



**Willie & another v Unaitas Sacco Society Limited & another;
Bricks Holdings and Engineering Ltd (Interested Party) (Civil Suit
28 of 2016) [2024] KEHC 12865 (KLR) (23 October 2024) (Directions)**

Neutral citation: [2024] KEHC 12865 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT 28 OF 2016
DO CHEPKWONY, J
OCTOBER 23, 2024**

BETWEEN

JOSHUA KAMAU WILLIE 1ST PLAINTIFF

MARY NDUITA KAMAU 2ND PLAINTIFF

AND

UNAITAS SACCO SOCIETY LIMITED 1ST DEFENDANT

INTEGRA AUCTIONEERING (K) CO 2ND DEFENDANT

AND

BRICKS HOLDINGS AND ENGINEERING LTD INTERESTED PARTY

DIRECTIONS

1. This court delivered a Ruling on 20th September, 2024 in this case where it found that the suit stood dismissed by operation of law since more than two years had lapsed since the last action was taken in the matter and it therefore held that the suit is no longer in existence. The court further declined to address the merits of the application dated 26th May, 2023 where the Plaintiffs sought to amend their Plaint.
2. Following the delivery of this Ruling, the Applicant filed Notice of Motion dated 8th October, 2024 filed pursuant to Sections 1A, 1B, 3A, 3B, 63(e) and 80 all of the *Civil Procedure Act* and Order 17, 45 and 51 all of the *Civil Procedure Rules* seeking the following orders:-
 - a. Spent.
 - b. The 1st Defendant either by its agents, employees, servants, officials and/or any persons acting under its control, direction, supervision and authority be barred from evicting the Plaintiffs



jointly and severally and or any person in occupation of the property known as L.R 21096/228 (Original 21096/215/10) pending the hearing and determination of this application.

- c. The 1st Defendant either by its agents, employees, servants, officials and/or any persons acting under its control, direction, supervision and authority be barred from evicting the Plaintiffs jointly and severally and or any person in occupation of the property known as L.R 21096/228 (Original 21096/215/10) pending the hearing and determination of this suit.
 - d. The court reverse the order of dismissal of the suit due to want of prosecution and reinstate the suit for hearing and determination on merit.
 - e. Directions to be issued on the hearing and determination of the suit.
3. The court fixed the interpartes hearing of the application on 23rd October, 2024, on which date, the Applicant stated that the Respondents are yet to respond to the said application.
 4. In response, the Respondent's Counsel sought leave to file the said response to which the Applicant sought corresponding leave to file further Affidavit. Further, the Respondent's Counsel indicated to court that following the Ruling of the court the suit is no longer in existence and therefore the orders sought cannot be issued in a vacuum. He also stated that injunctive orders cannot issue where there is no main suit.
 5. The Respondent's counsel holds that the original plaint was filed before the suit property was transferred to the 1st Defendant and therefore there is no prayer for injunction in the existing pleadings in court in which injunction against the eviction can be sought and therefore prayer number 2 cannot issue.
 6. In rejoinder, the Applicant's counsel confirmed that the suit was indeed dismissed for want of prosecution. However, counsel for the Applicant submitted that the present application is for reinstatement of the suit and for injunctive orders to issue as a protective measure. He stated that the original Plaint had a prayer for permanent injunction under prayer number 3 but the circumstances have since changed and what the Plaintiffs are seeking are only protective orders from eviction of the property where they reside to avert the application from being rendered nugatory as they stand to suffer prejudice if the preservative orders do not issue in the interim.
 7. The court has read through the arguments of the parties herein and considered the prayer sought for in the Notice of Motion application herein and alongside Supporting Affidavit together with the annexed amended Plaint. The Court finds that it would be prudent to consider the same so that it can determine the prayers sought on merits to establish whether the same should be granted or not. For this reason, it will be in the interest of justice for the court to direct that status quo be maintained in terms of prayer No.(2) pending the hearing and determination of the application.
 8. Therefore, the court proceeds to issue the following directions:-
 - a. The Respondents are hereby granted leave of 14 days to file and serve Replying Affidavit.
 - b. The parties to canvass the application dated 23rd October, 2024 by way of written submissions.
 - c. The Applicant is therefore granted corresponding leave of 14 days to file and serve further Affidavit if need be, alongside written submissions upon being served with a response by the Respondent.
 - d. The Respondent to file and serve written submissions within 14 fourteen (14) days of being served with written submissions by the Applicant/Plaintiff.



- e. The 1st Defendant either by its agents, employees, servants, officials and/or any persons acting under its control, direction, supervision and authority be and are hereby barred from evicting the Plaintiffs jointly and severally and or any person in occupation of the property known as L.R 21096/228 (Original 21096/215/10) pending the hearing and determination of this application.
- f. The matter is then fixed for Mention on 9th December, 2024 for parties to confirm compliance and take directions on ruling date.

It is so ordered.

**DIRECTIONS DATED AND SIGNED AT KIAMBU THIS 23RD DAY OF OCTOBER , 2024.
(UPLOADED VIA ELECTRONIC MAIL)**

D. O. CHEPKWONY

JUDGE

