



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE NO. 1847 OF 2001

UCHUMI SUPERMARIKETS LIMITED PLAINTIFF

VERSUS

AMINA MOHAMMED KULEDEFENDANT

RULING

The Applicants are the 4th and 9th Objectors in the Notice of Objection filed on 10/12/03. They have filed a notice of motion seeking for orders that :-

- 1) That the Order of this court dated 9/7/03 be stayed pending the hearing and determination of this application.
- 2) That the order of 9th July 2003 be set aside.

The application is based on the grounds that the police are being used to evict the applicants and yet they are not parties to the suit nor are they members of Joy Women Group the defendant.

The application is supported by the Affidavit of the 4th Objector who states that they are squatters and have built houses on part of LR NO 24486 Nairobi. They have filed a notice of objection on 10/12/03 when they received notices of eviction by the defendant. Counsel for the Applicant submitted extensively and raised the following points:-

- 1) The police have irregularly been used following an order issued on 9/7/03 which order was obtained exparte against the provisions of order 50 of the Civil Procedure Rules.
- 2) The parties who were affected y the Order of Eviction should have been notified. The Commissioner of Police was given wide power to evict the Applicants. This is against the provisions of the Civil Procedure and especially Order 21 rule 30 which does not provide for the Police to assist on a Civil Process.
- 3) Thirdly the Applicant/Decreeholder must have mislead the court to grant the Orders or there were no resistance recorded from the Objectors.

Lastly the Applicant's Counsel submitted that the Decreeholder's Replying Application sworn on 2/1/04 especially the averments in paragraphs 17 to 19 be struck out as per the provisions Order 18 Rule 16 as they are irrerevant and prejudicial to a fair hearing of the objection proceedings. The Application was vehemently opposed by the Counsel for the Respondents who relied on the grounds of opposition

filed on 5/2/03 as well as the replying Affidavit sworn on 2nd January by John Kariuki a Senior Security Officer with the Plaintiff/Respondent.

Both the Affidavit and the grounds of Objection state that the Respondent who is a decreeholder followed the proper procedure and the Objection have no *Locai standi* by the Applicants who is on abuse of the Court process. They are not the registered owners of the suit premises. The suit premises LR NO 24886 is registered in the name of the Respondent. The Respondent filed a suit herein against Amina Mohamed Kule on behalf of all the members of the Joy Women Group Judgment was obtained in favour of the Respondent and execution was undertaken following an eviction order. The Respondent's Counsel argued that the averments in the replying affidavit and the grounds of objection are relevant as they bring out the factual details that are necessary in the determination of the application. The fact of legal ownership is accepted by the objectors who admit that they are squatters on the suit premises.

As regards the issue of the misuse of the police to execute Civil matters counsel for the respondent submitted that section 14 of the police Act empowers the police in their duty of maintenance of law and order to preserve peace during the execution of a warrant or of eviction where violence is likely to erupt. The execution by way of eviction cannot be stayed by an application brought by way of objection proceedings and the Applicants have not given reasons why the application should be allowed.

I have carefully considered the above submissions by both Counsel for the Applicant and Respondent and all the affidavits and the material presented before me. I have formulated the following issues that will guide me in analysing the facts and the final finding.

- 1) Can the objectors, who filed the notice of objection on 10/12/03 be granted the orders of stay of execution.

Execution being by way of Eviction.

- 2) Was the execution orders obtained and applied for regularly against the Applicants.

It is not disputed that the property LR NO 24886 Nairobi belongs to the Respondents. The Respondent also obtained the Orders of the court to execute the warrant by way of eviction.

This order was issued by the court on 9/7/03 and it is the one being challenged by the Applicant as having been irregularly obtained as it was obtained *ex parte* when the provisions of order 50 of the Civil Procedure Rules. The Applicants complain that they were not notified of the application. It is obvious that they could not have been notified with the application as they were not parties to the suit. They filed a notice of objection on 10/12/03. I have also the proviso to Order 50 (2) which gives a leeway to a Judge to proceed with an application *ex parte* if the Court is satisfied that a delay caused by proceeding in the ordinary way would enter irreparable or serious mischief. In this regard I am satisfied the court was justified in granting the application dated 9/7/03. I find the prayers by the Applicants rather confusing and there is no Evidence whatsoever presented to this court in support of their claim.

The Applicants are not claiming ownership of the suit premises. They are not candid at all and withhold reasons on how they became occupants of the suit premises.

In this regard how would the court make a finding that they are entitled to an order of stay, when the Applicants have not established their interest in the suit premises. They have merely joined the suit after execution proceedings have been initiated and they are only challenging the mode of execution not the substance of the matter the Judgment herein. I agree with counsel for the respondent that execution proceedings are procedural and administrative matters and s.....the Applicantsthe respondent's titles, I find the application or staying of execution without basis.

I accordingly dismiss the application dated 24/12/04 with costs to the respondent. Order accordingly.

Ruling read and signed on 21/1/04.

M. KOOME

JUDGE