



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Burudi & 4 others v Mkimbo; Mzungu Samson Tumbo t/a Sparknet
Auctioneers Services (Applicant) (Environment & Land Case
252 of 2017) [2023] KEELC 21169 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21169 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 252 OF 2017
DO OHUNGO, J
OCTOBER 31, 2023**

BETWEEN

**JULIUS BARASA BURUDI 1ST PLAINTIFF
ISAAC JOAB BURUDI 2ND PLAINTIFF
JACKSON WAMBUNYA 3RD PLAINTIFF
MACHONI WAMBUNYA 4TH PLAINTIFF
JAMES WAMBUNYA 5TH PLAINTIFF**

AND

JIMMY ABEL MKIMBO DEFENDANT

AND

**MZUNGU SAMSON TUMBO T/A SPARKNET AUCTIONEERS
SERVICES APPLICANT**

RULING

1. Proceedings in this matter commenced when the plaintiffs/applicants filed Originating Summons (OS) dated 20th July 2015 in which they averred that they had acquired title to the parcel of land known as South Kabras/Shamberere/367 (the suit property) by adverse possession.
2. Subsequently, the defendant/respondent filed Notice of Motion dated 20th November 2015, seeking striking out of the OS and eviction of the plaintiffs/applicants from the suit property. The application



was determined by N.A. Matheka, J. through a ruling delivered on 29th May 2018. The court held as follows:

I find that, the suit is *res judicata* and in contravention of section 7 of the [Civil procedure Act](#). I find this application has merit and I grant the following orders;

1. This originating summons filed herein be struck out.
2. The applicants/respondents are given 3 (three) months to vacate from land parcel No. S/Kabras/Shamberere/367 from the date of this ruling and in default they shall be forcefully evicted.
3. The costs of this application to the applicant.

It is so ordered.

3. Yet another ruling was delivered on 28th February 2019 where the court ordered eviction of the plaintiffs/applicants from the suit property with a further order that the court's order be served upon the OCS Kabras Police Station for compliance.
4. Later, upon an application dated 23rd November 2020, filed by the OCS Kabras Police Station, the court delivered a ruling on 24th March 2021 in which it stayed the eviction order for six months in public interest.
5. The matter thereafter remained dormant until Mzungu Samson Tumbo an auctioneer trading as Sparknet Auctioneers Services filed Notice of Motion dated 19th August 2022, which is the subject of this ruling. The following orders are sought in the application:
 1. [Spent]
 2. That this Honourable Court be pleased to order the County Commander, Kakamega County to provide security to Sparknet Auctioneers Services during eviction and/or execution of orders issued by the honourable court against the defendants/respondents herein from land parcel South Kabras/Shamberere/367.
 3. That this honourable court be pleased to authorize the County Commander, Kakamega County to use minimum force to gain access into land parcel South Kabras/Shamberere/367 as ordered, by this honourable court and Sparknet Auctioneers Services to clear and/or demolish any illegal structures erected thereon and fencing of the plot.
 4. That the County Commander, Kakamega County to oversee the enforcement of this orders.
 5. That cost of this application and cost of security be in the cause.
6. The application is supported by an affidavit sworn by Mzungu Samson Tumbo. He deposed that he is a licensed auctioneer and that he was instructed by the defendant/respondent to execute the eviction order. That despite the six months stay having lapsed and despite him serving the plaintiffs/applicants with several demand notices, they had refused to give vacant possession and were resisting eviction. That it was necessary that the orders be granted in view of the situation on the ground.
7. The application was canvassed through written submissions. Although evidence of service of the application upon the plaintiffs/applicants was availed, they neither filed a response nor submissions. The auctioneer filed submissions in which he relied on the case of [Lengare ole Ngape v Mpaa ole Damo & another](#) [2021] eKLR and urged the court to allow the application.



8. I have considered the application and the submissions. A perusal of the record as highlighted above shows that on 29th May 2018, the court ordered the plaintiffs/applicants to vacate from the suit property. Later on 28th February 2019, the court ordered their eviction. Those orders remain in force. The stay that was granted on 24th March 2021 lapsed. I find merit in prayer 2 of the Notice of Motion. The decree of the court is to be enforced by the auctioneer as opposed to the police. The role of the police is limited to providing security. For that reason, I will not grant prayers 3 and 4 of the application since the obligation of enforcing the decree must remain with the auctioneer. I will also not grant the aspect of prayer 3 which seeks to allow demolition of structures and fence since there is no such order on record. The auctioneer should only enforce the orders on record.
9. Needless to state, the police have the usual mandate to use reasonable force in the course of their duties if that becomes necessary.
10. In the result, I make the following orders:
 - a. The County Commander, Kakamega County is hereby ordered to provide security to Mzungu Samson Tumbo trading as Sparknet Auctioneers Services during eviction of the plaintiffs/applicants from the parcel of land known as South Kabras/Shamberere/367.
 - b. Costs of the application and cost of security shall be in the cause.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 31ST DAY OF OCTOBER 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance by the Plaintiffs

No appearance by the Defendant

No appearance by the Applicant

Court Assistant: E. Juma

