



**Kenya Society for the Protection & Care of Animals v Ndeiya Multi Agency Security Team (Civil Case E012 of 2023) [2024] KEHC 3049 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3049 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL CASE E012 OF 2023  
GL NZIOKA, J  
MARCH 15, 2024**

**BETWEEN**

**KENYA SOCIETY FOR THE PROTECTION & CARE OF ANIMALS ..... PLAINTIFF**

**AND**

**THE NDEIYA MULTI AGENCY SECURITY TEAM ..... DEFENDANT**

**RULING**

1. The notice of motion application dated 8<sup>th</sup> November 2023 refers. The same is unfortunately not anchored on any provisions of the law. Therefore, it can be deemed to be untenable.
2. However, in the interest of justice and pursuant to the provisions of Article 159 of the Constitution of Kenya to pursue substantive justice. I shall deal with it.
3. The application is supported by the grounds thereto and the affidavit sworn by Emma Naylor Ngugi, the applicant's Executive Officer.
4. The applicant is seeking for the following orders :-
  - a. Spent.
  - b. That pending the hearing and determination of the application herein the Honourable Court be pleased to issue an order allowing the applicant to temporarily rehome donkeys placed under their care by the respondent on various dates commencing on 18<sup>th</sup> March 2023 until the determination of this application
  - c. That pending the hearing and determination of the suit herein, the Honourable court be pleased to issue an order allowing the applicant to temporarily rehome donkeys placed under their care by the respondent on various dates commencing on 18<sup>th</sup> March 2023 until the final determination of this suit.



- d. That the Respondents be condemned to pay the costs of this Application
5. The deponent avers that the respondent is a multi-agency security team comprising of various agencies and/or units within the National Government and National Police Service. That on the 18<sup>th</sup> of March 2023, the respondent placed four hundred and Fifty Three (453) donkeys that were in its custody into the applicant's care at their shelter in Naivasha as the respondent did not have the capacity to care for the animals and were at risk of having their welfare damaged and/or death.
  6. Further the decision was reached after consultations between the applicant and the respondent concluding that the applicant was best suited to care for the animals in the respondent's custody considering its extensive experience in animal welfare and availability of shelters for rescued animals subjected to animal welfare violations.
  7. That it was further agreed that the defendant would seek to identify the true owners of the animals within a period not exceeding a month following the investigations as they were suspected to have been stolen from locations in various parts of the country.
  8. That the timeline was agreed considering the high cost that the plaintiff would incur in providing, shelter, food and treatment of the donkeys since they were in very poor conditions. However, despite the respondent undertaking to identify the true and verified owners of the animal on or before the 18<sup>th</sup> of April 2023, the owners have not been identified nor has the necessary support to care for the animals been provided to the plaintiff.
  9. The plaintiff avers that the rescued donkeys are currently placed in its shelter in Naivasha where the plaintiff continues to cater for costs such as shelter, food and medical care which are essential for the wellbeing of the animals. But unfortunately some of the donkeys found in poor conditions during the rescue have died despite the applicant's veterinary doctors' efforts to provide the necessary medical care required.
  10. It is further deposed that, the plaintiff relies on voluntary donations and fundraising to carry out its work and to date, it has incurred costs amounting to Kshs 3,048,000 and continues to incur more each day in the provision of shelter, food and medical care for the rescued donkeys placed under their care by the respondent.
  11. That the respondent has indicated to the applicant that it wishes to place more donkeys with it and the applicant is therefore apprehensive that they would not receive the proper care they need due to its limited resources which may lead to the death of some or all of them.
  12. That to ensure that the donkeys placed under the care of the plaintiff by the respondent obtain the proper care that they need, the plaintiff urgently needs to rehome them with persons with the capacity to provide the necessary care needed under the supervision of the applicant.
  13. Unless this application is expeditiously heard and such order granted enable the applicant rehome the donkeys placed under their care by the respondent commencing 14<sup>th</sup> May 2023, the rescued donkeys risk dying due to the applicant limited capacity to provide the necessary care they urgently need.
  14. The application was served upon the respondent, but at the time of writing the decision herein, no response to the application had been filed. Therefore the application is technically and generally unopposed.
  15. Be that as it were, the applicant filed a supplementary affidavit, sworn by Emmah Ngugi its Chief Executive officer who deposed that, the applicant has been engaged in discussion with Brooke East



Africa who are an International Charity that protects and improves the lives of horses and donkeys and mules and they have confirmed their acceptance to receive the donkeys under the applicant's care.

16. Pursuant to the aforesaid the reasons and/or arguments for grant of orders sought the photos showing the subject donkeys and receipts in support of expenditure incurred by the applicant, I find that, it is in the interest of justice that the application herein be allowed as prayed.
17. Consequently, the application is allowed as prayed in terms of prayer (3). The costs of the application shall abide the outcome of the main suit.
18. It is so ordered.

**DATED, DELIVERED AND SIGNED THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2024**

**GRACE L. NZIOKA**

**JUDGE**

