



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC. E020 OF 2021

BETWEEN

ROSE MUMBI KIMEMIAH.....APPLICANT

AND

THE SENIOR PRINCIPAL MAGISTRATE'S COURT,

MILIMANI COMMERCIAL COURTS.....1<sup>ST</sup> RESPONDENT

BEN MBUGUA GATHURI T/A

AUCKLAND AGENCIES AUCTIONEERS.....2<sup>ND</sup> RESPONDENT

EXCELLENT DEVELOPERS AND

CONSTRUCTIONS LTD.....3<sup>RD</sup> RESPONDENT

AND

CHARITY WAMBUI.....INTERESTED PARTY

RULING

**The Application**

1. The Applicant herein has filed an application by way of a Chamber Summons dated 11<sup>th</sup> February 2021, seeking the following orders:

1. **THAT this Application be Certified urgent and heard immediately due the urgency set out in the Certificate herein.**
2. **THAT Leave be and is hereby granted to the Applicant to apply for Judicial Review Order of CERTIORARI to remove into the High Court and Quash the Entire Proceedings and Ruling/Order of the Senior Principal Magistrate's Court at Milimani Commercial Courts made on 09/12/20 in MILIMANI-SPMCC-MISC. APPL. No. E3019 OF 2020.**
3. **THAT the Leave granted herein do operate as a Stay of the Ruling and Orders given on 09/12/20 by the Senior Principal Magistrate's Court at Milimani Commercial Courts in SPMCC MISC.APPL. No. E3019 OF 2020 pending the Hearing and Determination of the Substantive Motion.**
4. **THAT the Substantive Motion be filed and served within such time as the Court may in its discretion prescribe.**
5. **THAT the Costs of this Application be in the Substantive Motion and borne by the Respondents.**

2. The application is supported by a statement dated 11<sup>th</sup> February 2021 and affidavit sworn on the same date by the Applicant. The grounds in summary are that the impugned order issued by the Senior Principal Magistrates Court at Milimani Commercial Courts in **SPMCC Misc. Appl. No.3019 of 2020** on 09/12/20 allowed the 2nd Respondent to break into the Applicant's residence to execute an otherwise illegal and unlawful distress for rent, and ordered removal of proclaimed goods particularized in a fraudulent proclamation purporting to attach the Applicant's household items based on alleged rent arrears on a non-existent tenancy between the 3rd Respondent and the Interested Party herein.

3. It is evident that the Applicant's dispute is one that relates to the title, use and occupation of land, which falls within the exclusive jurisdiction of the Environment and Land Court, pursuant to Articles 162(2) (b) and 165(5) of the Constitution, and section 13 of the Environment and Land Court Act. This Court therefore has no jurisdiction to hear and determine the Chamber Summons dated 11<sup>th</sup> February 2021.

**The Orders**

4. In the premise I direct and order that this suit be and is hereby transferred to the Environment and Land Court at Nairobi for further hearing and determination. The Applicant's Chamber Summons dated 11<sup>th</sup> February 2021 shall accordingly be placed before the **Duty Judge** at the **Environment and Land Court at Nairobi** on **3<sup>rd</sup> March 2021** for directions.

5. The Deputy Registrar of this Court shall send a copy of this ruling by electronic mail to the Applicant, and to the Deputy Registrar of the Environment and Land Court at Nairobi, by close of business on 25<sup>th</sup> February 2021.

6. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF FEBRUARY 2021**

**P. NYAMWEYA**

**JUDGE**