

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC. NO. 29 OF 2013

THE BOARD OF TRUSTEES

NATIONAL SOCIAL SECURITY FUND PLAINTIFF/APPLICANT

- VERSUS -

SEBORGA LEISURE LIMITED..... DEFENDANT/RESPONDENT

RULING

[1] The applicant filed his notice of motion on 3rd April 2014 praying for orders that the execution process undertaken by the plaintiff was unprocedural and/or premature and an abuse of the process of the court. That it was illegal and/or a nullity in that the said part of the premises was never subject of the court process. That the court be pleased to order such remedial measures as would in the circumstances restore status quo and to safeguard the due process and rehabilitate the rule of law.

[2] The respondents filed grounds of opposition. They argued that the application has been overtaken by events in seeking to act in vain. That the application lacks any basis since the Deputy Registrar acted in compliance with the judgment on record. They argued that the application filed a notice to the Court of Appeal and that this court is "*functus officio*" and that finally the subject matter was not tenancy but safety of the public and the execution for the order herein realized and gave effect to the court order.

[3] Judgment was delivered on 22nd February 2014. The respondents filed a notice of appeal on 12th March, 2014. A notice of appeal once filed is deemed as an appeal. This court became *functus officio* once it handed down the judgment. The execution of the decree has been done. The applicants recourse is now only to pursue the appeal it has filed. The application filed herein is clearly without any merit and is dismissed with costs.

Dated and delivered in open court at Mombasa this 14th day of November 2014.

S. MUKUNYA

JUDGE

14.11.2014

In the presence of:

Mr. Fwaya advocate for Mr. Wafula advocate.

Mr. Thiaka advocate holding brief for Mr. Mwakisha advocate for applicant.