



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CIVIL CAUSE NO.41 OF 2008**

**JOHN KIPTOROS KILEL.....PLAINTIFF**

**VERSUS**

**OMAR JUMA.....1<sup>ST</sup> DEFENDANT**

**SARAH SHEIKDON.....2<sup>ND</sup> DEFENDANT**

**MARY ACHIENG.....3<sup>RD</sup> DEFENDANT**

**JOSHUA LANGAT.....4<sup>TH</sup> DEFENDANT**

**NANCY TOO.....5<sup>TH</sup> DEFENDANT**

**RUTH BIOMDO.....6<sup>TH</sup> DEFENDANT**

**AGNESS WANJIRU.....7<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is an application brought by the plaintiff by way of Notice of Motion dated 8<sup>th</sup> July 2019 filed under section 3 and 3 A of the Civil Procedure Act (cap.21) seeking the following orders-

**a) That the court be pleased to grant the plaintiff leave to instruct another auctioneer to wit M/s Jewo Auctioneers in place of Moco Auctioneers to execute eviction orders against the defendants on L.R. Kericho Municipality 631/1673 within Kericho town.**

**b) That the Officer Commanding Station (OCS), Kericho to provide M/s Jewo Auctioneers with security during the eviction process.**

**c) Punitive costs of the application and costs be provided for.**

2. The application is based on the grounds that M/s Moco Auctioneers had failed to carry out eviction as ordered by the court in 2010 and had not given reasons; that the plaintiff had not taken possession of the land; and lastly that it was in the best interests of justice that the warrant issued to Moco Auctioneers be cancelled and issued to Jewo Auctioneers to execute.

3. The application is supported by an affidavit sworn on 8<sup>th</sup> July 2019 by the plaintiff John Kiptorus Kilel, which annexed the ruling by Justice GBM Kariuki of 16<sup>th</sup> November 2010, appointing Moco Auctioneers.

4. On the hearing date which was 7<sup>th</sup> October 2019 Mr. Miruka appeared for the plaintiff, and nobody appeared for Moco Auctioneers though a hearing notice was said to have been served upon them and an affidavit of service filed. Counsel urged the court to grant the orders sought.

5. Having considered the application, I have no reason to disallow the change of the auctioneers as requested since the auctioneers are a choice of the plaintiff who will pay for their services.

6. With regard to the request for the OCS, Kericho Police Station to provide security during eviction process, I note that Justice GBM

Kariuki made specific orders in that regard, and I have not been asked to review the same as an error on the record. Since I do not have jurisdiction to change those court orders on any other reason as I am not the appellate court, I adopt the same orders herein that at the request of the plaintiff's advocate, and the appointed auctioneer the OCS Kericho will no doubt ensure that there is no breach of peace.

7. As for costs, I will grant the plaintiff ordinary costs of the application against the previous auctioneer Moco Auctioneers, but not punitive costs.

8. Consequently, I order as follows-

**a) Leave is hereby granted to the plaintiff to appoint another auctioneer to wit M/s Jewo Auctioneers in place of Moco Auctioneers to execute eviction orders against the defendants on L.R. Kericho Municipality 631/1673 within Kericho town.**

**b) On request of the plaintiff's lawyer or the appointed auctioneers, the OCS Kericho will ensure that there is no breach of the peace.**

**c) The plaintiff is granted the costs of this application against Moco Auctioneers.**

Dated and delivered at Kericho this 10<sup>th</sup> December 2019.

**George Dulu**

**JUDGE**