



REPUBLIC OF KENYA



Margaret Nandako Wanjala t/a Mako Auctioneers & another v Sirengo (Environment & Land Case 171 of 2013) [2024] KEELC 13899 (KLR) (11 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13899 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 171 OF 2013
EC CHERONO, J
DECEMBER 11, 2024**

BETWEEN

**MARGARET NANDAKO WANJALA T/A MAKO
AUCTIONEERS AUCTIONEER**

AND

NELSON KAKAI SIKANGA DECREE HOLDER

AND

SIRENGO MOHAMMED SIRENGO RESPONDENT

RULING

1. This ruling determines the application dated 30/07/2024 which seeks the following orders;
 - a. SPENT
 - b. That the OCS Webuye Police Station be ordered to provide adequate security to M/S Mako & Auctioneers while executing the decree herein against the defendant.
 - c. That costs be in the cause.
2. The application is premised on the grounds on the face of the said application supported by the affidavit of Margaret Nandako Wanjala sworn on 30/07/2024 and a further affidavit sworn on 02/10/2024.
3. The Applicant averred that the Respondent has failed to obey a decree obtained on 19/02/2021 which was to take effect after three months. That it is now necessary for the auctioneers to execute the decree and they require the security to m/s Mako Auctioneers as they execute the decree. That the application has been made in good faith and in the interest of justice.
4. The Respondent filed grounds of opposition dated 04/09/2024 where it stated that this application is res judicata by dint of a similar application dated 07/11/2022 which was dismissed. That the Applicant



intends to use the Auctioneers to obtain illegal orders that were never issued in the judgment. That the terms of the decree were clear and in the absence of any survey report, the auctioneer is out to unjustly evict the Respondent.

5. The Applicant filed submissions dated 07/08/2024 while the Respondent filed submissions dated 04/09/2024.
6. I have considered the Notice of motion application dated 30/7/2024, the supporting and further affidavit of the Applicant, the replying affidavit and the rival submissions. The Applicant herein is seeking for security orders to execute a decree of this court issued on 19/02/2021.
7. It is the Applicant asserts that the defendant/judgment debtor has failed to obey the court's decree that directed that he and his family and relatives to remove any structures or property that has encroached onto the access road leading to land parcel no. Ndivisi/Mihuu/3011 within three (3) months from the date of the impugned judgment and after failing to comply with the court order, it has become necessary to have them evicted from the said access road in line with order no.3 of the said judgment.
8. However, I note that the application has been made by an auctioneer who is not a party to these proceedings. Further, the said Auctioneer has not demonstrated her involvement in this case by way of instructions/appointment by the decree holder and further, there is no proof that the said Auctioneer has obtained warrants of eviction. Basically, there is no nexus between the Auctioneer and this suit as it stands, she is a stranger to the proceedings. It is up to the decree holder to instruct/appoint the auctioneer, have the warrants of eviction issued and approach the court for the security orders.
9. For the above reasons, I find the application devoid of merit and a non-starter and the same is hereby dismissed with costs to the Respondent

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 11TH DAY OF DECEMBER, 2024.

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HON.E.C CHERONO

ELC JUDGE

In the presence of

Mrs Change H/B Bichange for the Defendant/Respondent

Plaintiff/Applicant-present.

Bett C/A

