



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT NAKURU**

**Civil Case 409 of 1999**

**ROSEMARY WAMUYU WACHIRA.....PLAINTIFF/  
APPLICANT**

**VERSUS**

**FRANCIS NDEGWA.....1<sup>ST</sup>  
DEFENDANT/RESPONDENT**

**GEORGE ODHIAMBO.....2<sup>ND</sup>  
DEFENDANT/RESPONDENT**

**GRACE WANJIKU KIMANI.....3<sup>RD</sup>  
DEFENDANT/RESPONDENT**

**PETER IRUNGU.....4<sup>TH</sup>  
DEFENDANT/RESPONDENT**

**RULING**

On 11<sup>th</sup> February, 2011, I delivered a ruling in which I ordered the Registrar of this court to execute all the relevant transfer documents to facilitate and give effect to the sale by public auction of the applicant’s parcel of land No.SUBUKIA/SUBUKIA/BLOCK 13/50 to the respondents.

The applicant in the instant application prays that those orders be set aside so that the motion dated 21<sup>st</sup> July, 2010 be heard *inter partes*. The applicant contends that the said motion dated 21<sup>st</sup> July, 2010 was not served upon her and the affidavit of service is false; that the transfer form is not dated; that the alleged public auction appears to have been conducted on 20<sup>th</sup> October, 2009, a public holiday; that the sale of the suit property was stayed on 20<sup>th</sup> January, 2009; and that the applicant has filed Civil Appeal No.73 of 2006 in the Court of Appeal.

The respondents’ counsel filed a notice of preliminary objection in which it is submitted that the stay orders lapsed and that the present counsel representing the applicant is irregularly on record having come on record after judgment without leave.

The applicant wishes that she be given an opportunity to defend the application dated 21<sup>st</sup> July, 2010 in which this court ordered the Deputy Registrar to execute transfer documents in respect of SUBUKIA/SIBUKIA BLOCK 13/50 KIANWE.

The court has unlimited discretion to set aside its orders, the only consideration being to do justice to the parties. The orders of 11<sup>th</sup> February, 2011 were made *ex parte* on the basis of an affidavit of service and a public auction which is being questioned.

The respondents have not responded to those issues but instead have raised a technical issue regarding representation. On the basis of the two issues raised in this application and bearing in mind that the dispute involves land, I will allow the application and order that the orders made on 11<sup>th</sup> February, 2011 be and are hereby set aside with costs to the respondents.

Application dated 21<sup>st</sup> July, 2010 be set down for hearing on a priority basis before the end of next court term. The applicant to file/serve replying affidavit within 14 days from the date hereof.

**Dated, Signed and Delivered at Nakuru this 31<sup>st</sup> July, 2012.**

**W. OUKO  
JUDGE**