

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 79 OF 2017

ROSEMARY WANJIRU KUNGU.....PLAINTIFF/RESPONDENT

VERSUS

PETER WILLIAM KINYANJUL..... DEFENDANT

AND

EFFORT MOVERS LIMITED.....1ST OBJECTOR

MARTIN NGUKU KARANJA T/A COUNTRY MUTHIGA INN...2ND OBJECTOR/APPLICANT

RULING

1. The plaintiff filed the preliminary objection dated 26th July 2021 arguing that the application filed by the objectors cannot stand if Icon Auctioneers were not enjoined as respondents.

2. It is argued that the application will be rendered nugatory by their omission. The respondents/objectors opposed the preliminary objection arguing that the same does not qualify to be regarded as such. It is pointed out that the preliminary will require the support of facts since it is not based on pure points of law.

3. Having considered the rival arguments, I am persuaded by the arguments of the objectors/respondents, that the plaintiff’s preliminary is not based on pure points of law hence it cannot qualify to be regarded as a preliminary objection. It is apparent that the same will require to be supported by facts and evidence.

4. In the end, I find no merit in the preliminary objection. The same is dismissed with costs abiding the outcome of the two applications one dated 18th June 2021 and the other dated 24th June 2021.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 22ND DAY OF OCTOBER, 2021

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Respondent

..... for the defendant