



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

MILIMANI LAW COURTS

Civil Case 931 of 2006

AINU SHAMSI LIMITED.....PLAINTIFF

VERSUS

KENNEDY NGONDI & 3 OTHERS.....DEFENDANT

RULING

On the 19th September 2006 a group of people alleging to act on the instructions of the plaintiff in the company of 20 police officers under the command of OCS Embakasi Police Station descended upon the suit property being L.R. NO. 7135/6 and 7 armed with hammers, mattocks and crow bars and started demolishing the structures erected therein by the defendants. The OCS on being questioned about the legality of those acts produced an eviction and alleged that he was acting on the strength of the said eviction order emanating from this court. Since the defendants had not been made aware of the existence of any suit against them in relation to the suit property rushed to the High Court to find out about the alleged suit but the file could not be traced. But from the court register it was indicated that the suit was registered as No.931 of 2006 on 8th September 2006 and an ex parte order of eviction was issued on 8th September 2006. Since the court file could not be traced the defendant applies for a temporary skeleton court file be opened for the purposes of this application.

By Notice of Motion dated 22nd September 2006 the defendant sought an order of temporary injunction to restrain the plaintiff, its directors, officers, employees and/or its agents from evicting the defendants from the suit land being LR NO.209/12040 or in any other manner interfering with the defendants occupation of the suit land pending the reconstruction or tracing, of the court file herein.

Mr. Gicigi appeared before the Duty Judge on 22nd September 2006 who granted prayers 1, 2, 3 and 6 of the notice of Motion of instant date and orders that service be effected upon the plaintiff/respondent.

On 28th September 2006 when Mr. Gicigi appeared before me, he submitted that prayers 1, 2, 3 and 6 had been granted and he only came for orders in respect of prayers 4 and 5. He submitted that the defendants have not todate been served with any court papers in respect of this suit and that the defendants only learnt that this suit exists on 19th September 2006 when the OCS Embakasi came to the locus accompanied by 20 police officers and a group of people to enforce the alleged eviction order. Todate the plaintiffs have not been traced nor the court file. The court record shows that the suit was filed on 31st August 2006 by OKACH & CO ADVOCATRES who cannot be traced and the records held by the Law Society of Kenya reveal that he does not hold a current practicing certificate.

Mr. Gicigi submitted further than proceedings conducted by an advocate without a practicing

certificate are null and void and any such pleadings when traced should be expunged from the record for want of competence.

This is a very unique situation where the court is being asked to set aside an order whose original record is not available nor can the plaintiff or its directors be traced.

Before concluding this ruling I would refer to paragraph 2 of the formal Order extracted on 8th September 2006.

It says: **“The OCS Embakasi Police Station be and is hereby ordered to oversee the eviction order.”**

I have yet to find out from the record if this is what was really ordered since the court record has not been traced but it would in any event be unlawful to utilize the police in a civil action for the purpose of effecting or aiding private evictions or reinstatements.

The Court of Appeal in the case of **KAMAU MUCUHA VS. THE RIPPLES LTD CA NO. 186 OF 1992** 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 in the premises.”

It would be unlawful to utilize the police in a civil action for the purpose of effecting or aiding private evictions or reinstatements.

It is alleged that the OCS Embakasi Police Station accompanied by about 20 police officers were involved in the demolition of the defendants’ structures. As I have stated earlier, Police should not be utilized in civil actions for the purpose of effecting or aiding private evictions or reinstatement. Let the Police Commissioner be warned that any such involvements by his officers might generate a host of civil suits for damages against the Government and the Police Department would find itself in a position whereby it is forced to pay a colossal amount of damages in the event the suits are decided in favour of the plaintiffs. Sometimes you find a court unknowingly ordering the police to oversee evictions in civil disputes. That is not part of the police duties and the law does not allow that. The applicants had obtained prayers 1, 2, 3 and 6.

For the foregoing reason I would allow the application in terms of prayers 4 and 5 of the Notice of Motion dated 22nd September 2006.

Dated and delivered at Nairobi 26th day of October 2006.

J.L.A. OSIEMO

JUDGE