



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL MISC. APPL. (J.R.) NO. 208 OF 2008

MAKIRA NATHAN.....APPLICANT

VERSUS

JAMES MWANGI NATHAN & ANOTHER.....RESPONDENTS

RULING

This ruling is the outcome of the Motion dated 1st November 2010 in which Makira Nathan, the applicant herein, has sought for the following orders:

- (1) *That the prohibitory order issued by this honourable court in land parcel No. Loc. 10/Wanjengi/534 be lifted.***
- (2) *That the deputy registrar of this honourable court be ordered to execute all requisite documents on behalf of James Mwangi to enable land parcel no. Loc. 10/Wanjengi/534 to be transferred to Lockwood Capital Ltd.***
- (3) *That the Land registrar be ordered to allow the dispensation of production of original title deed of Loc. 10/Wanjengi/534 when registering the transfer documents of land parcel no. Loc 10/Wanjengi/534 to Lockwood Capital Ltd.***
- (4) *Costs of this application be awarded to the applicant.***

The applicant has sworn an affidavit in support of the Motion. The Motion was served upon the firm of Waiguru & Co. Advocates on behalf of James Mwangi Nathan and others, the Respondents herein. There was no reply on the Respondent's part hence the Motion proceeded for hearing exparte.

It is the submission of the Applicant herein that L.R. No. **LOC.10/WANJENGI/534** was sold by auction pursuant to the court order of 1st October 2010 to Lockwood Capital Ltd. whereupon a certificate of sale was issued. It is alleged that James Mwangi has refused to execute the necessary documents to enable Lockwood Capital Ltd. obtain title yet the sale has not been challenged. The Motion is premised on *Section 3A* of the Civil Procedure Act. To begin with, I think it is necessary to issue an order lifting the prohibitory order issued on 28th April 2010. This will open the way to actualize the sale by effecting the transfer of the suit land to the purchaser. The aforesaid transfer cannot be effected unless the court appoints its Deputy registrar to sign the requisite documents in place of the Respondent who is unwilling to sign those documents. Where a party refuses to surrender documents like titles for cancellation, the court's hands are not tied. The court may exercise its inherent power by issuing orders dispensing with the production of the original title when a Respondent refuses to surrender title in his possession.

In the end I find the Motion to be with merit. It is allowed as prayed.

Dated and delivered at Nyeri this 23rd day of September 2011.

J. K. SERGON
JUDGE

In open court in the absence of the parties with Notice.