



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 547 OF 2004**

**NJOROGE REGERU ::::::::::::::::::::::::::::::::::: PLAINTIFF/APPLICANT**

**-VERSUS-**

**WANDA BAIRD AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE**

**GEORGE NEIL BAIRD ::::::::::::::::::::::::::::::::::: 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**WANDA BAIRD ::::::::::::::::::::::::::::::::::: 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**-AND-**

**NJAMA WAMBUGU ::::::::::::::::::::::::::::::::::: 1ST INTERESTED PARTY**

**GULABCHAND SAMJI SHAH ::::::::::::::::::::::::::::::: 2ND INTERESTED PARTY**

**KANAAYALAL MOHANLAL**

**PANDYA ::::::::::::::::::::::::::::::::::: 3RD INTERESTED PARTY**

**RULING**

1. This Ruling is pursuant to a **Notice of Motion** dated **14th September 2015** filed by the Plaintiff/Decree Holder seeking the following orders:-
  1. *This Honourable Court be pleased to set a date for the sale by Public Auction of the property comprised in Certificate of Title Number C. R 17187 Mombasa Plot Number 179/20 Section IV Mainland North Mtwapa.*
  2. *This Honourable Court be pleased to direct that the auctioneer's expenses and costs of advertising the sale by public auction of property comprised in Certificate of Title Number C.R 17187 Mombasa Plot Number 179/20 Section IV Mainland North Mtwapa be provided for and recovered from the proceeds of the Public Auction of the property comprised in Certificate of Title Number C. R 17187 Mombasa Plot Number 179/20 Section IV Mainland North Mtwapa.*
  3. *This Honourable Court be pleased to make such other and or further orders as may be necessary especially in respect to extension of time within which the Plaintiff and the 2<sup>nd</sup> & 3<sup>rd</sup> Interested Parties are to sale the Property for a further 30 days from 28<sup>th</sup> September, 2015.*
  4. *The costs of this Application be provided for.*

2. The application is supported by affidavit of **Elizabeth Ngonde** sworn on **14th September 2014**. The Deponent deposes that she is an Advocate of the High Court of Kenya practicing as such with the firm of Njoroge Regeru & Company, Advocates and has the conduct of this matter on behalf of the Applicant herein, and that she has full knowledge and information concerning this matter. M/s Ng'onde states that the property comprised in Certificate of Title Number C. R 17187 Mombasa Plot Number 179/20 Section IV Mainland North Mtwapa ("**the property**") was attached by an order of this Honorable Court of 17<sup>th</sup> December 2007, but the Judgment Debtor failed to settle the sums due and properly owed to the Decree-Holder. The Decree Holder now prays for the settlement of terms of sale of the suit property pursuant to the Order of this court made on 12<sup>th</sup> June, 2015 so that he can realize the fruits of his judgment. The deponent reiterated the contents of the Statement of Particulars of 14<sup>th</sup> September, 2015, filed together with the application, and prays that the Settlement of Terms of Sale as proposed in the Statement of the Terms of Sale filed herewith be adopted by this court. The Deponent further prays that:
  - a. ***This Honourable Court be pleased to set a date for the intended Public Auction of the property comprised in Certificate of Title Number C. R 17187 Mombasa Plot Number 179/20 Section IV Mainland North Mtwapa.***
  - b. ***This Honourable Court be pleased to direct that the auctioneer's expenses and costs of advertising the property for sale be provided for and recovered from the proceeds of the Public Auction of the property comprised in Certificate of Title Number C. R 17187 Mombasa Plot Number 179/20 Section IV Mainland North Mtwapa.***
  - c. ***This Honourable Court makes any such Order as it deems mete and just.***
3. The Applicant has also filed Statement of Particulars and Proposed Terms of Sale filed in court on 16th September 2015.
4. On the Proposed Settlement of Terms the only issue which divides the Plaintiff and the Defendant is the forced sale value. According to the Plaintiff, and guided by Valuation Report by M/s Coral Property Consultants Limited, the open market value of the property is Kshs.35,000,000/= and the forced sale value is Kshs.25,000,000/=.
5. However, according to the Defendant, and guided by the Valuation Report by M/s Ultimate Valuers, the market value of the property is Kshs.40,000,000/= and the forced value Kshs.30,000,000/=. So while the Plaintiff seeks a settlement on the issue at Kshs.25,000,000/-. The Defendant wants a settlement at 30,000,00/=. The interested parties have not filed any response to the application, but they pray that their interests be taken care of.
6. I have considered the application and the opposing affidavits. I have also considered the Statement of Particulars and the Proposed Terms of Sale.
7. In brief, the following is the history of the matter. The Decree-Holder herein is Njoroge Regeru. The Judgment Debtor is the Wanda Baird and the Registered owner of the property comprised in Title Number CR 17187 Mombasa Plot Number 179/20 Section IV Mainland North Mtwapa (hereinafter the Property). The Judgment Debtor's interest in the Property is a freehold interest. This Court did issue an order for the Attachment and Sale of the Property on 17<sup>th</sup> December 2007 and on 12<sup>th</sup> June, 2015. A Prohibitory Order was registered upon the title to the Property on 22<sup>nd</sup> January 2008. The property is subject to the following encumbrances:- A Charge dated 31<sup>st</sup> August 1995 to Dalip Singh Obhrai for Kshs. 250,000/= and a Charge dated 31<sup>st</sup> September 1998 to Gulabhand Samji Shah for Kshs. 1,000,000/=. According to a Report and valuation by M/s Coral Property Consultants Limited, the Open Market Value of the property is Kshs. 35,000,000/= and the forced sale value of the same is Kshs. 25,000,000/=. The amount for the recovery of which the sale is ordered is Kshs. 2,467,294.95 due and owing to the Decree Holder as at 4<sup>th</sup> June 2007 which amount continues to accrue interest at Court rates until payment in full.
8. I have considered the application. I have also considered the two Valuation Reports. What is to be noted is that the sale shall take care of the interest of all the parties. The forced sale price should not be so high as to lock out potential bidders. In that regard, I will accept the Valuation Report by M/s Coral Property Consultants to be the Report to be used in the auction fixing the forced sale value at Kshs.25,000,000/=. In the upshot, I allow the application and make orders as follows:-

- a. *The intended public auction of the property comprised in Certificate of Title Number C.R. 17187 Mombasa Plot number 179/20 Section IV Mainland North Mtwapa shall taken place on Wednesday 9th December 2015.*
- b. *The auctioneer's expenses and costs of advertising the property for sale shall be recovered from the proceeds of the Public Auction of the property comprised in Certificate of Title Number C. R 17187 Mombasa Plot Number 179/20 Section IV Mainland North Mtwapa.*
- c. *The Sale of the Property shall be by Public Auction.*
- d. *The Sale will be of the Judgement –Debtor's property comprised in Title Number CR 17187 Mombasa Plot Number 179/20 Section IV Mainland North Mtwapa.*
- e. *That the sale will be conducted by Jagani Auctioneers at their business premises in Mombasa commencing at 11.00 a.m. on the date appointed for the sale.*
- f. *The advertisement of sale of the Property shall be published at least twice in a daily newspaper of nationwide circulation.*
- g. *The highest bidder shall be declared and certified as the Purchaser at the fall of the hammer.*
- h. *The sale of the Property shall be subject to a reserve price of Kshs. 25,000,000.00.*
- i. *A deposit of 25% of the purchase price shall be deposited in Court immediately after the auction.*
- j. *The balance thereof shall be deposited in Court within 30 days from the date of the auction.*
- k. *At the sale the public generally are invited to bid either personally or by duly authorized agent.*
- l. *A bid by or on behalf of the Judgement –Debtor will be accepted, and any sale to her will be valid if done procedurally.*
- m. *All expenses incurred in executing the Decree herein shall be recovered from the Purchase price.*
- n. *All the expenses incurred towards the sale by public auction shall be recovered from the purchase price.*

Costs of this application shall be in the cause.

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI**

**THIS 17TH DAY OF NOVEMBER 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

**Mr. Gikonyo holding brief for M/s Ng'onde for the Plaintiff/Applicant**

**No appearance for the Defendants/Respondents**

**Mr. Ogada for the Interested Parties**

**Teresia – Court Clerk**