



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 92 OF 1998**

NJERU MBUNDI ..... PLAINTIFF/DECEASED

VERSUS

ERASTO NGUNGI AYUB..... DEFENDANT/APPLICANT

AND

JOHN KINYUA NJERU ..... 3<sup>RD</sup> PARTY/RESPONDENT

**R U L I N G**

Today's appearance was a mention for the Judgment Debtor to give a progressive report to the Court on the settlement of the decretal sum. A lot has been stated here by both Counsels on the position of the matter. It is true that the Judgment Creditor has been waiting for the settlement of the decretal sum for four years or so. It also is true that the Judgment Debtor was released from Prison by the Orders of this Court, on the following grounds;

- i. ***This is a monetary decree and the continued incarceration of the Judgment Debtor in Prison would not in itself produce the money. The Judgment Debtor has shown willingness to work on clearing his title to the subject land to enable him dispose of it and pay the decretal sum. To this end he has cleared the title and even got a purchaser of the property. I do appreciate that it has taken longer than anticipated.***
- ii. ***The Judgment Debtor is a very old man and his stay in Prison was taking a toll on his health.***

It would therefore be wrong for any party to claim that this Court is giving the Judgment Debtor undue favour. The Judgment debtor has already reported loss of the original title deed. The Land Registrar Embu has vide his letter dated 8<sup>th</sup> August 2013 sent the Notice of loss for gazette. It's not indicated whether the same has been gazetted. Once the gazette has been done it is the duty of the Judgment Debtor to convince the purchaser to immediately release the funds to him to enable him settle the decretal sum. It would be unfair to again tie the Judgment Creditor to the terms set by the Judgment Debtor and the purchaser. I will therefore;

- i. ***Allow the Judgment Creditor to receive the Bankers cheque written in favour of his advocate kshs.200,000/=.***
- ii. ***The Judgment creditor to hasten the remaining process and clear the balance of the decretal sum within 45 days from today. If this is not complied with the Judgment Creditor is at liberty to execute the decree.***

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 4<sup>TH</sup> DAY OF SEPTEMBER 2013.**

**H.I. ONG'UDI**

**J U D G E**

**In the presence of;**

**Mr. Mugambi for Judgment Creditor**

**Mr. E. Njiru for Mr. Njeru for Judgment Debtor**

**Kirong/Mutero – C/c**