



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 271 OF 2010

STEPHEN KIMANI KARUU

T/A KIRIIYU MERCHANTS.....**APPLICANT**

NENO EVANGELISM CENTRE

REGISTERED TRUSTEES.....1ST PLAINTIFF

JAMAGA INTERNATIONAL LIMITED.....2ND PLAINTIFF

VERSUS

THE CITY COUNCIL OF NAIROBI.....1ST DEFENDANT

DOSHI CERA & SANY LIMITED2ND DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 5/5/13 brought under Rule 9 (1) (a), (b) and (c) of Auctioneers Rules, Rule 9 (2) of the Auctioneers Rules (Amendment) 2009, Auctioneers Act No. 5 of 1996 and Section 3A of the Civil Procedure Act and all other enabling provisions of law. It is brought by Stephen Kimani Karuu t/a Kiriiyu Merchants and it seeks the following orders:

1. That this honourable court do order:
 - i. The Officer Commanding Kamukunji Police Station
 - ii. The Officer Commanding Nairobi Area Administration Police
 - iii. Office Commanding City Council Police

To authorize the officers under their command to escort Stephen Kimani Karuu t/a Kiriiyu Merchants to the premises occupied by Neno Evangelism Centre Registered Trustees for the purpose of maintaining peace and order while the Auctioneer will be evicting the Plaintiff as per the consent order dated 3rd February 2011 on plot No. L. R. No. 209/12223 Nairobi.

2. That cost be in the cause.

The said application is premised upon the Affidavit of Stephen Kimani Karuu in which he indicated that he is a class “B” Licensed Auctioneer trading under the name and style of Kiriiyu Merchants. He swore that he received instructions on 6/5/13 from Majanja Luseno & Company Advocates to execute

orders issued by this Honourable court on 3/2/11. He further swore that upon receiving the said instructions on 7/5/13, he proceeded to the premises situated on plot No. L. R. No. 209/12223 and gave notice of the eviction to the Plaintiff as required by law. He indicated that to date, the Plaintiff has refused to obey the orders issued by the Honourable Court on 3/2/11. He further stated that on 14/5/13 he proceeded to the said premises where the Plaintiff intimidated him and incited his employees and guards not to let him into the premises. He further stated that he requests this Honourable Court to issue orders authorizing the Officers Commanding Kamukunji Police Station, Nairobi Area Administration Police and Officer Commanding City Council Police or any other officers under their command to provide security as he carries out the instructions of evicting the plaintiffs as per the order issued by this court.

I have perused the court record and do confirm that the following order was issued by Justice Mbogholi Msagha on 2nd February 2011:-

“ By consent eviction order to issue and is hereby issued in terms of prayer 1 of the Chamber Summons dated 29/11/2010 (That the Honourable Court be pleased to grant the Defendant/Applicant leave to forcibly evict the Plaintiff from L.R. No. 209/12223 Nairobi). There shall be no eviction until the expiration of thirty (30) days from the date hereof”.

It is noteworthy that Counsel for the 2nd Defendant and for the Plaintiff signed against the consent order.

Clearly, the period of 30 days from 2/2/2011 has long since lapsed yet the Plaintiff is still in occupation of L.R. No. 209/12223 Nairobi. That was the window of opportunity extended to them by this court to grant the Defendant Applicant vacant possession of L.R. No. 209/12223 Nairobi. Failure to vacate the said premises in peace, the Defendant/Applicant became entitled to forcibly evict the Plaintiffs from L.R. No. 209/12223 Nairobi.

In view of the foregoing, I see no impediment to granting the Applicant herein the orders sought by him to enable him to enforce the orders issued by this Court. Accordingly, I hereby allow the application. Costs shall be in the cause.

SIGNED AND DELIVERED AT NAIROBI ON THE 14TH

DAY OF JUNE 2013

MARY M. GITUMBI

JUDGE