Muinde v Mavua & another; Mavua (Plaintiff) (Miscellaneous Application E029 of 2022) [2023] KEELC 18715 (KLR) (5 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18715 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

MISCELLANEOUS APPLICATION E029 OF 2022

A NYUKURI, J

JULY 5, 2023

BETWEEN

JUSTUS M MUINDE ..... APPLICANT

AND

JAMES MULINGA MAVUA & ANOTHER ..... RESPONDENT

AND

SIMEON MUSYOKA MAVUA ..... PLAINTIFF

RULING

1. This suit was instituted by way of a Notice of Motion dated June 24, 2022 filed by the Applicant Justus M. Muinde seeking the following orders;

   a. Spent.

   b. That this Honourable Court be pleased to issue an order to OCS Machakos Police Station to assist in gaining entry to the premises occupied by Simeon Musyoka Mavua and remove the proclaimed assets for the purpose of auctioning the same to recover decretal sum amounting to Kshs. 224,036/- together with auctioneer's costs in Elc Case No 16 of 2009.

   c. That the O C S Machakos Police Station or any other officer under his command to supervise the exercise.

2. The application is premised on the grounds on its face together with the supporting affidavit sworn by the Applicant. The Applicant's case is that he is a Class 'B' auctioneer duly licenced and practising in the name and style of Kande Auctioneers. He stated that on June 8, 2022, his firm was appointed by Janet, Jackson & Susan Advocates for the Defendant, to execute the warrants of attachment and sale against the Plaintiff. That on June 10, 2022, he proceeded to the judgment debtor's premises at Mutituni, and proclaimed the movable assets indicated in the attached proclamation notice. He stated

that on several occasions he made several visits to the judgment debtor's home with a view to take away the proclaimed goods, but the judgment debtor and his agents were violent. He stated that he needed the court to allow him use minimum force to take away the proclaimed goods in the presence of police officers.

3. Although the judgment debtor/Respondent was served, no response was filed by him.

Analysis and Determination

4. I have carefully considered the application and the affidavit in support, and the issue is whether the Applicant is entitled to the orders sought.

5. Rule 9 (1) and (2) of the Auctioneers Rules 2009 provides as follows;

    1. Where an auctioneer has reasonable cause to believe that –

        a. he may have to break the door of any premises where goods may be seized or repossessed; or

        b. he may be subject to resistance or intimidation by the debtor or other person; or

        c. a breach of peace is likely as a result of seizure, repossession or attempted seizure or repossession of any property,the auctioneer shall requests for police escort from the nearest police station in order to carry out his duties peacefully.

    2. An application under this rule shall be by motion by way of a Miscellaneous application supported by an affidavit and may be heard exparte.

6. In the instant application, the Auctioneer has deponed that although he proclaimed the judgment debtor's goods on June 10, 2022, pursuant to the warrants of court given on June 8, 2022, he is unable to seize the proclaimed goods as the judgment debtor and his agents have turned violent necessitating the need for police escort. He attached a copy of Auctioneers Licence, the warrants of attachment and sale, proclamation, relevant extract of the Auctioneers Rules, a letter dated October 28, 2009 from the secretary of the Auctioneers Licencing Board and an internal memo by the then Chief Magistrate Machakos Law Courts, dated October 15, 2008.

7. Having considered the Applicant's assertions that he is unable to execute the warrants of the court issued in Machakos ELC No 16 of 2009, due the violence posed by the judgment debtor, it is my finding that this is a proper case for an order granting the Applicant police escort.

8. In the premises, I find and hold that the application dated June 24, 2022 is merited and the same is allowed as follows;

    a. This Honourable Court be and is hereby pleased to issue an order to the OCS Machakos Police Station to assist the Applicant in gaining entry to the premises occupied by Simeon Musyoka Mavua and remove the proclaimed assets for purposes of auctioning the same to recover the decretal sum amounting to Kshs 224,036/- together with Auctioneers costs in ELC Case No 16 of 2009.

    b. The OCS Machakos Police Station or any other officer under his command to supervise the exercise.

9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 5TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the Presence of;

No appearance for Applicant

No appearance for Respondent

Josephine – Court Assistant