



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)

Miscellaneous Application 94 & 608 of 2011

**IN THE MATTER OF THE MAGISTRATE'S COURT ACT CAP 10 LAWS OF KENYA) AND
THE AUCTIONEERS ACT, 1996**

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHIEF MAGISTRATE'S COURT NAIROBI.....RESPONDENT

AND

**JOSEPH K. KIMANI trading as
PYRAMID AUCTIONEERS.....1ST INTERESTED PARTY
MARION WAKANYI KAMAU.....2ND INTERESTED PARTY
AND**

**IN THE MATTER OF NAIROBI CHIEF MAGISTRATE'S COURT, MILIMANI
COMMERCIAL COURTS**

MISC. APPLICATION NO. 608 OF 2011

BETWEEN

**JOSEPH K. KIMANI trading as
PYRAMID AUCTIONEERS.....1ST APPLICANT
MARION WAKANYI KAMAU.....2ND APPLICANT**

VERSUS

DELIVERANCE CHURCH (LANGATA BRANCH).....RESPONDENT

RULING

1. By a Notice of motion dated 28/11/2011 the Applicants are seeking the following orders:

i. An order of certiorari by way of Judicial Review be issued to remove into the High Court for purposes of being quashed the orders of the Honourable Principal Magistrate Mr. C. Obulutsa in the Chief Magistrate's Court at Nairobi, Milimani Commercial Courts in Miscellaneous Case No. 608 of 2011 dated 9th September 2011 and 1st November 2011.

ii. An order of prohibition by way of Judicial Review be issued barring the Chief magistrate's Court Nairobi, Milimani Commercial Courts from entering any further proceedings and/or any further hearing of Miscellaneous case No. 608 of 2011.

iii. An order that the Kshs, 3,000,000/- deposited in Court be released to the Ex parte applicants herein and the Auctioneers fees paid to the Second interested party herein in the sum of Kshs. 179,616/- be refunded to the Ex Parte applicants.

iv. That the costs of these proceedings be borne by the Interested Parties herein.

This application is supported on grounds that:

i. The Honourable Principal Magistrate disregarded one of the twin principles of Natural Justice that no one should be condemned unheard by concluding that Deliverance Church (Langata Branch) already owes Marion Wakanyi Kamau Kshs. 6,484,800/- even without any pleadings filed in the matter.

ii. The Honourable Principal Magistrate gave orders in a matter that touches the same subject matter that is being heard by the High Court in Milimani, Nairobi being Civil Suit No. ELC 12 of 2011.

iii. The Honourable Principal Magistrate Mr. Charles Obulutsa disregarded the provisions of the Magistrate's Court Act (Cap. 10 Laws of Kenya) given that his monetary jurisdiction is Kenya Shillings one million (Ksh.1,000.000) as conferred to him by the Honourable Chief Justice on 1st February 2010 vide Gazette Notice No. 1924 published on 20th February 2010. In this case, the Honourable Principal Magistrate gave orders over a matter where the value for the alleged Rent Arrears is said to be over Kshs.6,000,000/- which is exceedingly beyond his jurisdiction.

iv. The orders granted by the learned Principal Magistrate on the 9th September 2011 and 1st November 2011 and more particularly those of 1st November 2011 were granted in the absence of any suit before him and sadly, in a miscellaneous application without a Plaint or an originating summons/motion.

2. The background of this application is that the Interested Parties, Joseph Kimani T/A Pyramid Auctioneers and Marion Wakanyi Kamau filed suit against Deliverance Church (Langata Branch) at the Chief Magistrate Court, Misc. Application 608 of 2011, wherein they sought orders that:

a) THAT the officer-in-charge Langata Police Station to accompany the 1st Applicant, Mr. Joseph D.K. Kimani T/A Pyramid Auctioneers in order to maintain law and order serving of the fourteen days proclamation and serve notification of sale at suit premises known as LR No. 209/9938/2, Langata Road Nairobi for the recovery of Kshs. 6,484,800/- plus costs being occupied by M/s Deliverance Church (Langata Church)

b) THAT the Honorable Court be pleased to issue Police Assistance order to the 1st Applicant Mr. Joseph D. K. Kimani for provision of security during the service of proclamation and notification of sale notice upon tenants, their servants, members or agents at suit premises known as LR. No. 209/9938/2, Langata Road Nairobi for a recovery of Kshs. 6,484,800/- plus costs.

3. The matter was heard by Principal Magistrate P. Obulusta, who after hearing the application in his ruling dated 9/9/2011 granted the aforesated prayers. The Applicants have now come to this Court seeking orders in this application citing the grounds in the application with what is deponed in the

Supporting Affidavit of Geoffrey Kamau Njunguna a senior pastor at Langata Deliverance Church.

4. The application was opposed by the 2nd Interested Party who had instructed the 1st Interested Party. She filed a Replying Affidavit dated 16/1/2012. Counsels also filed written submissions, which I have carefully read and considered. In the Affidavits filed, the parties gave details of the background of their relationship which gave rise to the 2nd Interested Party levying distress against the Applicants. The affidavits are quite exhaustive and I need not quote them as I have considered the same and note that the issue for determination is not the relationship between the parties of which counsels have substantively argued, but whether the magistrate could grant the orders he did. The Applicant has exhibited that the Principal Magistrate's P. Obulusta, monetary jurisdiction for matters he was to deal with was increased to 2 million on 16/12/2011. The orders that the magistrate gave was that the applicant deposits Kshs. 6,484,800/- in court, pending the determination of ownership of the suit property. PM Obulusta monetary jurisdiction was limited as to the sum of Kshs. 2Million. A matter that involved a sum of over two million should have been referred to a court of higher jurisdiction. I take note that Deputy Registrars deal with matters as provided under Order 49 of the Civil Procedure Rules 2010. PM Obulusta was not dealing with this matter as a DR but in his capacity as a magistrate with limited jurisdiction. This was a miscellaneous application and the magistrate should have confined himself to his monetary jurisdiction as gazetted by the Chief Justice. He acted beyond his jurisdiction.

5. I therefore find that the applicant's application has merit and I therefore grant the following orders;

1. That an order for certiorari do issue quashing the orders of the Honourable Principal Magistrate Mr. C. Obulutsa in the Chief Magistrate's Court at Nairobi, Milimani Commercial Courts in Miscellaneous Case No. 608 of 2011 dated 9th September 2011 and 1st November 2011.

2. I order that the Kshs, 3,000,000/- deposited in Court be released to the Ex parte applicants herein and the Auctioneers fees paid to the Second interested party herein in the sum of Kshs. 179,616/- be refunded to the Ex Parte applicants. The auctioneer is at liberty to pursue his fees for work done as provided under the Auctioneer's Act.

3. I decline to grant prayer 2 for an order of prohibition as sought.

4. Costs of this application be borne by the Interested Parties.

Dated, Signed and delivered this 24th day of **July** 2012

R. OUGO
JUDGE

In the Presence of:-

..... For the Applicant

..... For the Respondent

Kabiru..... Court Clerk