



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

ENVIRONMENTAL AND LAND DIVISION

CIVIL CASE NO. 28 OF 2009

CLEAN AIR SYSTEMS LTD.....1ST PLAINTIFF/APPLICANT

KAMITI FARMERS CO. LTD..... 2ND PLAINTIFF/APPLICANT

VERSUS

SAMUEL MUNGAI..... DEFENDANT/RESPONDENT

RULING

The applicant has filed a Notice of Motion dated 11/11/2010 under section 3A of the Civil Procedure Act and all other enabling provision of law. The prayers sought are that;

1. THAT the Officer Commanding Police Division – Kasarani be directed to oversee such execution and /or provide the necessary security.
2. THAT the costs of this application be provided for.

It is based on the following grounds:-

- a) THAT the respondent has despite being served with the orders in issue, gone on to wilfully neglect and/or ignore observance of such said order.
- b) THAT such execution is of a profound nature and would attract gross opposition from the respondent.
- c) THAT it is hence necessary to direct the police department for purposes of overseeing such execution and ensuring the safety of all parties.
- d) THAT in the interest of justice and fair play, this application ought to be allowed to ensure that these orders in issue were not in vain.

The application is supported by the Affidavit dated 11th November 2011 sworn by one of the directors of

the 1st Applicant Mr. John Charles Ndegwa. The respondent/Defendant filed grounds of objection dated 18/1/2011 stating that;-

- i. That the application is not founded on any applicable provisions of law.
- ii. That the application is bad in law
- iii. That the applicant failed to make material disclosure pertaining the facts of his earlier case No. 130 of 2008 which had been on the same issue

I have considered the application dated the 11/11/2010. The application is supported by the affidavit of Mr. John Charles Ndegwa which I have carefully read and considered. The applicant was granted an injunctive order on the 28/10/09 against the respondent. The said has been served to the respondent as per annexure JCN2 and JCN3. It is evident that the defendant has ignored the order. The applicant seeks to execute the orders using the firm of Muhatia Pala Auctioneers.

The Respondent filed grounds of opposition dated 18//1/11 though served; the Respondent did not attend the hearing of the application. The applicant has cited section 3A of the CPA which give the court inherent jurisdiction to make such orders as may be necessary for the ends of Justice or to prevent abuse of the process of the court. I do not find the application bad in law. The fact that a provision is not cited does not make the application incompetent. Ground IV is not supported by any evidence.

The applicant has a proper court order. The respondent has refused to comply. I find merit in the application and grant prayers No1 and No. 2 of the application dated 11/11/10. Costs shall be in the cause. This order shall be served on the Respondent before the Auctioneers moves into the premises to enforce the court orders of 28/10/09.

Dated and delivered this 17th Day of February 2012

R. OUGO
JUDGE

In the Presence of:-

Absent For the Applicant

Absent For the Respondent

Mr. Kabiru Court Clerk