



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC 826 OF 2015

(FORMERLY HCCC CASE NO. 163 OF 2009)

JULIUS ONIANGO ETOLE.....PLAINTIFF

VERSUS

MOSES ONYANGO ADIGO.....DEFENDANT

RULING

1. Julius Oniango Etole hereinafter referred to as the applicant has come to court vide notice of motion dated 3/5/2019 seeking orders that the exparte ruling made by the court on the 9/4/2019 is set aside on the grounds that:-

- a) That he was at home throughout on 28th March 2019 as he was ailing but did not see the process server.
- b) That the process server could not serve me since he had no license for the year 2019 to enable him to do so.
- c) That the plaintiff was not given the chance to defend the application for the stay of execution since he was not served with the pleadings thereto.
- d) That the order of stay has prejudiced the plaintiff/Applicant position.

2. In the supporting affidavit, he states that he was not served. Moreover, that the process server has no license to execute court process.

3. In the replying affidavit David Elius Ochieng the Licensed process server states that he served the plaintiff personall three times with Notice of Appeal, Records of Appeal in the presence of his son William Opot.

4. The process server has also annexed receipt no. 4236947 in respect of the fees for renewal of the license of process server.

5. I have considered all facts of the matter. I do find that though the process server was duly licensed to serve, he ought to have served the Counsel for the Decree Holder and not the Decree holder personally. For the fact that the plaitiffs counsel was not served I do allow the application. Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 26TH DAY OF SEPTEMBER 2019.

In the presence of:

Applicant Mr. Mukabwa (advocate)

Respondents Moses Onyango Adigo

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE