



Gituma Otieno & Co Advocates v Inovet Systems Limited & another (Miscellaneous Application E726 of 2022) [2024] KEHC 12164 (KLR) (Commercial and Tax) (11 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E726 OF 2022
FG MUGAMBI, J
OCTOBER 11, 2024
IN THE MATTER OF AUCTIONEERS ACT NO. 5
OF 1996 & RULES 9 (1-2) OF 2009 AS AMENDED**

BETWEEN

GITUMA OTIENO & CO ADVOCATES APPLICANT

AND

INOVET SYSTEMS LIMITED 1ST RESPONDENT

SAFE ZONE PROTECT LIMITED 2ND RESPONDENT

RULING

Introduction and Background

1. For determination is the application dated 15/3/2024. The applicant seeks orders authorizing the Officer Commanding Langata Police Station or any Officer under his command with the rank of an inspector of police or above to accompany the auctioneer Mr. Humphrey W. Okuku for the purpose of keeping peace and witness the removal of the proclaimed assets.
2. The application is premised on the continued resistance and frustration of the applicant by the respondents and further the unpaid decretal amount. The application is supported by the affidavit of Humphrey Waudi Okuku, a licensed auctioneer, sworn on 15/3/2024. The affidavit details the attempts that have been made by the applicant towards removing the proclaimed goods in vain.
3. In response to the application the respondent raised a preliminary objection dated 9/4/2024, on the grounds that the application is in breach of Rule 9(1) of the Auctioneers Rules, 1997 and that it has



been brought by an unqualified person. For the avoidance of doubt, Rule 9 of the Auctioneers Rules, 1997 provides thus:

- “ 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 the peace is likely as a result of seizure, repossession or attempted seizure or repossession of any property, the auctioneer shall request 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 ex parte.”

4. I have reviewed the record and particularly the supporting affidavit to the application. Produced as annexure HWO1 is the practicing license for Humphrey Waudi Okuku, the auctioneer. The license is valid having been issued on 19/2/2024 and expires on 31/12/2024. The preliminary objection is therefore unfounded and unsubstantiated and as such it is dismissed.
5. Contemporaneously with this the respondent filed a replying affidavit sworn on 9/4/2024 by Zedekiah Onyando Okumu, the Managing Director of the respondents. The respondents acknowledge that the proclamation took place on 18/8/2023 but contend that this is the only time that the applicant's agents have been to their premises. They deny any resistance as claimed by the applicant.
6. The respondents further contend that as a result of the ruling delivered by this court on 23/2/2024, they have since filed an appeal, to wit COACA E186 OF 2024. It is their case that an application for stay of execution at the Court of Appeal has equally been filed and that directions were issued on the application on 27/3/2024. On this ground the respondents contend that granting the orders sought will render the appeal nugatory and result to damage of property.

Analysis and determination

7. I have carefully considered the pleadings, submissions, evidence and authorities submitted by both parties. I note that the Court of Appeal is seized of this matter but I do also note that there is presently no order for stay of execution against this court's decision.
8. Order 42 Rule 6(1) and (2) of the Civil Procedure Rules is instructive that:
 - “(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order. ...”
9. I note from an email sent from the Court of Appeal on 27/3/ at 18:25 that upon reviewing the application filed by the respondent, for stay of execution, the parties were advised that the duty judge declined to certify the application dated 18/3/2024 as urgent. Under the circumstances, it would be unjust to further delay the applicant from enjoying the rightful benefits of the judgment in their favor.
10. I have equally reviewed the decree issued on 1/8/2023 (the decree), confirming the decretal amount of KShs.893,838/= together with interest and costs as well as the proclamation by the applicant following



the issuance of the decree. It is common ground that by a ruling of 23/2/2024, this court dismissed an application filed by the respondent challenging the certificate of taxation and seeking to set aside the impugned decree.

11. As it stands, there is therefore nothing standing in the way of the orders sought by the applicant. The respondent contends that they have not hindered the applicant from taking away the proclaimed goods. That being the case, the execution exercise would in anticipation not face any challenge, but that is not reason enough not to allow the application.

Disposition

12. Accordingly, the application dated 15/3/2024 is allowed as prayed. The applicant shall have the costs of this application.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 11TH DAY OF OCTOBER 2024.

F. MUGAMBI

JUDGE

