



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION – MILIMANI

CIVIL CASE NO. 889 OF 2010

**DAVID JONATHAN GRANTHAM and
GARY FARRANT PLAINTIFFS**

VERSUS

ARNOLD MAKOKHA SIMIYU 1ST DEFENDANT

HIGHRISE SECURITY SERVICES LTD. 2ND DEFENDANT

R U L I N G

By this application, the Plaintiffs seek orders that the Defendants' agents, employees or servants be ordered to vacate the suit premises being Land Reference No.11392/2 and that the Plaintiffs be allowed to re-enter the said premises. In facilitating the execution of the eviction and re-entry, the Plaintiffs seek a further order that the assistance of the Spring Valley Police be used, if necessary.

The application is brought by a Notice of Motion dated 10th February, 2011 and taken out under **Order 40 Rules 2, 4 and 10 (b)** of the **Civil Procedure Rules**. It is supported by the affidavit of Kananu Kinya Mutea, Advocate, sworn on 10th February, 2011 and is made on the grounds that –

- (a) The true and proper owner of the premises is the late Paul Bindstrup Stoffregen who appointed the Plaintiffs the executors of his Estate.***
- (b) The Defendants are strangers to the premises and are obstructing the use of the same by the beneficiaries of the deceased's Estate; and***
- (c) That it is in the interests of justice that this matter be concluded at the earliest to facilitate the Winding Up of the Estate of the deceased.***

When the application came for hearing on 17th February, 2011 Ms. Mutea appeared for the Applicants but the Defendants did not attend and were not represented. An affidavit of service on record sworn by one Kennedy Musyoka Malombe, a licensed Court Process Server of this Court, shows that M/S Veronica & Miencha, the Advocates on record for the Defendants, were duly served with the application under

certificate of urgency on 14th February, 2011 at 1.00 p.m. However, they did not appear in Court on the hearing date. As they failed to file either grounds of opposition, a replying affidavit, or attend Court on the appointed date, the Court finds that the application is unopposed and the Applicants are entitled to the orders sought.

For the above reasons, the Court hereby makes the following orders –

(i) That the Defendant's agents, employees or servants be and are hereby ordered to vacate the premises being Land Reference No.11392/2.

(ii) That the Plaintiff be and is hereby allowed to re-enter the premises being Land Reference No.11392/2.

(iii) That in facilitating the execution of the eviction and re-entry, the assistance of the Spring Valley Police be used, if necessary.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 18th day of February, 2011.

**L. NJAGI
JUDGE**