

REPUBLIC OF KENYA

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

Civil Case 579 of 2003

ANGELA WAIRIMU GITHI.....PLAINTIFF/APPLICANT

VERSUS

CHARLES WAHOME GETHI.....DEFENDANT/RESPONDENT

R U L I N G

This is an application brought under Section 3A of the Civil Procedure Act seeking orders that an order do issue directed to the Officer Commanding Ndaragua Police Station (OCS) to provide security to M/s Providence Security Auctioneers and Brokers, their servants or agents when evicting the Defendant/Judgment-debtor herein Charles Wahome Gethii, his servants and agents from the suit land being LR No 7381 within Ndaragua Area.

In support of the application Angela Wairimu Gethi has sworn an affidavit in which she avers that to effectively execute the eviction order issued by this court it is necessary that the Court Broker, his servants or agents be fully protected by the police as the Defendant may resist and organize mobs to create fights fracas, and other commotions thereby obstructing the execution of the court order; that this is a very risky exercise as the Defendant is likely to become hostile, refuse to comply.

I agree that the sentiments of the Applicant could be justified as is indicated from the pleadings and the affidavit evidence that the Defendant had been in possession of the 6 acres out of the 300 acres for the last 33 years but as the Court of Appeal has held in several authorities it is unlawful to utilize the police in civil actions for the purpose of effecting or aiding private evictions or reinstatements. One such example is the case of **KAMAU MUCUA vs THE RIPPLES LTD CA No. 186 of 1992** where Hancox JA as he then was had this to say:-

“Paragraph 4 of the formal order extracted on 22nd September 1992 says that police assistance may be enlisted to ensure that the Plaintiff i.e the Respondent is reinstated to the premises. It would be unlawful to utilize the police in a civil action for the purposes of effecting or aiding private eviction.”

And Kwach JA as he then was in the same appeal said:-

“The only valid criticism of the order of the judge which I can see as of now but which does not swing the scale one way or the other in this application is the direction that the assistance of the police should be enlisted to secure compliance by the Applicant. The police should never be involved in such matters as there is specific provision for enforcement under Order 21 rule 28 of the Civil Procedure Rules.”

For these reasons I would decline to grant the order sought, and dismiss the application.

Dated and delivered at Nairobi this 2nd day of July 2008.

J. L. A. OSIEMO

JUDGE