



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CIVIL CASE NO. 28 OF 2006

HALIMA ALI SIGARA.....PLAINTIFF/APPLICANT

VERSUS

ALI KALIL.....1ST DEFENDANT/RESPONDENT

HUSSEIN DALDAL.....2ND DEFENDANT/RESPONDENT

ALI MAHDI AG.....3RD DEFENDANT/RESPONDENT

R U L I N G

1. The plaintiff/applicant through a Notice of Motion brought pursuant Section 1A, 3A, 63(e), Order 22 Rule 82(1),(2),83 of Civil Procedure Rules sought that the Honourable court do issue summons to the OCPD and OCS Wajir and the clerk to County Council of Wajir to appear and answer and/or show cause why they cannot comply with this Honourable court's orders granted On 25th April, 2008 for providing security during the eviction of the respondents herein and that the court do make a finding that both the OCPD and OCS Wajir are both in contempt of the Honourable court's orders granted on 25th April, 2008 and issued on 30th April, 2008 and proceed to commit the said officers into prison for a period not exceeding 30 days. The applicant sought any other better orders to be made for the end of justice with costs to the applicant.

2. The application is based on the grounds on the face of the application inter alia: that the respondents consented to vacate the suit property to wit plot No.4363 Wajir after filing this suit; that the applicant obtained an order for the respondents to vacate on 14th February, 2008; that the respondent and their relatives did not comply with the orders to vacate the subject land; that an order for eviction was granted on 25th April, 2008 ordering OCPD to provide security during the eviction of the respondents; that the orders for security was served upon the said OCPD and OCS Wajir but have refused to obey the court's orders; that the applicant sought intervention of the Minister of Lands and that of the Police Commissioner who have advised the OCPD and OCS on the need to obey court's orders but to no avail; that the applicant has been obstructed by the officers mentioned from occupying the plot; that the issuance of summons is necessary for the offices to explain the reasons why they cannot obey court's orders, that the applicant is apprehensive that the officers mentioned have no reason at all against obeying the court orders but simply are in contempt of court and that there is no public prejudice in making the orders sought.

3. The application is further supported by attached affidavit dated 10th October, 2011 by the applicant and annexures thereto. The affidavit briefly sums up to the grounds on the face of the application. The application was served on 11/6/2014 as per affidavit of service by Oswan Ganyire, a process server at

Wajir Law Courts.

4. The extracted court's order issued in April, 2008 states:-

Upon hearing submissions by counsel for the applicant and upon perusal of the application dated 21st April, 2008, supporting affidavit and annexures thereto;

IT BE AND IS HEREBY ORDERED THAT:

1. The review of this Honourable court's ruling dated 14th February, 2007 is hereby granted.

2. The OCPD and OCS WAJIR be and are hereby ordered to provide security personnel to supervise the eviction of the respondents, their kins and relatives from Plot No.4363 WAJIR township.

5. The applicant in his affidavit deponed that the reviewed order upon being served upon OCPD and OCS they refused to acknowledge receipt of the same hence the applicant made complaint to the commissioner of Police who wrote to the PPO North Eastern Province. That the said court order has not been complied with to date.

6. The applicant in view of OCPD failure to comply with court's order is seeking issuance of summons to the two officers and clerk to Wajir County Council(note we do not have clerk to County Council anymore) to appear and make an application to court or why they cannot obey or implement court orders served upon them.

7. The order of 25th April, 2008 is very explicit as regards the role to be played by the OCPD and the OCS Wajir. Their role was not to execute the court's order but to provide security personnel to supervise the eviction of the respondents, their kins and relatives from plot No.4363 Wajir Township. The applicant in her affidavits deponed that she served the OCPD and the OCS with court's order. There is no averment that security was sought at the time of eviction and denied. There is no disclosure as to who was to carry out the eviction and whether such an officer sought security personnel and the OCPD and the OCS declined to provide the same.

8. A perusal of the court file do reveal that at no time did the applicant appoint a court bailiff or any auctioneers to execute the court's order and such officer upon being issued with the warrant to evict the respondents upon seeking security from the OCPD and the OCS Wajir was denied the same. The OCPD and the OCS Wajir were not the ones who were required to evict the respondents but were required to provide security personnel to court bailiff or auctioneers. There is no affidavit by either court bailiff or auctioneer averring that they had been issued with warrant to evict the respondents and that they sought security from the OCPD and the OCS Wajir and was refused the same. The OCPD and the OCS Wajir could not be expected to carry out the role of the court bailiff or evict the respondents as that was not their role. The application as it stands is incompetent for want of warrant of eviction to court bailiff to carry out eviction. No eviction could be entertained without warrant of eviction having been applied for and obtained.

9. This court is however concerned with the OCPD and the OCS Wajir inactivity and failure to give the applicant support as evidenced by the various correspondences in the court file and the contents of the applicant's affidavit. We need not overemphasize the need for police officers to obey court's orders in administration of justice. That upon the court bailiff or auctioneers being appointed by the applicant and upon seeking security personnel from the OCPD and the OCS Wajir this court would expect co-operation from the OCPD and the OCS Wajir otherwise the officers concerned will be cited for contempt of court's orders.

10. In view of the foregoing, and having come to the conclusion that the application is premature and/or incompetent the application dated 10th October, 2011 is hereby dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF OCTOBER, 2014.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN PRESENCE OF:

Mr. Maganga for the applicant

N/A for the respondent

J. A. MAKAU

JUDGE