



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NYERI

Civil Case 350 of 1999

SILVIA WANGUI WANDETO.....PLAINTIFF

-versus-

FRANCIS WANDETO KAHOI.....DEFENDANT

R U L I N G

The subject matter of this ruling is the Motion dated 22nd October 2008, taken out by **Silvia Wangui Wandeto**, the Applicant herein. In the aforesaid Motion, the Applicant applied for the following orders: -

- 1. That the Deputy Registrar High Court at Nyeri do execute all the necessary documents to facilitate smooth transfer of land parcel known as Naromoru Block 1/Ragati/193 Guara Area Nyeri District.***
- 2. That the Registrar of Lands at Nyeri do transfer the land parcel known as Naromoru Block 1/Ragati/193 Guara Area to the purchaser(s).***
- 3. That costs be in the cause.***

The Motion is supported by the affidavit of the Applicant. Francis Wandeto Kahoi, the Respondent herein, filed a Replying Affidavit to oppose the Application.

It is the submission of the Applicant that she obtained judgment in her favour in which she was permitted to sell by public auction the Respondent's Properties. On 14th October 2008, Sheflo Auctioneers sold **L.R. No. Narumoru Block 1/Ragati/193** to Pen Agencies for Ksh.2,000,000/=. The Applicant argued that she cannot now execute a transfer of the property to the buyer because a Prohibitory Order had been registered against the title. There is therefore need to lift the order and to authorize the Deputy Registrar to register the property in the name of the Purchaser. The Respondent urged this court to dismiss the Motion. He claimed that his advocate was never served with the decree for approval. He also stated that he was served with the notification of sale. He also complained that the auctioneer i.e. Sheflo Auctioneers was only authorized to operate in Nairobi and Kajiado. It is further the submission of the Respondent that the sale should be declared to be null and void. The Respondent further indicated that he was in the process of filing an application to set aside the sale.

I have considered the rival submissions plus the facts deponed in the affidavits filed for and against the motion. When the Motion came up for interpartes hearing, Mr. Muthui, learned advocate for the Respondent, informed this Court that the Respondent had passed on. There was no indication from Mr. Muthui whether he had instructions to apply for the Defendant's substitution. There is no doubt that the Applicant obtained judgment authorizing her to sell by public auction, the Defendant's Properties. It is also not in dispute that the Respondent's Parcel of Land known as **L.R. No.Narumoru Block 1/Ragati/193** was sold to Pen Agencies on 14th October 2008. It is admitted in the replying affidavit of the Defendant that the sale has not been challenged nor set aside. In opposing the Motion, the Respondent merely stated that the auctioneer was not authorized to execute warrants in the area the land is situated. He also complained that he was not served with the Notification of Sale. In my humble view, the grounds relied by the Respondent are those envisaged in challenging a sale. The application before this Court is not for setting aside the sale but it is one which seeks to actualize the sale. I am convinced the motion has merit. It is allowed as prayed.

Dated and delivered this 8th day of June 2012.

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J. K. SERGON

JUDGE