



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 1233 of 2003**

VIJAY KANT .....1<sup>ST</sup> PLAINTIFF

**FEROZE NOWROJEE personal representatives**

**of Vallabhadas Karsandas Raniga (Deceased).....2<sup>ND</sup> PLAINTIFF**

V E R S U S

KENNETH IMBAHALE AKIBAYA .....1<sup>ST</sup> DEFENDANT

HONOURABLE ATTORNEY GENERAL .....2<sup>ND</sup> DEFENDANT

**J U D G M E N T**

There is no dispute that the City Council of Nairobi filed a suit in the First Class District's Court at Nairobi against the 1<sup>st</sup> Defendant for recovery of rate arrears for the year 1976 in the sum of KShs. 236/25 plus interest and costs in respect of Plot No. 37/566 Nairobi which he owned. The suit was No. 123 of 1979. The 1<sup>st</sup> Defendant was served but did not respond. The case was heard by way of formal proof and judgment entered against him.

The court issued a prohibitory order. Subsequently, the Council applied for execution of the decree in the case by attachment and sale by public auction the right title and interest of the Defendant in the property. The property was sold by public auction and bought by the deceased Vallabhadas K. Raniga for KShs. 100,000/=. The auctioneer informed court of the sale following which a certificate of sale was issued.

The 1<sup>st</sup> Defendant filed application in the court to set aside the *ex parte* judgment, the decree and sale. The application was dismissed. He appealed to the High Court in HCCC No. 3 of 1984 at Nairobi. He succeeded. The Council and the deceased went on appeal in Civil Appeal No. 126 of 1991 at Nairobi. The Court of Appeal overturned the decision of the High Court and found that the sale had become absolute when the subordinate court issued a certificate of sale. The title of the suit property had thereby vested in the deceased. The Court of Appeal made the following order:-

**“.....we order that the suit property belongs to the second appellant from the date of auction of sale i.e. 24<sup>th</sup> March, 1981”**

That decision was rendered on 7<sup>th</sup> June, 1996

The Plaintiffs herein are executors of the estate of the deceased (who was the second appellant in the Court of Appeal). They brought this suit on 23<sup>rd</sup> November, 2003 seeking that the Provisional Certificate issued to the 1<sup>st</sup> Defendant in

respect of the suit property and that the entry relating to the Provisional Title being entry Number I.R. 20595/5 be cancelled. After that, it was prayed, there be a permanent injunction restraining the 1<sup>st</sup> Defendant, his servants and agents from alienating, disposing or in any other manner interfering with the Plaintiff's quiet enjoyment of the land.

The 1<sup>st</sup> Defendant filed a defence in which he admitted the decision of the Court of Appeal but said the same was tainted with illegality. This is not the forum to question this decision. The second plea was that the judgment did not vest any legal right in the deceased **“except by execution and a judgment *per se* cannot decline such a legal right in law.”** It is material that the Court of Appeal pronounced that the title to the suit land belonged to the deceased.

In the instant case, the 1<sup>st</sup> Plaintiff testified as did the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Plaintiff testified that although he has the original title to the land the 1<sup>st</sup> Defendant had gone to the Land Registrar and obtained a Provisional Certificate of Title. This is the one he wanted cancelled.

The 1<sup>st</sup> Defendant testified that he had taken a loan with Barclays Bank using the land as security. When this dispute was in the Court of Appeal, he said, he repaid the outstanding loan. He wrote to the bank to discharge the charge and return the title. The bank told him the title was lost. He went to the Registrar and lodged a caveat. The loss was advertised for 90 days following which he was issued with the Provisional Certificate of title. It is clear the Plaintiffs were unaware of the issuance of the Provisional Certificate of title. When they learnt they came to the court to order its cancellation.

The highest court in the land has found the title to the land belongs to the deceased whose executors have the original certificate. It is hereby ordered that the Provisional Certificate of title issued in respect of L. R. No. 37/566 in the name of the 1<sup>st</sup> Defendant be cancelled by the Registrar of Titles. Also ordered to be cancelled is entry No. I.R. 20595/5. Thereafter, there shall be injunction restraining the 1<sup>st</sup> Defendant and all those acting under him from dealing with this land in any manner in any manner whatsoever. The 1<sup>st</sup> Defendant shall pay costs of this suit.

**DATED AND DELIVERED AT NAIROBI  
THIS 14<sup>TH</sup> DAY OF OCTOBER 2010**

**A. O. MUCHELULE  
J U D G E**