



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CIVIL CASE NO. 144 OF 2012**

**ALI ABDALLA DUHMY (CHAIRMAN) & OTHERS.....PLAINTIFF**

**VERSUS**

**MOHAMED ABDISHEIKH & OTHERS.....DEFENDANTS**

**RULING**

The application dated 16.10.2015 seeks the following prayers: -

- b) That the plaintiff's agents and/or servants namely Yusuf Omar and Mohamed Ali who have not obeyed the judgement and decree of this court be evicted from the house they are occupying in the sit premises at Mabruki belonging to Nur Muslim School Society.
- c) That the eviction be carried out by the court bailiff and the O.C.S. Marereni police station do provide security to keep law and order during the exercise.
- d) That the court do issue any other orders as it may deem fit and just in the circumstances and interest of justice.

The application is supported by the affidavit of Swaleh Aboud Abdalla sworn on the same date. The interested parties filed a notice of preliminary objection and grounds of objection. There is also a replying affidavit of Mohamed Ali sworn on 16.11.2015. The plaintiffs filed a replying affidavit sworn by Shee Athman Omar on 6.11.2015. Parties agreed to determine the preliminary objection and the application together by way of written submissions. By the time of writing the ruling none of them had filed submissions.

The application is based on the grounds that the defendants were declared to be the lawful office bearers of Nur Muslim School Society. In the process of executing the decree they found the two interested parties residing in the society's houses. The interested parties have refused to move out of the premises. The defendants would now wish to have them evicted from the premises. The defendants maintain that the interested parties are the agents of the plaintiffs and therefore are supposed to obey the court order.

On their part, the interested parties maintain that they were employed by the society as teachers and they have been in occupation of the houses for the last ten (10) years. They are not the agents of the plaintiffs. It is further stated that they were not parties to the suit and therefore cannot be evicted from the premises.

From the pleadings herein it is clear that the interested parties were employed by the plaintiffs. The applicants maintain that they are the agents or servants of the plaintiffs and should therefore obey the court order. The pleadings show that the defendants dismissed the interested parties from their position as teachers. The pleadings show that the interested parties took away the desks and other learning materials from the teaching premises and are now teaching at a nearby premises. It is also clear that the interested parties' loyalty is to the plaintiffs. The contention that the interested parties were employed by a society and not by either of the parties cannot stand. I believe that is why they did not respond to the defendants' summons for them to show cause. The society is run by the officials and the interested parties cannot be

their own bosses. The premises where they reside are owned and controlled by the society. Their recourse lies to the Ministry of Labour and not clinging to the premises. The right to occupy the premises is tied with the employment. Now that they were dismissed from their positions they have to relinquish the premises.

The preliminary objection does not raise any legal issues. The interested parties do not own the premises. The new officials have the right to take over the premises and decide on whether to give them to other teachers or rent them out. The interested parties occupy the premises through the permission of the office bearers of the society.

In the end I do find that the application is merited and the same is granted as prayed. Costs to the applicants.

**Dated and delivered in Malindi this 21<sup>st</sup> day of April, 2016.**

**S.J. CHITEMBWE**

**JUDGE**