



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**ELC NO. 414 OF 2012**

**KIMUTAI LELEI.....PLAINTIFF/RESPONDENT**

**VERSUS**

**HOSEA BITTOK.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**THE MANAGEMENT COMMITTEE**

**KAPSABET BONDENI SELF HELP GROUP.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

This ruling is in respect of an application dated 11<sup>th</sup> December 2019 by the 1<sup>st</sup> defendant applicant seeking for the following orders:-

- a. That the plaintiff/respondent herein be evicted from the parcel of land known as PIONEER/NGERIA BLOCK 1(EATEC)113.
- b. That the Uasin Gishu County Commander and the OCS Langas police station be and is hereby ordered to provide police escort to Paul K. Ole Yaile t/a Nasioki Auctioneers for purposes of peace and order during the process of eviction of the plaintiff, his agents, employees or servants in PIONEER/NGERIA BLOCK 1(EATEC)113.
- c. That costs be provided for.

Counsel for the applicant relied on the grounds on the face of the application that the plaintiff/respondent failed to vacate the suit property as per the court's judgment delivered on 31<sup>st</sup> July, 2019 whereby a decree was subsequently served upon him on 17<sup>th</sup> September, 2019. It was counsel's submission that the 30 days from the date of judgment pursuant to this honorable court's orders granted to the plaintiff/respondent on 31<sup>st</sup> July 2019 has since lapsed.

Counsel further submitted that on 10th December, 2019 instructions were given to Nasioki Auctioneers to evict the defendant from the suit land and unless the auctioneers are provided with police assistance to keep peace and order during physical eviction of the plaintiff, his agents, servants or employees in PIONEER/NGERIA BLOCK 1(EATEC)113, there is likely to be a breach of peace and will be unable to evict the plaintiff.

Miss Cheso submitted that the substantive law of evictions is section 152(a) to 152 (i) of the Law Lands (Amendment) Act as read together with clause 4.9.1 and 4.9.3 of the Ministry of Lands –Eviction and Resettlement Guidelines , October 2009. Counsel submitted that Order 22(29) which addresses the issue of eviction does not apply to this case as the cabinet Secretary is yet to issue regulations in respect to section 152.

Counsel submitted that Kamau Lagat were properly on record and that the auctioneers are licensed. Further that it is not proper to submit that the orders of the High Court should be executed by the Magistrate's court.

**RESPONDENT'S SUBMISSION**

In opposing the said application, the plaintiff/respondent filed grounds of opposition on the grounds that the court has no jurisdiction to entertain the ex-parte chamber summons as an application for police assistance under the provisions of rule 9 of the Auctioneers (Amendment) Rules, 2009 can only be made in a magistrate's court in a miscellaneous cause.

Counsel submitted that the 1st defendant not being a licensed auctioneer cannot make an application for police assistance under the

provisions of rule 9 of the Auctioneers (Amendment) Rules, 2009 as the law only grants authority to a Licenced Auctioneers who has been issued with warrants by the court for purposes of execution.

Mr. Mogambi submitted that the instructions given by the 1<sup>st</sup> defendant to Nasioki Auctioneers by the letter dated 10<sup>th</sup> December, 2019 are a nullity as an instruction letter must be in Sale Form 1 to the schedule of the Auctioneers (Amendment) Rules, 1997.

Counsel further submitted that the firm of Kamau Lagat & Co Advocates are not validly on record as no notice of appointment of advocates have been filed in court after the 1<sup>st</sup> defendant opted to act in person and therefore cannot purport to file the application before the court. Further that Section 94 of the Civil Procedure Act gives the court inherent powers for execution of decrees before taxation of costs. According to rule 5(8) of the auctioneer's rules, warrants are only issued through attachment and sale of immovable property. Counsel urged the court to dismiss the application with costs to the respondent.

### **ANALYSIS AND DETERMINATION**

This is an application for an order directing the police to ensure peace and order during eviction. It should be noted that this is a matter where a judgment has been rendered and a decree issued. The only issue remaining is the enforcement of the decree which requires police supervision to ensure peace. There is no stay of execution in this matter therefore the court could even give the order for the police to assist with the execution to ensure law and order.

The judgment of the court rendered on 31<sup>st</sup> July, 2019 was to the effect that:

- a. A declaration that the 1<sup>st</sup> defendant is the true and absolute owner of land parcel number PIONEER/NGERIA BLOCK 1 EATEC 113.
- b. A declaration is hereby issued that the continued occupation of the land parcel No PIONEER/NGERIA BLOCK 1 EATEC113 by the plaintiff is unlawful.
- c. A permanent injunction is hereby issued restraining the plaintiff from encroaching on the land parcel number PIONEER/NGERIA BLOCK 1 EATEC 113 or in any manner interfering with the 1<sup>st</sup> defendant's use, possession and peaceful enjoyment of the suit land.
- d. The plaintiff do give the 1<sup>st</sup> defendant vacant possession of land parcel no PIONEER/NGERIA BLOCK 1 EATEC 113 within 30 days failure to which execution to issue.
- e. General damages for trespass for Kshs. 300,000/=
- f. The plaintiff to pay costs of the application.

The court gave the respondent 30 days from 31<sup>st</sup> July 2019 to comply with the order but the same has since lapsed with non-compliance on the part of the respondent. The opposition to the application stating that the auctioneer is not licensed with no such proof is a side show. The submission that High court decrees should be executed by the Magistrate's court is not tenable. What is the work of the Deputy Registrar in the High Court?

I find that the application has merit and is therefore allowed as prayed with costs. The eviction to be carried out during the day in a humane manner.

**DATED and DELIVERED at ELDORET this 25<sup>TH</sup> DAY of FEBRUARY, 2020**

**M. A. ODENY**

**JUDGE**

RULING read in open court in the presence of Mr.Kisuiya holding brief for Mr.Kigamwa for Plaintiff/Respondent and in the absence of Miss. Chesoo for Defendant/Applicant.

Mr. Yator – Court Assistant