



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL SUIT 301 OF 2004

WISH LIFE INVESTMENTS LIMITED.....PLAINTIFF

VERSUS

LUCY WANGARI AKWEYU.....1ST DEFENDANT

IBRAHIM MWANGI.....2ND DEFENDANT

(As the administrators and legal representative of the estate of

PURITY WANJIKU MWANGI)

SAMSON W. NDEGWA T/A

S.W. NDEGWA & CO. ADVOCATES.....3RD DEFENDANT

ZACK-MARK ENTERPRISES.....4TH DEFENDANT

RULING

1. The application before court is the Notice of Motion dated 6/06/2005. The same is brought under Order XXI Rules 59, 61(1) and Order L Rule 1 of the Civil Procedure Rules. The application seeks orders:-
 1. *That this Honourable Court be pleased to make an order for sale of the judgment debtor's land known as LR No. KAJIADO/KITENGELA/5477.*
 2. *That this Honourable Court be pleased to settle terms of sale of the judgment debtor's land known as LR No. KAJIADO/KITENGELA/5477 (the suit land).*
 3. *THAT the costs of this application be paid by the Plaintiff/Judgment Debtor.*
2. The application is premised on grounds that the judgment/debtor's land has been attached to answer the decree herein and it is in the interest of justice that it be sold to realize the decretal sum and secondly that it is in the interests of justice that this Honourable Court settles the terms of sale of the judgment debtor's land to facilitate its sale expeditiously so that the decree holder can enjoy the fruits of his decree.
3. The application is also supported by an affidavit dated 6/06/2005 and sworn by **Samson Wambugu Ndegwa**, the 3rd Defendant/Decree Holder. The deponent says that the Plaintiff's suit was struck out on 21/09/2004 with costs to the

deponent. He says that those costs were taxed at Kshs.246,025/=. The deponent also says that he applied to have the suit land herein attached which application was granted and that thereafter, this Honourable Court issued a prohibitory order which order has since been registered at the lands office in Kajiado. Although the deponent says that a prohibitory order has been registered against the suit land, the Certificate of Official Search dated 25/02/2005 annexed to the supporting affidavit as “**SWN1**” does not show such an inhibition on the title.

4. There is also an amended statement of Particulars dated 7/08/2007 filed along with the application showing the property to be sold as being the suit property in satisfaction of the decretal sum and all costs payable to the 3rd Defendant in HCCC No. 301 of 2004 at Nairobi, with the balance of the purchase price to be paid to the judgment debtor. The total amount payable under the decree is Kshs.249,125/=. The auctioneer who has been appointed to sell the property is M/s Zack-Mark Enterprises after the sale is advertised twice in the Daily Nation at a cost of Kshs.30,000/=.
5. The application was duly served upon the Plaintiff’s advocates on the 22/10/2009 for hearing on 10/11/2009. The Plaintiff did not respond to the Applicant’s application. On the 10/11/2009, Mr. Njeru Gichobi advocate urged the court to allow the application as prayed. Order XXI Rule 59 of the Civil Procedure Rules provides –

“59. Any court executing a decree may order that any property attached by it and liable to sale, shall or such portion thereof, as may seem necessary to satisfy the decree, be sold and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.”

6. I have now considered the above provision and the application as filed. I have also considered the application itself and the annexures to the affidavit in support. I would have allowed the application were it not for the fact that the Certificate of Search dated 25/02/2005 which is attached to the supporting affidavit as proof that a prohibitory order has been issued against the suit property does not show such detail.
7. In the circumstances, the application dated 6/06/2005 is struck out with no order as to costs. The Applicant is at liberty to file similar application seeking the same orders within 30 days from the date of this ruling.

It is so ordered.

Delivered and Dated at Nairobi this 23rd day of February, 2010.

R.N. SITATI

JUDGE

Delivered in the presence of:-

No appearance for the Plaintiff/Respondent

Mr. Gaita (present) for the 3rd Defendant/Applicant

Weche – court clerk