REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 140 OF 1999

SALIM SULEIMAN ……………….……………………. APPLICANT

VERSUS

NOCENT MAISIBA TOYO, THE DEPUTY REGISTRAR HIGH COURT OF KENYA AT ELDORET …………….………….. 1ST RESPONDENT
STANLEY NGETHE KINYANJUI …………… 2ND RESPONDENT
PAUL GICHERU OF GICHERU AND COMPANY ADVOCATES …………………….. 3RD RESPONDENT
MAWJI PATEL ……………….………………….4TH RESPONDENT
COMMISSIONER OF LANDS ………...…. 5TH RESPONDENT
TONY KETER ………………………………….. 6TH RESPONDENT

RULING - (On application dated 17th June 2011)

This application dated 17th June2011 is one of the numerous applications that have cropped up since this suit was commenced way back in 1999 between **MAWJI PATEL** (herein the plaintiff/4th respondent) and **TONY KETER** (herein the defendant/6th respondent). The suit was fully heard and final judgment rendered on 4th December 2002 by **OMONDI TUNYA J.** (as he then was). Thereafter, execution commenced despite several applications intended to have the Judgment set aside and/or to have the execution stayed. Finally, execution was effected with the result that property known as **L.R. NO. 7741/149/3 KITSURU ESTATE NAIROBI** said to belong to the defendant/judgment debtor was allegedly sold by public auction on 30th October 2009 to **STANLEY NGETHE KINYAJUI** (herein, the purchaser/2nd respondent).

However, **SALIM SULEIMAN** (herein, the applicant/objector), objected to the sale and filed an application to that effect dated 18th November 2009 scheduled for hearing on the 24th February 2010.

In the meantime, on the 2nd December 2009, the Objector moved the Court under a certificate or urgency for a temporary injunction order to preserve the aforementioned property even though he appreciated that the filing of the notice of objection by itself granted an automatic stay. The Objector contended that the sale of the property was illegal and that there was a danger of the property being transferred. The application was certified urgent and an ex-parte temporary injunction order was granted pending hearing inter-parties of the application on 16th December 2009.

However, on the 16th December, the application was stood over to 24th February 2010. An order to have the "status quo" maintained was issued. But, before the 24th February 2010, another application dated 21st January 2010 by the defendant was presented in Court under a certificate of urgency on the 27th January 2010. The application was certified urgent and was fixed for inter-parties hearing on 10th February 2010. A further ex-parte temporary injunction order was issued. On 10th February 2010, the inter-parties hearing of the application was stood over to 16th March 2010 with extension of the interim orders of temporary injunction.

Now, on the 24th February 2010, the Objector's application dated 18th November 2009 came up for hearing but was stood over to 16th March 2010 to be heard together with the application dated 21st January 2010 and another dated 24th February 2010. Interim orders were extended to that date. However on the 10th March 2010, the plaintiff/4th respondent filed another application which was also fixed for hearing on the 16th March 2010.

On that date (16th March 2010), about four applications came up for hearing but none proceeded save the one by the plaintiff dated 10th March 2010.

The applications dated 18th November 2009 and 21st January 2010 were stood over to 9th June 2010 with extension of the interim orders. The application dated 24th February 2010 was stood over to 23rd June 2010 with extension of interim orders.

The application dated 10th March 2010 was heard and dismissed by the Court in a ruling delivered on 16th June 2010. It is not known what happened on 9th June 2010 when the other applications were due for hearing. The Court record does not indicate what happened on the 9th June 2010. However, the record shows that the defendant's/6th respondent application dated 24th February 2010 came up for hearing on 23rd June 2010. The application was heard and was dismissed by the Court for want of competence and merit in a ruling delivered on 21st July 2010.

Thereafter, nothing substantial occurred until the 23rd March 2011 when an application dated 18th February 2011 by the defendant's Counsel for leave to come on record was heard and granted.

A further application dated 9th June 2011 was presented by the defendant under a certificate of urgency on the 10th June 2011. The application was certified urgent and was fixed for mention on the 21st June 2011. Interim orders of injunction were granted until then. On 21st June 2011, the application (i.e. one dated 9th June 2011) was stood over to 27th July 2011 with extension of the interim orders. On the same 21st June 2011 this present application by the Objector/applicant dated 17th June 2011 was presented under certificate of urgency and fixed for hearing inter-parties on 19th July 2011. Interim orders of injunction were granted until then.

On 19th July 2011, the application was stood over to 5th October 2011 after the parties agreed to file skeletal written submission together with supporting authorities. The interim orders were extended accordingly.

On 27th July 2011, the defendant's application dated 9th June 2011 came up for hearing but was stood over to 5th October 2011 for hearing together with the present application. On 5th October 2011, the Court ordered that the highlighting of the written submission respecting this application and that dated 9th June 2011 be made on 8th November 2011.

On 8th November 2011, this Court was given a brief summary of the genesis of the two applications and thereafter gave direction to the effect that the present application be heard and determined prior to the

application dated 9th June 2011. In that regard, the parties filed written submissions and supporting authorities.

The application seeks a multiplicity of orders/prayers, twenty six (26) in number. Prayer four (4) to eighteen (18) are for declaratory orders under the Constitution of Kenya.

Indeed, the application is made under Articles 19, 20, 21, 22, 25, 40, 47, 50 (1), 165 (3) & (4), 259 and 260 of the Constitution of Kenya and Rule 23 of the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the individual).

The application is also made under the High Court Practice and Procedure Rules 2006, Sections 1A, 1B and 3A of the Civil Procedure Act, Order 51 Rule (1) of the Civil Procedure Rules and the inherent powers of the Court.

It would appear that the applicant/objector did not want to leave anything to chance.

Nonetheless the application is grounded on nine (9) factors as follows:-

(1) The application raises substantial questions of law touching on the alleged denial, violation or infringement of the applicant's fundamental rights and freedoms in the Bill of rights, or threats thereof, by which the applicant is aggrieved.

(2) The applicant who had a declared beneficial owner's interest duly registered against the title to L.R. No. 7741/149/3 Kitsuru Estate Nairobi was not heard by either the first respondent who was exercising administrative and judicial authority before the first respondent completed the certificate of sale dated 9th November 2009 or prepared and executed the transfer dated 10th November 2009, the applicant was therefore condemned unheard.

(3) The applicant stands to suffer irreparable loss and suffer immense violation of his rights guaranteed under Articles 40 and 47 of the Constitution of Kenya when his property in L. R. No. 7741/149/3 Kitsuru Estate Nairobi is fraudulently and unlawfully expropriated as has been done by the first, second, third, fourth and fifth respondents.

(4) The fifth respondent fraudulently registered a transfer of land over land that had a caveat registered without reference to the '*caveator*" first, or without lifting the caveat first, contrary to S. 57(4) of the Registration of Titles Act (Cap 281 of the Laws of Kenya).

(5) The first to fifth respondents did fraudulently and unlawfully purport to execute documents of sale and transfer of the suit premises in favour of the second respondent in violation of orders of Court, caveats and prohibitions that disallowed the purported sale and/or transfer.

(6) The first respondent grossly abused his office as the Deputy Registrar of the High Court in purporting to execute documents of sale in violation of orders of Court, caveats and prohibitions that disallowed the purported sale and or transfer.

(7) The purported sale and transfer of the suit property herein engineered by the first to fifth respondents is illegal and therefore a nullity.

(8) Unless the Honourable Court in accordance with its jurisdiction under Articles 19, 20, 21, 22, 165 (3), 259 and 260 of the Constitution steps in and protects the fundamental rights of the applicant to property and fair administrative action, the applicant shall loose irreparably and his said rights shall be violated with abandon.

(9) The interests of justice and the applicant's right to property and fair administrative action will be protected if the application is urgently heard and the reliefs herein granted.

These grounds are supported by the facts contained in the applicant's supporting affidavit dated 17th June 2011. All the respondents have opposed the application save the 6th respondent/defendant.

Having considered the application, the grounds in support and opposition thereto and the written submissions filed herein by the respondents, it is apparent to this Curt that the issues arising for determination are firstly, whether the application is competent and proper before the Court and secondly, depending on the outcome of the first issue, whether the applicant/objector is entitled to any of the orders sought against each of the respondents.

With regard to whether the application is competent and proper before the Court, it is obvious that the suit in general was essentially between the plaintiff/4th respondent and the defendant/6th respondent. After a full trial, the suit was concluded on 4th December 2002 when the Court delivered its final Judgment. Any of the aggrieved party was at liberty to appeal to the Court of Appeal. To that extent, the suit was lawfully concluded and could not be re-opened unless with orders from the Court of Appeal. In an order made on 12th May 2009 by **IBRAHIM J**. (as he then was), it was noted that the end of the road for this case in the High Court had reached and everything else had to take its natural and legal course. This was stated when the Court dismissed the defendant's application for stay of the execution of the Judgment and decree made on 4th December 2002. Indeed, the case had reached the end of the road in so far as it related to any attempt to obtain stay of execution and setting aside of the Judgment of the Court delivered on 4th December 2002. If there was to be any relief, it lay with the Court of Appeal.

Herein, the main concern is not the merit or demerit of the Judgment delivered in this suit but the process of execution of the said Judgment. In that regard, the dispute is really between the applicant and the actual parties to this suit (i.e. plaintiff and the defendant) as well as the purchaser of the suit property (i.e. the 2nd respondent). Invariably, those who may have facilitated and/or sealed the disputed process of execution would fall under the radar of this application. This category would include the first, third and fifth respondents who may have acted in the course of their respective lawful mandate. However, whether they acted beyond the scope of their lawful mandate is a matter which will have to be considered herein.

The foregoing notwithstanding, this suit was essentially between the plaintiff and the defendant upto the point of conclusion. These are the parties directly affected by the turn of events at the execution stage. Being the purchaser of the suit property, the 2nd respondent is also directly affected and is a necessary party in these proceedings. Even though the applicant may be or may have been affected by the disputed sale of the suit property to the 2nd respondent, he was required to be enjoined in the suit in one way or the other. He seems to suggest that the notice of objection filed in this matter by himself gave him the necessary "*locus-standi*" to move the Court for appropriate orders. The validity and efficacy of the said notice of objection vis-à-vis the plaintiff, the defendant and the purchaser of the suit property would be a matter for consideration herein.

Suffice to say that the law on the process of execution is to be found in Order 22 (formerly Order 21) of the Civil Procedure Rules. It is under that provision that it would become apparent whether the applicant has the necessary "*locus-standi*" to move this Court by way of the present application.

It may be argued, as has been done herein by the applicant, that since the applicant's fundamental rights guaranteed by the Constitution have allegedly been violated by the sale of the suit property which had previously been sold to him by the defendant, the applicant would be at liberty to move the Court for appropriate orders. However, much as it is the supreme law of the country, the Constitution ought not be invoked in isolation to the other laws of the land. Otherwise, the other laws would be superfluous. Besides, a proper constitutional matter ought to be presented by way of a petition if not a judicial review application. Of importance is the fact that the fundamental rights prescribed by the Constitution are principally available against the state. The Constitution regulates the relationship between the State government and its citizens. Private law exists to serve individual interests and provide the available remedies (see, **KENYA BUS SERVICES LIMITED & OTHERS VS. THE ATTORNEY GENERAL & OTHERS [2005] 1 EA 111)**. Indeed, constitutional applications would not be a substitute to private law remedies or a substitute to judicial control of administrative action.

In that regard and with reference to the first issue for determination, this Court would find that the inclusion of the constitutional provisions in a matter which is purely a civil dispute between two or three individuals amounts to an abuse of the Court process. Consequently, prayers four (4) to eighteen (18) of the appropriate notice of motion together with the supporting grounds 1 (VIII & (ix), 3, 8 and 9) have not been properly and competently sought and must therefore be overruled and are hereby overruled.

That leaves us with prayers 19, 20, 21, 22, 23, 24, 25 and 26 of the notice of motion. Issues relating to these prayers may be ventilated in this suit and are therefore competent and proper before this Court. However, as noted hereinabove the applicable law in the present circumstances is Order 22 (formerly Order 21) of the Civil Procedure Rules. The provision has been referred and acknowledged by the applicant in his submissions but it is sad to note that it has not been invoked in this application and more so considering that the applicant's alleged "*locus standi*" in this matter seems to be anchored on the notice of objection to attachment issued under the former Order 21 Rule 53 (now, Order 22 Rule 51) of the Civil Procedure Rules.

Nonetheless, the applicant has invoked Sections 1A, 1B and 3A of the Civil Procedure Act.

Sections 1A and 1B provide for the objective of the Act and the duty of the Court. Thus, the overriding objective of the Act and the Rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act and for purposes of furthering the overriding objective, the Court shall handle all matters presented before it for the purpose of attaining the just determination of the proceedings, the efficient disposal of the business of the Court, the efficient use of the available judicial and administrative resources, the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties etc.

However, Sections 1A and 1B of the CPA are not intended to circumvent the already existing rules and precedents. Worth of note is the remark made by the Court in the case of **MRANDULA SURESH KANTANA VS. SURESH NANALAI KANTANA CIVIL APPEAL NO. 227 OF 2005**, to the effect that:-

"The overriding principle will no doubt serve us well but it is important to point out that it is not going to be the panasea for all ills and in every situation. A foundation for its application must be properly laid and the benefits of its application judicially ascertained."

As for S.3A of the Civil Procedure Act, it was designed to give the Courts power to use their inherent jurisdiction to prevent an abuse of the process of the Court in any manner. The Courts are therefore not impotent where it can be proved that its process is being abused for it can use its inherent powers to curb such an abuse and the underlying principle there is to prevent an abuse of its process and ensure that the ends of justice are met (see, **UNITED INSURANCE COMPANY VS. KERARIO MARWA NDOLO & CO. ADVOCATES [2000] LLR 5657)**.

It is the view of this Court that given the nature of this application and the circumstances leading thereto and even though the provisions of Order 22 (formerly Order 21) were not invoked in the appropriate notice of motion, it was proper for the applicant to invoke Sections 1A, 1B and 3A of the Civil Procedure Act.

But, for the applicant to be entitled to any of the prayers sought herein, his "*locus standi*" in the matter needed to be established.

In his supporting affidavit dated 17th June 2011 the applicant avers that he has beneficial ownership interest over the suit property arising from the purchase of the same and a price of Ksh. 20 million which was fully paid. On learning of the intended disposal of the property in execution of a decree by this Court, his advocates on his instructions contested the attachment and sale of the property. The advocates filed the necessary objection proceedings on the 30th October 2009. A stay of attachment and sale of the suit property was sought and issued. Thereafter, a stay order was extracted and served upon the plaintiff/4th respondent through his advocate.

The applicant avers that as at the 30th October 2009 there was a stay in force restraining the execution or continuation or completion of the sale of the suit property and that since his advocates took out proceedings under Order 21 Rules 56 and 57 CPR seeking to set aside the order of attachment and sale, no sale should have been concluded before affirmation or otherwise under Rule 81 of the said Order 21 CPR.

The applicant goes on to aver that the suit property was illegally sold by an auctioneer called John Muita of Jomuki Enterprises yet the person was not authorized to perform the auction under the Auctioneers Act and also that the person was not authorized to attach and sell property situated in Nairobi in execution of this Court's warrants of attachment and sale. Therefore the attachment and sale of the suit property by the unauthorized auctioneer rendered the whole process a nullity for in the year 2009 there was no licensed auctioneer by the name and style of Jomuki Auctioneers.

The foregoing averments clearly show that the applicant is possessed of a right to complain and be heard about the process which led to the sale of the suit property. The applicant claims a beneficial interest in the property. His complaint is that the property was irregularly sold in execution of a decree issued by this Court. Surely, the applicant has demonstrated that the sale of the property has occasioned him substantial injury. He was tremendously affected by the sale and obviously entitled to move the Court for appropriate remedy if not to correct what he perceived to be an injustice against himself.

Order 21 of the previous Civil Procedure Rules provided for the modalities to be followed in the execution of decrees and orders of the Court. In essence, the present dispute cropped up from the main suit pitting the plaintiff against the defendant. The suit culminated in favour of the plaintiff/4th respondent and execution followed against properly owned by the defendant/6th respondent. The suit property was among the attached property. It's attachment fell under Order 21 Rule 49. But, Order 21 Rule 53 allowed any party to object to such attachment.

The provision i.e. Order 21 Rule 53 provided that:-

"**Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to the payment out of the proceeds of sale of such property give notice in writing to the Court and to all parties and to the decree-holder of his objection to the attachment of such property."**

The applicant by virtue of the aforementioned provision was accorded the right to come into this matter although he was originally not a party to the suit which was indeed heard and concluded by a lawful judgment of the Court. The applicant's entry into the matter was at the execution stage as an objector to attachment of property in which he claims a beneficial interest. It was to that effect that he filed the necessary notice of objection on the 30th October 2009. From that time, his "locus-standi" in this matter was cogently established.

Having filed the notice of objection, the applicant was required to serve it on appropriate parties. With that filing of the notice of motion, an automatic stay of execution had to issue under Order 21 rule 54 CPR which provided that:-

"**Upon receipt of a valid notice given under Rule 53, the Court shall order a stay of the execution proceedings and shall call upon the attaching creditor by notice in writing within 15 days or such other person as the said notice may prescribe to intimate to the Court and the objector in writing whether he proposes to proceeded with the attachment and execution thereunder wholly or in part."**

The provision made it mandatory for the Court to order a stay of the execution proceedings and call upon the attaching creditor to intimate to the Court and the objector whether he wished to proceed with the attachment and execution. Indeed, the attaching creditor (herein the plaintiff/4th respondent) was

called upon by the Court to give the necessary intimation and by a notice of intimation filed and dated 4th November 2009, the plaintiff/4th respondent/decree holder obliged and expressed his intention to proceed with the attachment and execution. The notice of intimation was copied to the Deputy Registrar of this Court, the applicant/objector and the Auctioneer.

Pursuant to the notice of intimation, the applicant moved the Court and took out objection proceedings as provided by Order 21 Rules 56, 57 and 79 of the Civil Procedure Rules. He filed the necessary Chamber Summons dated 18th November 2009. The said application has not been heard and determined. It is still pending. Consequently, the present application cannot be said to be "res-judicata". The applicant's interest and concern is the manner in which the suit property was sold in execution of the decree of this Court and not in the outcome of the case between the plaintiff/4th respondent and the defendant/6th respondent. A distinction must here be made between the objection proceedings coming up during the process of execution and the conclusion of the main suit between the plaintiff and the defendant which ended up in favour of the plaintiff without prejudice to the defendant's right to appeal to a higher Court. The objection proceedings are yet to be concluded and were taken out for the sole purpose of protecting the appellant's alleged interest in the suit property and to forstall the execution of the decree of this Court by attachment and sale of the suit property.

Invariably, the objection proceedings and indeed the present application have brought other parties on board. These include the alleged purchaser of the suit property and those who may have facilitated, rightly or wrongly, the disputed sale and transfer of the suit property.

The background of the present dispute having thus been set hereinabove, it would now be appropriate to consider the prayers sought by the applicant in relation to the process of execution.

The Court record and material placed before this Court by the parties clearly shows that after the attachment of the suit property by an auctioneer acting on instruction from the plaintiff/decree holder, the applicant lodged an objection dated 30th October 2009. The objection was received by the Court on the same day. Under Order 21 rule 54 CPR, the Court was obligated to order a stay of execution proceedings pending the hearing and determination of the objection proceedings filed by the applicant under Rules 56, 57 and 79 of Order 21 of the Civil Procedure Rules.

Rule 79 became handy for the reason that the suit property may have been sold prior to filing notice of objection and/or prior to the taking out of the objection proceedings by the applicant. Whatever the case, the ensuing stay order meant that any or further action with regard to the attached suit property had to be put to a halt pending determination of the objection raised by the applicant. In that regard, the alleged purchaser should not have paid in part or in full the purchase price. He could also not have commenced any mechanism to have the suit property transferred into his name. His entitlement to the suit property was subject to the determination of the pending objection proceedings.

As it were, the alleged purchaser was the "*owner of the suit property*" in waiting since the sale thereof had not become absolute. The decree-holder/plaintiff indirectly acknowledged by his notice of intimation dated 4th November 2009 that there was a stay of execution even though the suit property was sold by public auction on 30th October 2009.

The notice of intimation read as follows:-

"**Upon receipt of the notice of stay of execution dated 2nd November 2009 and the notice of objection to attachment attached thereto, the decree holder hereby intimates that the entire land parcel number L.R. No. 7741/149 was sold by public auction on 30th October 2009. The decree has therefore been executed and the attached good sold."**

Even if the suit property had already been sold on 30th October 1999 by the time the notice of objection was filed, the sale could not have become absolute on the same date without the issuance of the

certificate of sale by the Court.

The certificate of sale contained in the Court record dated 30th October 2009 was not issued by the Court but the auctioneer. The said certificate was invalid in terms of Rule 83 of Order 21 CPR which provided that:-

"Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of the sale is declared to be the purchaser, and such, certificate shall bear the date and the day on which the sale became absolute"

The possibility that the notice of objection was filed and served prior to the alleged sale of the suit property is reflected in the return of service dated 30th October 2009 by an Advocate called Vincent K. Mutai. The return showed that the notice of objection was served upon the plaintiff/4th respondent/decree holder through his advocate, the 3rd respondent. The return was also served upon the auctioneer on the same date (30th October 2009). The service was accepted by both the plaintiff and the auctioneer but according to the return, the auctioneer acknowledged service only after conducting the auction.

The notification of sale filed in Court by the auctioneer on the 30th September 2009 showed that the suit property was to be sold by public auction on 30th October 2009 at 10.00 .am. outside Eldoret Post Offices.

The return of service indicated that both the plaintiff and the auctioneer may have been served with the notice of objection prior to 10.00 a.m. on the 30th October 2009.

A letter dated 30th October 2009 from the auctioneer to the 3rd respondent indicated that the suit property was purchased for a sum of Ksh. 53 million by the alleged purchaser Stanley Ngethe Kinyanjui (2nd respondent) of which a sum of Ksh. 19,800,000/- was paid towards the purchase price. The balance was to be paid at a later stage.

A letter dated 23rd November 2009 from the 3rd respondent to the Deputy Registrar of this Court indicated that the balance of the purchase price was paid either on that 23rd November 2009 or on 5th November 2009 but certainly not before the 2nd November 2009 being the date which the formal notice of stay of execution was issued by the Deputy Registrar pursuant to the provisions of Order 21 Rule 54 of the Civil Procedure Rules. The notice was addressed to the 3rd respondent and the auctioneers. It is apparent from the foregoing that there being a notice of objection and a stay of execution order followed by the pending objection proceedings, the suit property should not have been sold in execution of the decree of this Court and if any sale occurred then it was irregular and had not been made absolute by the Court and a certificate of sale issued to that effect by the Court.

The subsequent transactions relating to the suit property including the alleged transfer of the property to the alleged purchaser were all null and void "ab initio". If only the effect of the notice of objection lodged by the applicant and the resulting stay order had been given careful and serious thought, the present unpleasant state of affairs would have been avoided.

In the haste to realize the fruits of his judgment, the decree holder ignored or became blind to the clear provisions of the law and thus abused the process of execution.

What seemingly was a simple and straight forward exercise turned out to be a complex and protracted exercise made possible by the non-observance of the Civil Procedure Rules particularly by the decree holder, the auctioneer and the alleged purchaser of the suit property.

It is unfortunate that persons such as the first and fifth respondents who were performing their proper and lawful mandates were caught up in the web of confusion and impropriety created by the decree

holder, the judgment debtor, the purported purchaser of the suit property and of course the auctioneer. They (first and fifth respondents) cannot be said to have acted beyond the scope of their respective lawful mandate but they ought to have been more cautious rather than casual in dealing with this matter.

Worth of note is the fact that it has emerged herein that a caveat over the suit property was lodged with the land Registrar by the applicant in the year 2008 yet the notification of sale filed in Court on 30th September 2003 failed to note the encumbrance as required by Rule 61 of Order 21 CPR.

It is absolutely clear that the execution segment of this suit was shrouded in discrepancy such that it would be in the interest of justice to undo the entire flawed process and maintain the integrity of the Court system and its players.

Undoubtedly, situations like these compels the court to exercise its inherent jurisdiction under S. 3A of the Civil Procedure Act in order to meet the ends of justice and prevent further abuse of the process of the Court.

Consequently, this application is granted in terms of prayers 19, 20, 21, 22, 23, 24 and 25 of the notice of motion dated 17th June 2011. The applicant is rightly entitled to the said prayers. The objection proceedings lodged herein by the applicant be fixed for hearing and determination in the next three (3) months from this date hereof. In default, the stay of execution order issued pursuant to Order 21 Rule 54 of the former Civil Procedure Rules be vacated forthwith for the execution of the decree issued by this Court to proceed. Each party shall bear own costs of the application.

Ordered accordingly.

J. R. KARANJA
JUDGE

[Read and signed this 9th day of December 2011]
[In the presence of Mr. Okara holding brief for Mr. Gicheru for 3rd Respondent, Mr. Katwa for 6th Respondent, Mr. Havi for 2nd Respondent, Mr. Ngumbi for 1st and 5th Defendants]