



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO. 130 OF 2010**

SAMUEL MAINA KARIUKI.....PLAINTIFF

**VERSUS**

ANGELA KABISA KABITA.....1<sup>ST</sup> DEFENDANT

JOYCE WAMBUKU NG'ANG'A.....2<sup>ND</sup> DEFENDANT

BONNIFACE KIRATU NJOGO.....3<sup>RD</sup> DEFENDANT

MARY AGNES GATHONI GAKUO.....4<sup>TH</sup> DEFENDANT

VITALIS L. OLOO.....5<sup>TH</sup> DEFENDANT

**RULING**

1. This is a ruling on the plaintiff's Notice of Motion dated **15<sup>th</sup> August 2019** seeking the following orders: -

**a. An order for the eviction of the judgment debtor from the land known as, Nakuru/Municipality Block 22/1719 to issue to be executed by Ms. Legacy Auctioneering Services.**

**b. The Office Commanding Station (OCS) Elementaita Police Station do provide security to Legacy Auctioneering services while undertaking the said auction.**

**c. The eviction complies with sections 152E and 152G of the land Act.**

2. Grounds on the face of this application are that, by a decree dated 18<sup>th</sup> October 2017, this court made a declaration that the plaintiff is the lawfully registered owner of land known as Nakuru/Municipality Block 22/1719, and further ordered that the defendant be evicted forthwith and the decree has been served upon the judgment debtor but the judgment debtors have refused to vacate the suit land requiring an eviction order which will entail the demolishing of buildings and is likely to cause a breach of peace; that it is prudent that the OCS Elementaita Police Station do provide security at the time of eviction.

3. The applicant averred in the supporting affidavit that the order issued on 18<sup>th</sup> October 2017 include an order of eviction of the respondents from the suit land and the respondent has been served but has declined to vacate.

4. In response, the defendants filed replying affidavit dated 26<sup>th</sup> July 2021 sworn by Vitalis L. Oloo. He averred that a petition is pending before this Court after the discovery of new evidence of forgery which led to the prosecution of the plaintiff vide Nakuru Criminal Case No. E1923 of 2021 and it is just and fair that this Court awaits the outcome of the criminal or report from the government analyst confirming the allegations of fraud.

5. The respondents further averred that they stand to suffer prejudice if the eviction orders are granted.

#### **ANALYSIS AND DETERMINATION**

6. I have considered averments herein and what I consider to be in issue is whether the applicant is entitled to orders sought. The applicant seeks eviction orders on the strength of the decree of this honorable court issued on 18<sup>th</sup> October 2019 in Nakuru CACA No. 33 of 2015 where the Court allowed appeal on the following terms: -

a. The judgment and decree of Nakuru HCC No. 130 of 2010 is set aside and reversed and this honorable court finds for the plaintiff as prayed for in the plaint, judgment is entered for the plaintiff against the defendants jointly and severally for-

i. Eviction.

ii. A permanent injunction to restrain the defendant by themselves, their servants and/or agents from entering and/or interfering with the Plaintiff's quiet enjoyment, or in any way dealing with all that property known as Nakuru Municipality Block 22/1719

iii. Mense profits from 1999 to date.

b. Plaintiff was awarded costs.

7. The fact that a party is entitled to enjoy fruits of successful litigation as was stated in the case of **Joseph Nyakundi Orina v Joseph Ambuka [2019] eKLR** where Justice Sila Munyao ordered the OCS Bondeni Police Station to provide the court bailiff/auctioneer with a police escort to effect the eviction. He stated that the applicant was entitled to the fruits of the judgment which he would not be able to enjoy if the respondent continued to be in occupation of the suit property.

8. I however note that the respondent has filed a complaint against the applicant alleging that the applicant committed forgery by submitting a forged police abstract and charges have been preferred against the applicant. Attached to the complaint is a copy of a charge sheet in Nakuru Criminal Case No. E1923 of 2021 a matter pending in Court. In light of gravity of the orders of eviction orders which will involve demolishing structures, I am inclined to delay the eviction orders sought herein to allow time for the investigation and conclusion on allegations raised.

9. In the mean time I order status quo be maintained awaiting the outcome of investigations and proceedings related to this matter as indicated in the complaint filed.

#### **10. FINAL ORDERS**

**1) Status quo to be maintained awaiting finalization of criminal proceedings related to this matter.**

**2) Costs in the cause.**

**RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 14TH DAY OF OCTOBER 2021**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Jeniffer - Court Assistant

Mr. Mbiyu for Plaintiff

Chepngetich for Defendants



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