

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC APPEAL CASE NO. 9 OF 2017

BROOKWAY NYONJE.....PLAINTIFF/APPLICANT

VERSUS

JAPHETH M. CHITERI.....DEFENDANT/RESPONDENT

RULING

The application is dated 12th July 2018 and seeks the following orders;

1. That the respondent be and is hereby evicted from land parcel No. MARAMA/SHINAMWENYULI/2094.
2. That the O.C.S. Butere Police Station to provide security during the eviction process.
3. That costs of this application be provided for.

It is supported by the annexed affidavit of BROOKWAY NYONJE, and other evidence and following grounds:-That the applicant is the sole registered own of land parcel No. MARAMA/SHINAMWENYULI/2094. That on 26th November, 2010 the applicant obtained a decree order from Butere Law Court CC No. 184 of 2001 which the respondent has failed, ignored and/or neglected to obey to date despite being served. That the respondent appealed against the verdict of Butere Law Court and the same appeal was dismissed by this court on 14th May, 2018 for want of prosecution. That the applicant continues to incur exorbitant costs and suffer substantial loss due to respondent's continued stay on the suit land. That it is in the interest of justice that the orders sought be granted as no prejudice shall be caused to the respondent

This court being an appellate court has no jurisdiction to grant the orders sought. The application is misconceived and cannot be granted by the court. The applicant has to file substantive suit. The respondent has adopted a procedure unknown in court.

This court has considered the application and the submissions herein. The application seeks orders to enforce a judgement of the lower court. This application is misplaced and an abuse of the court process. The application is misconceived and cannot be granted by the court. This application is unmerited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 25TH DAY OF SEPTEMBER 2018.

N.A. MATHEKA

JUDGE