



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO.409 OF 1999**

**ROSEMARY WAMUYU WACHIRA.....PLAINTIFF**

**VERSUS**

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

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

**GRACE WANJIRU KIMANI..... 3<sup>RD</sup> DEFENDANT**

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

**AND**

**MICHEL K. KARANJA.....INTERESTED PARTY/APPLICANT**

**RULING**

It is not necessary to go to the protracted history of this dispute. Suffice only to indicate that a bill of costs against the plaintiff in this suit, Rosemary Wamuyu Wachira was taxed at Kshs.191,440/=.

In execution of that, the plaintiff's property, SUBUKIA/SUBUKIA BLOCK 13/50 was sold by a public auction on 20<sup>th</sup> January, 2009 to the applicant, Michael Kinyanjui Karanja. The plaintiff obtained, rather late in the day an order to stay the sale. The sale had taken place by the time the order of stay was issued prompting the court on 3<sup>rd</sup> February 2009 to vacate the order as it served no purpose. The plaintiff has taken no action to challenge the sale. Instead, it is alleged that she continues to occupy the property and is now planning to sell it.

The applicant has brought this application for orders directed at the Deputy Registrar to sign the transfer form in respect of the suit property in favour of the applicant, or in the alternative an order to issue compelling the Land Registrar, Nakuru to re-issue a title deed in respect of the suit property to the applicant. The latter relief is clearly not available in an application brought in this manner, the Land Registrar being a Government officer and not being a party to this suit.

Regarding the main prayer, this court shall, in the exercise of powers vested by **Order 22 rule 80** of the **Civil Procedure Rules** (formerly **Order 21 rule 85**), on application of the purchaser, order delivery to be made by putting the purchaser in possession of the property and if need be by removing the judgment-debtor or any person who refuses to vacate the same. Here I have not been asked to do this.

Although in terms of **Order 22 rule 79** of the **Civil Procedure Rules**, the applicant ought to have obtained from the court a certificate confirming the sale, that omission is not fatal as no difference would be made even if it was obtained. The plaintiff remains a trespasser and in order to forestall any intention of disposing of the suit property, this application is granted and the Deputy Registrar is directed to execute all the relevant transfer documents to facilitate and give effect to the sale by public auction.

Costs to the applicant.

**Dated, Signed and Delivered at Nakaru this 11<sup>th</sup> day of February, 2011.**

**W. OUKO  
JUDGE**