



Mwal-Mart Limited v Chief Magistrates Court at Eldoret; Kennedy Kweyu Shikuku t/a Eshikon Auctioneers Tumaz and Tumaz Enterprises (Interested Party) (Environment & Land Miscellaneous Case E011 of 2023) [2023] KEELC 20965 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20965 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND MISCELLANEOUS CASE E011 OF 2023
EO OBAGA, J
OCTOBER 26, 2023**

BETWEEN

MWAL-MART LIMITED EXPARTE APPLICANT

AND

CHIEF MAGISTRATES COURT AT ELDORET RESPONDENT

AND

KENNEDY KWEYU SHIKUKU T/A ESHIKON AUCTIONEERS TUMAZ AND TUMAZ ENTERPRISES INTERESTED PARTY

RULING

1. The Ex-parte Applicant filed an ex-parte chamber summons dated 13/9/2023 in which it sought the following orders: -
 1. That this matter be certified urgent and the requirement of notice to parties be dispensed with.
 2. That leave be granted to the Applicant to apply to this Honourable court for orders of certiorari to call, remove, deliver up to this honourable court and quash the proceedings, directions/orders by the Respondent of 19th July, 2023.
 3. That leave be granted to the Applicants herein to apply to this Honourable court for orders of prohibition against the Respondent, either by itself or through any officer of the court including the auctioneer herein from relying or acting under the Respondent’s order issued on of 19th July, 2023.
 4. That the grant of such leave to operate as a stay against any further proceedings, consequential actions and orders arising from the Respondents impugned orders of 19th July, 2023 pending



the hearing and determination of the proceedings herein and substantive application for judicial review.

5. That this honorable court do grant any other or further relief that it may deem fit to grant.
6. That the costs of this application be the cause.
2. It is apparent from the ruling of 17/5/2023 delivered by D. Mikoyan, Chief Magistrate that Kennedy Kweyu Shikuku T/a Eshikoni Auctioneers had on 1/12/2022 been granted break-in orders against the Ex-parte Applicant in execution of a pending decree . The Ex-parte Applicant filed a notice of motion dated 16/12/2022 in which he sought to permanently restrain the Auctioneer from executing the decree.
3. In the ruling of 17/5/2023, the Magistrate declined to grant the Ex-parte Applicant's prayers. He only varied the orders given on 1/12/2022 to the extent that Police assistance be accorded to Eshikoni Auctioneers to carry out his duties peacefully. Each party was to bear their own costs.
4. An order was extracted in accordance with the ruling of 17/5/2023 but the date when it was issued was not indicated. Another order arising from the same ruling was extracted and issued on 6/7/2023. This order included the prayers which the Ex-parte Applicant had been denied. These two orders were signed by two different magistrates.
5. On 7/7/2023, the firm of Mukabane & Kagunza wrote to the Executive officer of Eldoret Law Courts enclosing the two conflicting orders as well as the ruling of 17/5/2023. The Advocates sought clarification as to which of the two orders was authentic. It would appear that on 10/7/2023 the letter by Mukabane & Kagunza was placed before the Chief Magistrate for administrative directions. The Chief magistrate clarified that the only orders which were given pursuant to ruling of 17/5/2023 only directed that Police assistance be accorded to Eshikoni Auctioneers to carry out his duties peacefully and that any other version of order was by error.
6. It is because of the above two conflicting orders which were clarified administratively through directions of 10/7/2023 that the Ex-parte Applicant contends that the Chief magistrate was biased in that he did not give it a hearing. There is no big issue herein as to call for grant of leave to bring orders of certiorari and prohibition.
7. The Ex-parte Applicant and the interested party do not deny that they owe money which had not been fully realized through a lawful execution. Orders which were extracted in error could not be allowed to stand. The same were clarified administratively and there was no need for parties to be heard on a matter which was extracted in error. I therefore decline to grant leave to the Ex-parte Applicant to commence judicial review proceedings. There is no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 26TH DAY OF OCTOBER, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Muhuyu for Mr. Munzala for Ex-parte Applicant.

Court Assistant –Laban

E. O. OBAGA



JUDGE

26TH OCTOBER, 2023

