



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**THIKA LAW COURTS**

**ELC.235 OF 2017**

**IN THE MATTER OF JEREMIAH K. MUCHENDU**

**T/A ICON AUCTIONEERS.....APPLICANT**

**WILLIAM KIARIE KARIUKI.....PLAINTIFF**

**-VERSUS-**

**NJOROGE KIMANI.....DEFENDANT/RESPONDENT**

**RULING**

The *Auctioneer/Applicant* herein *Jeremiah Kiarie Muchendu* has brought this application under Order 21 and Section 3A of the Civil Procedure Act and Rules 9(A-C) of the Auctioneers Act 1997 and has sought for the following orders:-

**1) Spent.**

**2) That this Honourable Court be pleased to grant him or his authorized agent Police assistance into the Plot No.Kiambaa/Kiambaa T61 occupied by Njoroge Kimani in order to maintain law and order and enable him evict the said Defendant herein.**

**3) That the Officer Commanding Kiambu or Karuri Police Station Sub-County Administration Police Commander in Charge or an Officer under his command in the rank of Assistant Inspector do hereby accompany him for the purpose of maintaining law and order.**

**4) That the cost of this application be borne by the Defendant in any events.**

This application is premised on the following grounds:-

**a) The tenant has refused/resisted to vacate the said premises.**

**b) That the said Defendant is still in occupation of the said property, Plot No.Kiambaa/Kiambaa T61 and his attempt to vacate him have been unsuccessful.**

**c) That the continued resistance of eviction has denied the auctioneer right to evict the Defendant as ordered by this Honourable Court.**

It is also supported by the Supporting Affidavit *of Jeremiah K. Muchendu*, the Applicant herein who

averred that on **4<sup>th</sup> October 2016**, he was served with Eviction Order, from the Environment and Land Court Nairobi, Marked **JKM2**. Further that on **5<sup>th</sup> October 2016**, he proceeded to the suit premises being plot **No.Kiambaa/Kiambaa/T61**, and served the Defendant with the said Eviction Order dated **4<sup>th</sup> October 2016**. He also averred that on **8<sup>th</sup> October 2016**, he proceeded to the plot **Kiambaa/Kiambaa T61** to check whether the Defendant had vacated from the suit premises only to find that he was still occupying the said premises.

He further alleged that on **12<sup>th</sup> October 2016**, he proceeded to evict the Defendant, but the Defendant denied them access to the suit premises and became very hostile. He still went back on **13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> October 2016**, but the Defendant resisted the attempt to evict him. He contended that his effect to evict the Defendant herein has not been successful as the Defendant is abusive, violent and has threatened them. Further that he has denied them entry into the said premises and as such avoiding eviction and likely to cause breach of peace. He urged the Court to allow his application.

The said application is opposed by the Defendant who filed a **Replying Affidavit** dated **23<sup>rd</sup> June 2017**, and averred that his father, the late **Kimani Karechu** owned **plot No.758** and the same was exchanged with plot **No.Kiamba/Kiambu/T185**. That the Plaintiff surrendered his plot **No.Kiambaa/Kiambaa/T61**, to the County Council of Kiambu and was allocated **Kiambaa/Kiambaa/T185**, which had been allocated to the Respondent's father. Therefore his father and the Plaintiff ended up being allocated the same **plot T185**. Due to that confusion, his father ended up in occupation of **Kiambaa/Kiambaa/T61**, which was previously owned by the Plaintiff. The parties settled on their separate plots and later his late father allocated the suit land to him being **Kiambaa/Kiambaa/T61**. Further the Plaintiff changed his mind and went to the County Council of Kiambu to reclaim his old plot which by now was being occupied by the Defendant and his family.

The Respondent further admitted that he did not defend the suit and that his family has no objection of relocating but he urged the Court to give him one year to relocate. Further that if the Plaintiff had involved their father, the matter would have been resolved amicably. He further averred that the Plaintiff does not stand to suffer any prejudice if the Defendant is granted time to seek for funds for relocation. He urged the Court to allow his request for time so that he can prepare for relocation since the Plaintiff would not suffer any prejudice.

The Court directed that the instant Notice of Motion be canvassed by way of written submissions. The Applicant/Auctioneer did not file any submissions. However the Defendant did file the submissions which this Court has carefully read and considered. The Court has also considered the pleadings in general and perused the court record.

There is no doubt that the matter herein proceeded for formal proof on **16<sup>th</sup> December 2014**, wherein the Plaintiff gave evidence for himself and called no witness. A Judgement in favour of the Plaintiff was entered on **19<sup>th</sup> March 2015**. A Decree was issued on **22<sup>nd</sup> September 2015**, wherein it was ordered that:-

- 1) That an order be and is hereby issued to evict the Defendant from parcel of land known as Kiambaa/Kiambaa T.61 forthwith.**
- 2) That a permanent injunction be and is hereby granted restraining the Defendant or any other person claiming under him from entering, trespassing, building, occupying or in any other way dealing with plot No.Kiambaa/Kiambaa T.61.**
- 3) That the Defendant do pay to the Plaintiff the costs of the suit.**

Further an **Eviction Order** was issued on **4<sup>th</sup> October 2016**, under Order XXI Rule 30 of the Civil Procedure Rules to the Applicant herein **T/a Icon Auctioneer**, and was authorized to remove any person bound by the said Decree who may refuse to vacate the same.

The Applicant has alleged that he went to enforce the eviction order against the Defendant on various dates but the Defendant refused to vacate and/or resisted the eviction order. The Defendant has not denied being served with the eviction order. He only contended that he should be given a period of one year to relocate from the suit premises.

There is no doubt that there is a Decree in favour of the Plaintiff herein (Decree holder). The Defendant (Judgement Debtor) has not denied that he is occupying the suit premises. He is only seeking for time to be allowed to relocate.

The **Decree** herein was **22<sup>nd</sup> September 2015**. The Decree holder (Plaintiff) should be allowed to enjoy the fruits of his Judgement since the said Decree has not been appealed against, stayed or set aside. The Defendant has been aware of this application since the **year 2016**. He ought to have made efforts to satisfy the Decree herein. He seeks for a period of one year to relocate. That was in **June 2017**. From **June 2017** to date is a period of about 8 months. The Defendant has had ample time to relocate and satisfy the Decree herein.

For the above reasons, the Court will only grant the Respondent herein a period of **45 days** from the date hereof to relocate from the Plaintiff's parcel of land in satisfaction of the Decree issued on **22<sup>nd</sup> September 2015** in favour of the Plaintiff. Failure to do so, the Applicant is authorized to use the police assistance in accessing the plot **No.Kiambaa/Kiambaa/T.61** occupied by the Defendant herein to as to maintain law and order and enable the Applicant and his authorized agent to **evict** the Defendant herein.

Further, the Court allows prayer no.3 of the instant **Notice of Motion**. Costs of the application to be borne by the Defendant herein.

In a nutshell, prayers no.2 and 3 of the instant **Notice of Motion** dated **19<sup>th</sup> October 2016**, are allowed but the same to take effect after **45 days**, from the date hereof in the event the Defendant would not have relocated or moved out of the suit premises in satisfaction of the Decree issued herein on **22<sup>nd</sup> September 2015** in favour of the Plaintiff.

It is so ordered.

**Dated, Signed and Delivered at Thika this 9<sup>th</sup> day of February 2018.**

**L. GACHERU**

**JUDGE**

In the presence of

No appearance for Auctioneer/Applicant

No appearance for Plaintiff

Mr. Macharia holding brief for Mr. Nyamu for Defendant/Respondent

Lucy - Court clerk.

**Court** – Ruling read in open court in the presence of the above advocate.

**L. GACHERU**

**JUDGE**

**9/2/2018**