



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 54 OF 2011

VICKY

MONGI.....PLAINTIFF

VERSUS

ESTHER NGUNA CHANDA

EVANS MAABI t/a MURPHY

AUCTIONEERS.....DEFENDANTS

R U L I N G

1. By a notice of motion dated 3rd May, 2011 Evans Maabi t/a Murphy Auctioneers seek an order setting aside orders number (4) and (5) issued on 11th April, 2011. They also want the court to hold that Evans Maabi t/a Murphy Auctioneers is free to carry out auctioneering services and or bailiff work emanating from the High Court and all Magistrate's Court in Mombasa.
2. The applicant maintains that he never defied or acted in contempt of the court order, but that he was unable to comply with the order as he fell ill whilst making arrangements for security to enable him comply with the order. He did subsequently release the distrained goods as ordered. The applicant explains that he was not in court on 11th April, 2011 when orders were made against him. Had he been present in court he would have explained to the court why he was unable to comply with the order. He pleads that the orders made against him have completely blocked him from carrying out his trade. He therefore urges the court to vacate the orders.
3. Neither the plaintiff nor the defendant have objected to the application. I have carefully perused the court record. Prayers (4) and (5) issued on 11th April, 2011 are orders which were issued by Hon. Mr. Justice Ibrahim following the failure by the applicant to execute an order requiring him to reinstate a tenant who had been unlawfully dispossessed of the rental premises. The court being disturbed by the

conduct of the applicant directed that he should not be allocated and or given any work or enforcement of court orders, execution of warrants or any other auctioneering/bailiff work from Mombasa Law Court i.e. the High Court and all Magistrate's courts which fall under the jurisdiction of the Resident Judge based at Mombasa. These are the orders that the applicant wishes to have vacated.

4. I note that the applicant is licensed by the Auctioneers Licensing Board to execute court orders and warrants. The effect of the order made on 11th April, 2011 was to suspend the operations of the applicant as he could no longer execute court orders within the jurisdiction of Mombasa High Court. This no doubt has grave consequences on the applicant's business. Nonetheless the status of the applicant as an Auctioneer and Bailiff puts him in a sensitive position where his actions have grave impact on other people. In this case the judge felt that the drastic orders were called for, because as a result of the applicant's failure to execute the court order, the litigant who was the beneficiary of the orders suffered serious consequences as she missed the opportunity to be reinstated into the demised premises. The applicant has offered a belated explanation as to why he could not execute the court orders. I still do not understand why the applicant could not communicate with the counsel for the litigant. For even if the Auctioneer was sick as he alleged all it needed was a phone call to pass on the information. I get the impression like Hon. Mr. Justice Ibrahim did, that the applicant had a lucklustre attitude towards the court orders. Be that as it may, it is my hope that by being in the cold for a few months the applicant has learnt a lesson and will in future treat court orders with the seriousness they deserve.

5. I therefore grant the application dated 3rd May, 2011 and vacate the orders issued on 11th April, 2011. The applicant may resume his operations subject to strict compliance of the law.

Dated and delivered this 26th day of July, 2011.

H. M. OKWENGU

JUDGE

In the presence of:-

Gikandi for the Applicant/Auctioneer

Advocate for Plaintiff absent

Advocate for the defendant absent

Buoro Court Clerk