



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omalla v Oriwo & another (Environment and Land Case  
36 of 2021) [2025] KEELC 6853 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6853 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIRONMENT AND LAND CASE 36 OF 2021**

**AE DENA, J**

**OCTOBER 9, 2025**

**BETWEEN**

**WILLIAM OPONDO OMALLA ..... PLAINTIFF**

**AND**

**GABRIEL OCHING ORIWO & ANOTHER ..... DEFENDANT**

**RULING**

1. This ruling is the subject of the Notice of Motion application dated 22/10/2024 seeking the following orders; -
  1. Spent
  2. That this Honourable court do issue ex-parte orders that the officer incharge of Segga Police station do provide security and or required assistance to Jairo Ounza Mukoya T/A Yamuko Auctioneers during the eviction of the respondents
  3. That Jairo Ounza Mukoya T/A Yamuko Auctioneers be granted leave to use utmost minimum and or reasonable force to gain access and evict Gabriel Oriwo or his agents from plot number North Ugenya/Segga/12
  4. That the costs of this application be provided for
2. The application is premised on the grounds on its face and the supporting affidavit of Paul Omalla sworn on 18/10/2024. It is deponed that the applicant is unable to implement the orders of the court pursuant to the judgement delivered on 2/02/2023 since the OCS Segga police station has indicated he can only execute the orders through the help of an auctioneer.
3. The applicant states he then instructed Yamuko Auctioneers to execute the orders but the OCS insists he must have an order of the court giving authority to the OCS to offer security to the said auctioneer. The applicant seeks the authority of this court as stated hereinabove. It is pointed that the auctioneer



will execute the order while the OCS role will be to provide security for the eviction of the respondents who have failed to obey the court order. It is disclosed that the said auctioneer applied for these orders under Misc. Application No. E016 of 2024 but the lower court directed the matter be filed before this court.

4. The application was served upon the respondent who failed to respond.

#### **Analysis and Determination**

5. I have considered the application and the main issue for determination is whether the prayers sought should be granted.
6. The application is brought under Rule (i) A,B and C of the Auctioneers Rules/Amendment 2009, [Auctioneers Act](#) No. 5 of 1996.
7. To put matters into context I will rehash the background of the matter. This is a post judgement application touching on execution of the decree of the court. The court in its judgement delivered on 2/02/2023 found the defendants in the main suit to be trespassers and ordered for eviction against the 1<sup>st</sup> defendant. The court then granted 90 days for the 1<sup>st</sup> defendant to remove himself and his developments from the suit property and give the plaintiff vacant possession and in default the plaintiff was given the go ahead to ‘forcefully evict the 1<sup>st</sup> defendant together with his servants or agents.’ However, the court ordered that the eviction should be undertaken in accordance with Sections 152B, 152E, 152F, 152G, 152H and 152 of the [Land Act](#).
8. The applicant then brought another application dated 23/11/2024 seeking inter alia an order that the OCS of Segga Police station be ordered to assist the plaintiff to forcibly evict the defendant and file a report within 7 days confirming compliance. The basis was that the decree holder served the orders upon the 1<sup>st</sup> defendant who declined to vacate the suit property.
9. This court in its ruling dated 23/11/2024 had this to state about the role of the OCS  

By section 24 of the [National Police Service Act](#), the police’s role is limited to maintaining law and order and during an eviction process, their duty is limited to maintaining security and no more.’
10. The court then noted that the plaintiff had not lodged an application to appoint a court bailiff under Section 2(2)(a) of the [Auctioneers Act](#). It would appear the present application has been precipitated by the courts observation.
11. Section 2 (d) of the [Auctioneers Act](#) Cap 526 of the Laws of Kenya recognises anyone who carries out evictions under an order of a court is deemed to carry on the business of an auctioneer.
12. Based on the above provision then I have confidence that the Auctioneers role herein is backed by statute.
13. Rule 9 of The Auctioneers Rules Legal Notice 120 of 1997 is on Police assistance and reads 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 support by an affidavit and may be heard ex parte.
14. While the above provisions relate to attachment of property in my view the mischief sought to be cured by the provisions resonates to cases of evictions. The court still reiterates the said role of the police. It is not the police to execute the order as this is not their role under statute. My understanding is that the police is responsible for maintaining law and order, ensuring there is no breach of the peace and the safety of all parties involved during the execution of a court order.
15. I would not have a problem granting the prayer 2 but subject to the above understanding.
16. Prayer 3 of the Notice of Motion seeks that the auctioneer be granted leave to use utmost minimum and or reasonable force to gain access and evict Gabriel Oriwo or his agents from the suit property. For me this order is not necessary the presence of the security officers shall suffice. Moreover, it is not clear the benchmark upon which such force would be measured/calibrated. I decline to grant this order.
17. The application is therefore allowed in the following terms;-
1. That this Honourable court do issue ex-parte orders that the officer incharge of Sega Police station do provide security to Jairo Ounza Mukoya t/a Yamuko Auctioneers during the eviction of the respondents
  2. That having allowed the above order, the court directs that the decree be extracted and served upon the respondents. The applicants are at liberty once there is full compliance with Section 38 of the *Civil Procedure Act*, Order 22 of the Civil Procedure Rules, and Section 152A of the *Land Act*, to proceed with execution in tandem with 1 above.
  3. That parties shall appear before the Deputy Registrar ELC to confirm compliance with 2 above.
  4. That there shall be no orders as to costs on the application.

**DELIVERED AND DATED AT SIAYA THIS 9<sup>TH</sup> DAY OF OCTOBER 2025**

**HON. LADY JUSTICE A.E. DENA**

**JUDGE**

09/10/2025

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Ooro F for the Applicant

No appearance for the Respondents

Court Assistant: Ishmael Orwa

