



Njari Mathew Mbatia t/a Matson Auctioneers & another v Kariuki & 2 others (Environment & Land Case 90 of 2019) [2022] KEELC 14899 (KLR) (17 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14899 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 90 OF 2019**

**JG KEMEI, J
NOVEMBER 17, 2022**

BETWEEN

NJARI MATHEW MBATIA T/A MATSON AUCTIONEERS APPLICANT

AND

WAIG LIMITED PLAINTIFF

AND

FRANCIS KARIUKI 1ST DEFENDANT

JOSEPH MWAURA 2ND DEFENDANT

JOHN KANYI 3RD DEFENDANT

RULING

1. The Applicant/Auctioneer filed the instant Motion dated 5/4/2022 under Section 5 of the Auctioneers Rules of 1997 and Section 3 [Civil Procedure Act](#) seeking Orders That;
 - a. Spent.
 - b. This Honorable Court be pleased to issue an order granting the Applicant with the assistance of the officer commanding Makongeni police station supervision in the execution of the decree given on 10th December 2020 of the demolition orders of the illegal structures erected on the suit property LR No. Thika Municipality Block 29/644.
 - c. Costs of the Application be borne by the respondent.
2. The Application is supported by the Affidavit of even date of Njari Mathew Mbatia, a licensed Class B Auctioneer under the [Auctioneers Act](#) as evidenced by copy of his license marked NMM1. He deponed that he received a letter of instruction from the firm of M/S Kamau Kinga & Co. Advocates to execute the decree issued on 10/12/2020 - NMM2 to demolish the illegal structures on the suit property



known as LR No. Thika Municipality Block 29/644. That he had applied for and obtained similar orders which were erroneously directed to the officer commanding station Thika police station yet the suit property lies outside the jurisdiction of Thika Police Station. That the instant Application is for correcting the said anomaly and urged the Court to grant the prayers.

3. The Application is unopposed. Supporting the Application, the Applicant's Counsel, M/S Kamau Kinga & Co. Advocates filed written submissions dated 7/6/2022 and reiterated the averments in the Supporting Affidavit.
4. The main issue for determination is whether the Application merited.
5. The Court record confirms that Judgment was entered herein on 10/12/2020 in favour of the Plaintiff and *inter alia* ordered the demolition of all the illegal structures erected on the suit property. To that end a decree was extracted and the Applicant filed an Application dated 28/7/2021 seeking the assistance of this Court to execute the said decree through the OCS Thika Police station. The Application was granted on 14/10/2021.
6. It is trite that Court orders are not issued in vain. It is also judicially noted that when a party is unable to execute court orders for one reason or the other, they are at liberty to approach the Court for assistance as the case herein.
7. I am satisfied that the Application is for allowing with no orders as to costs. The Applicant is ordered to comply fully with the provisions of Section 152G of the [Land Act](#).
8. It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 17TH DAY OF NOVEMBER, 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Waweru for Plaintiff

1st, 2nd and 3rd Defendants - Absent

Court Assistant – Kevin

