



Stephen Juma Onyango t/a Intime Auctioneers v Kuria & 21 others (Environment and Land Civil Miscellaneous Application E004 of 2023) [2023] KEELC 20681 (KLR) (12 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20681 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION E004 OF 2023**

**J OMANGE, J
OCTOBER 12, 2023**

BETWEEN

STEPHEN JUMA ONYANGO T/A INTIME AUCTIONEERS APPLICANT

AND

MARY KURIA & 21 OTHERS RESPONDENT

RULING

1. The Notice of Motion application dated 6th July, 2023 brought under section 3 A of the [Civil Procedure Act](#) and order 50 (1) of the [Civil Procedure Rules](#) and rule 9 (2) of the [Auctioneers Rules](#) seeks the following orders;
 - a. That this honourable court be pleased to issue orders for Police Assistance and Escort to Stephen Juma Onyango T/A Intime Auctioneers, acting on behalf of Wilson Gacanja, the legal owner and proprietor of Plot LR No 209/9770, along Makweni road, Kileleshwa, to proceed and remove all the illegal occupants and structures erected on the plot and restore the site for official use by the owner as directed vide the enforcement notice issued by the Director of Planning & Enforcement, Nairobi County Government dated 29th May, 2023.
 - b. That the officer commanding Kileleshwa station or any other officer under his command of the rank of Assistant Inspector or above and the representatives of Nairobi County Enforcement/Inspectorate Department Officers to supervise the exercise for the purpose of ensuring security of the Auctioneer, his agents, and to maintain law and order during the exercise.
 - c. That the cost of the application be in the cause.



2. The application is brought on the grounds that the Respondents having recently invaded the suit property were issued an enforcement notice to vacate the suit property but have failed to do so.
3. The application is supported by the affidavit of Stephen Juma Onyango in which he avers that he received instructions from Wambugu and Muriuki and co Advocates acting for the legal owner of LR 209/9770 along Makueni Road Kileleshwa to obtain court orders for police assistance to remove the illegal structures and occupants on the plot on behalf of the owner Wilson Gachanja.
4. The applicant in his affidavit refers to letters of instructions, title deed, enforcement notice, photographs of alleged invaders and their wares. The application was served upon the Respondents vide affidavit of service dated 1st July, 2023.
5. The Auctioneers Powers to carry out evictions is found in Section 2 of the [Auctioneers Act](#) which provides;

Subject to Section (3) any person who-

- a. Attaches for sale any moveable or immovable property in execution of a court order made pursuant to the provisions of any written law or contract;
 - b. Sells or offers for sale any moveable or immovable property or any interest therein by auction or by any other mode of sale by competition;
 - c. Levies distress for rent or distrains under the provisions of any written law;
 - d. Carries out evictions under an order of court;
 - e. Repossess goods from any person pursuant to any written law or contract
Shall for purposes of this Act be deemed to carry on the business of auctioneer.
6. From a plain reading of Section 3(C) above, it is evident that an auctioneer's powers to carry out an eviction which is what the Applicant seeks to do so in this case, emanate from a court order. There was no court order attached to the application authorizing the eviction. Hence this application for police assistance is premature.
 7. I therefore dismiss the application with no orders as to costs as it was not opposed.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12TH DAY OF OCTOBER 2023.

JUDY OMANGE

JUDGE

