

**IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE 329 OF 2003**

AWO SHARIFF MOHAMMEDPLAINTIFF/DECREE HOLDER

VERSUS

ABDULKADIR SHARIFF ADBIRAHIM DEFENDANT/JUDGMENT DEBTOR

AND

DAHIR SHARIFF ABDULKADIR 1ST OBJECTOR

TIMESCOM ENTERPRICES 2ND OBJECTOR

SASA GENERAL INVESTMENT LIMITED 3RD OBJECTOR

RULING

1. By a notice of motion dated 26th November 2009, Dahir Shariff Abdulkair the 1st objector sought for an order of injunction restraining the decree holder, his servants or agents from alienating transferring of any ownership on LR 209/13688 (I.R. 80763) pending the inter parties hearing. The objector also sought for an order to set aside a sale of property known as LR NO. 209/13688 formerly BLOCK 103/504 Civil Servant Quarter House No. 794 NAIROBI. At the hearing, Counsel for the 1st objector indicated that he was abandoning the other prayers save for the one to set aside the sale by public auction.

2. This application is premised on the grounds that by a notice of motion dated 16th November 2009, the decree holder purportedly sold the suit property to one Isaac Kamau Kabira at an auction held on 26th August 2009. That auction is said to be in disregard of the court order of 17th July 2009 in which Lesiit J made the following findings;

“I have considered the submission by both counsel in this application. In regard to the suit property listed under Order 1(a) there is no dispute that this property LR 209/13688 is not the subject of the notification of sale issued on 23rd December 2008 and which is part of the documents relied upon by the Objector. The issue of that property is moot.”

According to counsel for the 1st objector, this property was never sold. It was not even in the schedule of the properties to be sold. Counsel also faulted the replying affidavit sworn in response to this application. He urged the court to allow the application and expunge the offending affidavit from the record.

3. In response to this application, Mr. Wamalwa appearing for the decree holder objected to Mr. Njenga’s representation of the objector. However this objection was found to have no basis as Mr. Njenga duly filed a notice of appointment. As regards the alleged transfer of the suit premises, Mr. Wamalwa contended that the title is registered in the name of the 1st objector. He also confirmed that the property is not a subject of the prohibitory order it was not in the list of properties settled for sale before the deputy registrar, therefore it was not in the public auction and it has not been sold. Mr. Wamalwa further conceded that the ruling by Lesiit J was clear that this property was not subject of the attachment. He therefore urged the court to find the application is a merely academic exercise.

4. Mr. Wamalwa having conceded that property LR NO. 209/13688 (IR 80663) was not sold and it was not part of the assets contained in the proclamation, this literally settles the matter. He also agreed that the

ruling by Lesiit J excluded this property from attachment because it was registered in favor of the 1st objector three years before these proceedings were started. The applicant abandoned the prayer for injunction and pressed on prayers seeking to set aside the sale (which was never there). The only issue perhaps to determine is probably who should bear the costs of this application.

5. I award costs of this application to the 1st objector for reasons that the 1st objectors application was precipitated by a notice of motion filed by the decree holder on 16th November 2009 in which they were seeking a confirmation of the sale of Title No. 103/564 Civil Servants House No.794 Nairobi West to Isaac Kamau Kabira be confirmed. The Decree Holder knew very well this property was not sold and it is that application which made the 1st objector filed this application or to engage in what was referred to as an academic exercise. The 1st Objector must have genuinely come to court to defend his rights pursuant to the order of Lesiit J, the application is allowed as prayed.

RULING READ AND SIGNED ON 18TH JUNE 2010 AT NAIROBI.

M.K. KOOME

JUDGE