



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT GARISSA

MISC ELC APPLICATION NO. E002 OF 2020

SAMIMPEX KENYA LIMITED.....PLAINTIFF/APPLICANT

VERSUS

HAWO BASHIR OMAR.....1ST DEFENDANT/RESPONDENT

SALAT FENUS.....2ND DEFENDANT/RESPONDENT

ISNINO OSMAN.....3RD DEFENDANT/RESPONDENT

FADUMO RAGE.....4TH DEFENDANT/RESPONDENT

ADOW SEDOW.....5TH DEFENDANT/RESPONDENT

HAWO RAGE.....6TH DEFENDANT/RESPONDENT

RULING

1. On 19th April 2021 this Court issued the following Orders;

a. That an extension of time to execute the eviction Order do issue to Recovery Concept Auctioneers for the execution Order dated 31st February 2015 granted to this Court following an order made on the 2nd day of May 2014 by the Honourable Lady Justice Mary Gathumbi for the Defendants/Respondents namely HAWO BISHARO OMAR, SALAT FENUS, SININO OSMAN, FADUMO RAGE. ADOW SEDOW, HAWO RAGE respectively to vacate and hand over all the land known as title Number Garissa Town/Block 5/3 to the Plaintiff/Applicant.

2. Subsequently the applicant filed an application dated 19th July 2021 seeking;

a. Spent

b. That the Officer Commanding Station, Garissa Police Station do ensure the enforcement of the Orders issued herewith.

3. The application was based on the grounds adduced and supported by sworn affidavit of **Rajab Sumba, an advocate of the High Court of Kenya** acting for the applicant. It was her averment that this Honourable court issued succinct extension of Eviction Orders against the Respondents on 23rd August 2020. That unfortunately at the time of the filing of the Application she overlooked the requisite Order requiring the police assistance to enforce the Orders.

4. That on 14th May 2021, after her client was ready with the eviction and armed with the said Order she visited Garissa Police Station, Garissa Sub County, Garissa County where she met the Officer Commanding Station, Chief Inspector Micheal Munyalo of Service Number 232865 who upon introducing herself and the purpose of her visit perused the Order and indicated that he could neither receive nor act on the Order as they were not a party to the dispute and the said Order is not directed to them.

5. That it is therefore necessary for the enforcement of the said Order for the Police to be Ordered to enforce the same.

Analysis and determination

6. I have looked at the prayers sought in the application. I have also looked at the Orders sought and granted in the Notice of Motion dated

24th November 2020.

7. The gist of the matter is that the applicant was granted an Order on 24th May 2014 directing the Respondents herein to vacate and hand over all the land known as title Number Garissa town/ Block 5/3. In the year 2015 they proceeded to secure the services of Recovery Concepts Auctioneers taxed their bill to facilitate the eviction at Kenya Shillings One Million Five Hundred Thousand (Kshs, 1,500,000). It is worth to note that the auctioneers substantiated their charge/Bill to among other things the hiring of police officer at the strength of 42 officers. Since they could not afford the aforesaid sum they proceeded to issue an eviction notice dated 13th January 2020.

8. It seems the respondents were not perturbed by such moves and have stayed put since the Orders were issued by this Court on 24th May 2014.

9. According to **Section 24 of the National Police Service Act**, it is the duty of the police to maintain law and order and to enforce all laws and regulations with which it is charged, amongst other functions. The provisions of that Section 24 are as follows:

24. Functions of the Kenya Police Service

a) **Provision of assistance to the public when in need;**

b) **maintenance of law and order;**

c) **preservation of peace;**

d) **protection of life and property;**

e) **investigation of crimes;**

f) **collection of criminal intelligence;**

g) **prevention and detection of crime;**

h) **apprehension of offenders;**

i) **enforcement of all laws and regulations with which it is charged; and**

j) **performance of any other duties that may be prescribed by the Inspector-General under this Act or any other written law from time to time.**

10. In *Namu Wachira & 2 others v Njeru Wachira* [2015] eKLR the Court held as follows;

It is clear from the provisions of Section 24 that there is no explicit reference to implementation of court orders as one of the functions that the police are required to discharge. According to the affidavit evidence of the applicant, they need security of the police during the execution of the court order. The police are under a statutory duty to maintain law and order. In my view the above provisions are wide enough to include the provision of security on the ground to enable the execution and implementation of the court order.

Furthermore, my attention has been drawn to two cases of the High Court where police assistance was sought and obtained by the applicants for purposes of executing court decrees and orders. The first case is that of *Claire Adamba Okanga v. Godfrey Gichuki Waiharo* being *Civil Appeal number 69 of 2012 (at Nairobi)* in which the court ordered the officer commanding in charge of the police station to assist the appellant in enforcing the court order. The court had directed that the *ex parte* applicant be given interim custody of the two children of their marriage. The police assistance therein was requested for in order to break into the premises, where the children of the marriage were residing, because the appellant/applicant had been denied access to those premises.

The second case in which the court ordered police assistance in the execution of a court order is that of *Republic v. The Registrar of Societies and others, being Misc Civil Application (J.R) number 24 of 2014 (at Mombasa)*. That was a case in which the *ex-parte* applicants were granted orders directing the police to assist the court bailiff in restoring possession of the suit premises to the *ex-parte* applicant.

That court went further to require the officer in charge of the police station responsible for the area, where the suit premises were situate to ensure that law, order and peace were maintained during and after the restoration of the *ex-parte* applicants into the suit premise

11. In *Mariko Ndwiga v Edith Muthanje* [2020] eKLR the court similarly held as follows;

Although the Appellant objected to the involvement of the police service in the matter, a distinction has to be drawn between their role as agents of eviction and their role as law enforcement officers. The court's understanding is that whereas the eviction order is to be executed by appointed court bailiffs, the role of the police service shall be confined to maintaining law

and order to enable the court bailiffs to perform their duties.

12. The wordings of the application herein do not read “assistance of the Police” but the gist of the application clearly seeks such assistance. There is a clear difference between assistance of the police in enforcement of the court orders and asking the police to enforce the court Orders. Again, it is not every instance shall the police be sought to enforce court Orders. An applicant has to prove formidable grounds why such assistance is necessary.

13. The history of the case set out above and the challenges so far faced by the applicant in enforcing the court Orders presents this case as a clear candidate for police assistance in the enforcement of the Court Orders.

14. I shall therefore make the following determination;

a. That the Officer Commanding Station, Garissa Police Station to provide assistance to the plaintiff in enforcement of the Orders issued herewith.

b. I make no order as to costs. It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED AT GARISSA THIS 29TH DAY OCTOBER, 2021.

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E.C. CHERONO

ELC JUDGE

In the presence of:

1. Mr. Sumba for the Ex-parte Applicant
2. Respondent/Advocate; Absent
3. Fardowsa: Court Assistant