



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL APPEAL NO. 22 OF 2017

ROMANO NJAGI NJAMBARO.....APPELLANT

VERSUS

EUSEPHIO NJERU ADRIANO.....RESPONDENT

AND

MUGAMBI RUTERE T/A GIANT AUCTIONEERS.....APPLICANT/EXECUTOR

RULING

The applicant/executor filed the notice of motion dated 24th January 2020 under Order 51 of the Civil Procedure Rules and Section 17 of the Auctioneers Rule 1997 seeking for the following orders:-

- 1. That the Executive Officer of this Honourable Court be authorized to sign all the necessary documents to facilitate the transfer of land parcel no. EVURORE/ KATHERA/604.***
- 2. That the Embu Land Registrar be ordered to dispense with the production of the original title deed of land parcel no. EVURORE/KATHERA/604.***
- 3. That the land parcel no. EVURORE/KATHERA/604 be registered in the name of NALAS MBURA MBUGI and the absolute ownership of the said land be vested in the name of NALAS MBURA MBUGI.***
- 4. That prohibitory order, restrictions and cautions be removed.***

The application is supported by the affidavit of Mugambi Rutere, the Applicant /Executor sworn on 24th January 2020. He averred that the sale of the land parcel No. EVURORE/ KATHERA/604 by public auction was confirmed by this court and a certificate of sale to that effect issued on 17th January 2020. That the judgment debtor/appellant cannot surrender the title deed of the said parcel of land and that the purchaser Nalas Mbura Mbugi is desirous of being registered as the owner of the said land.

The application and hearing notice were served to the Appellant and an affidavit of service sworn on 24th February 2020 by Advocate Lugard Mogusu, filed on 25th February 2020.

It was directed that the application be canvassed by way of written submissions. The applicant/executor filed its submissions dated 29th July 2020. It submitted that the application be allowed as the appellant has not filed any documents to challenge neither the application nor the sale by auction. The sale by public auction was conducted on 29th November 2019.

Evidently, the appellant did not file any replying affidavit to oppose the application.

Section 48 of the Civil Procedure Act provides that:-

Where immovable property is sold in execution of a decree and the sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Order 22 rule 77(1) of the Civil Procedure Rules provides that:

Where no application is made under rule 74, rule 75 or rule 76, or where such application is made and disallowed, the court shall make an order confirming the sale, and thereupon the sale shall become absolute in so far as the interest of the judgment debtor in the property sold is concerned.

The gist of the matter is that the appellant's land parcel no. EVURORE/ KATHERA/604 was sold via a public auction due to litigation in Embu CMCC No. 33/2015 and the subject appeal which was dismissed on 19th June 2018. The sale was subsequently confirmed by the deputy registrar and a certificate of sale confirming the said Nalas Mbura Mbugi as the purchaser, was issued on 17th January 2020. I note that there is no mention of an application before this court to set aside the certificate of sale or seeking the nullification of the sale.

It is my finding that this application is merited and it is hereby allowed in terms of prayers 1, 2, 3 and 4.

It is hereby so ordered.

DATED AND SIGNED AT EMBU THIS 17TH DAY OF NOVEMBER, 2020.

F. MUCHEMI

JUDGE