Chief Magistrate Case No. 137 of 2011 **Katheu Mboni vs. Samson Mwenga Musili** to peruse the same and satisfy itself as to the legality of the proceedings and thereafter make any orders as it may deem appropriate.
3. According to the affidavit in support, the Respondent who was the Defendant in the lower court case was not served with summons to enter appearance, notice of entering judgment or the notice to show cause why execution should not issue. That the Applicant ended in civil jail, forcing him to pay part of the decretal sum to regain his freedom. The Applicant made allegations of forgery, cheating and bribery against the lower court, hence the dismissal of his application.
4. The application is opposed. Grounds of opposition and a replying affidavit were filed. The Respondent's case is that the lower court case was heard and concluded and only execution proceedings are pending. That the Applicant's application to set aside the ex-parte judgment was dismissed and the Applicant did not file any appeal or application for review. That the Applicant's application for payment by instalments was allowed and the Applicant allowed to satisfy the decree accordingly.
5. Parties agreed to canvass the application by way of written submissions. The Respondent has filed his submissions but the Applicant did not file any. I have considered the said written submissions.
6. It is common ground that the lower court case is at the stage of execution. The execution proceedings are at an advanced stage, with the Applicant having been in and out of civil jail and with orders for payment of the decretal sum by instalments already on record. There is no appeal or application for review of the orders of the lower court. The Applicant has only made unsubstantiated allegations of forgery, cheating and bribery on the part of the lower court.
7. With the foregoing, I find no merits in the application and dismiss the same with costs.

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B. THURANIRA JADEN

Dated and delivered at Machakos this 7th day of May, 2015

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B. THURANIRA JADEN

JUDGE