



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

Civil Case 1791 of 2001

**MAESTRO CREDIT MANAGEMENT LTD & 2 OTHERS.....
....PLAINTIFF**

VERSUS

KAWANGWARE CINEMA LTD.....DEFENDANT

RULING

The plaintiff is the registered proprietor of parcels of land known as DAGORETI/RIRUTA/S 990, 991, 998, 999, 982 and 1000. He had purchased the said parcels of land from the defendant at a consideration of Ksh.9,000,000/= which sum was paid in full. But according to the plaintiff the Defendant together with its agents and servants without any reasonable cause or lawful excuse have failed to give vacant possession and the Defendant further despite repeated requests have refused to or failed to remove structures garages and car washers which were erected by the Defendant before the said parcels of land were sold to the plaintiff.

On 17th October 2001, the plaintiff filed this suit seeking judgment for an order directing the Defendant to remove and/or demolish the said structures, garages, and car washes from the parcels of land aforesaid and the Defendant permanently be restrained from entering the parcels of land aforesaid. The plaintiff also sought damages and costs of the suit.

On 3rd May 2002, the parties recorded a consent judgment/order in the following terms:-

BY CONSENT:

1. That the parcels of land known and registered as LR NO. DAGORETI/RIRUTA/982, 990, 991, 998, 999, and 1000, original known as DAGORETI/RIRUTA/S 961, already registered in the name of the plaintiff and the defendant herein has no interest and/or title rights unto the said parcels of land.
2. That the Defendant herein has authorized the plaintiff and/or empowered the plaintiff herein together with court bailiff of this Honourable Court to remove and/or demolish any garages, car washes or structures found and/or being into the said parcels of land known as LR NO. DAGORETI/RIRUTA/982, 990, 991, 998, 999 and 1000 (original known as DAGORETI/RIRUTA/S 961.
3. That any restriction lodged and/or caveat lodged against the said titles be removed forthwith.
Dated this 3rd day of May 2002.

The Decree was extracted to that effect.

On 7th July 2005 the plaintiff filed an application under Section 3A of the Civil procedure Act seeking orders:-

1. That the OCS Satellite Police Station Riruta be directed and ordered to give assistance to Court Bailiffs of the High Court of Kenya Nairobi to remove and/or demolish any garages, car washes and all structures found and/or being unto all that parcels of land known and registered as DAGORETI/RIRUTA/982, 990, 991, 998, 999 and 1000 (original known as DAGOETI/RIRUTA/S 961.
2. That the costs of this application be provided for.

The Application is based on the grounds that:

- a) That the court bailiffs of the court have tried to execute the court orders dated 17th March 2004 but the illegal occupants became so hostile and physically chased them away and the said court order could not be executed.
- b) That the OCS Satellite Police Station should be ordered to protect and also give assistance to the court Bailiffs to enable them to execute the court orders.

The application is also supported by an affidavit sworn by Daniel Kipkoskei Rono on 7th July 2005 in which he avers that on several occasions he has accompanied the Court Bailiff to the site with a view of pointing out the illegal occupants always become so hostile and physically chased them away and that without police protection the court bailiff cannot be able to execute the said court orders.

The court order was directed to the Defendants in this suit but from perusal of the affidavit accompanying this application the people sought to be evicted are illegal occupants and not the Defendant. There was no disclosure that there were illegal occupants on the suit land sought to be evicted and their structures demolished.

The parties having entered into and recorded a consent order, there is no reason why it should resist to give vacant possession.

It is unlawful to utilize the police in a civil action for the purpose of effecting or aiding private evictions or reinstatement.

The police should never be involved in such matters as there is specific provision for the enforcement of an injunction under Order XX1 Rule 28 of the Civil Procedure Rules. This was so stated by the Court of Appeal in the case of ***KAMAU MUCUHA VS. THE RUPPLES CIVIL APPLICATION NO. NAIROBI 186 OF 1992.***

For those reasons I would decline to grant the relief sought and dismiss the application.

Dated and delivered at Nairobi this 27th day of June 2006.

J.L.A. OSIEMO

JUDGE