



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 212 of 2002

CHARLES MIGWI KINYINGI.....PLAINTIFF

VERSUS

THE BLESSED LAND HOUSING COMPANY LTD. & OTHERS.....DEFENDANTS

R U L I N G

1. The application before me is the Chamber Summons dated 16/07/2008 by which the Applicant seeks ORDERS:-

(a) THAT the sale of the property being all that piece of land known as LOC 2/KANGARI/1985 together with the buildings and improvements erected and being thereon to the purchaser/applicant herein GABRIEL GIKONYO NDIRANGU held on 30th March 2005 be confirmed and made absolute.

(b) THAT this Honourable Court be pleased to make an order vesting the property in the name of the purchaser/applicant Gabriel Gikonyo Ndirangu free from all encumbrances.

(c) THAT costs of this application be provided for.

2. The application which is brought under Order XXI Rules 81(1), 83, 84 and 91 of the Civil Procedure Rules is premised on the averments contained in the affidavit sworn by Stephen Ndichu Karago Advocate. The deponent says that he has the conduct of this case on behalf of the Plaintiff, is familiar with the facts of the case and competent to make and swear the affidavit. He says that the property known as No. LOC.2/KANGARI/1955 was sold by public auction in execution of the decree herein. That the successful bidder at the auction was Gabriel Gikonyo Ndirangu for the price of Kshs.250,000/= as per annexure marked "SNK 1". Annexure "SNK 1" is a copy of a Certificate of Purchase of the suit property at an auction held on Wednesday, 30/03/2005 pursuant to the decree herein. The Certificate dated 27/06/2005 was addressed TO WHOM IT MAY CONCERN.

3. The application was duly served upon the Respondent's Advocates, M/s Njiru Bonface & Co. Advocates on 24/07/2009. Service was acknowledged by the said firm of advocates, but they did not appear at the hearing of the application on the 27/07/2009. There were no comments on receipt of the summons that the service was being protested. Having failed to appear, the court allowed the application to proceed *exparte*.

4. Rule 81 of Order XXI sets the limits within which this court can grant the orders sought by the Applicant herein:-

(a) *Where no application is made under rule 78, rule 79 or rule 80 OR*

(b) *Where such an application is made and disallowed.*

Rule 78 requires any person who owns or holds an interest in the immovable property sold in execution of a decree to apply to the court to have the sale set aside on his depositing into court –

(a) *for payment to the purchaser, a sum equal to ten percent of the purchase money, and*

(b) *for payment to the decree holder, the amount specified in the public notification of sale as that for the recovery of which the sale was ordered, less any amount which may since the date of such public notification of sale have been received by the decree-holder.*

5. Rule 79 allows any person whose interests are affected by the parties action to apply to the court to set aside the sale on ground of a material irregularity or fraud in publishing or conducting it provided that no sale shall be asset aside unless the fraud or irregularity has resulted in substantial loss/injury to the Applicant.

6. In the instant case, the sale was conducted way back on 30/03/2005. There is no evidence on record to show that any applications have been made under rules 78, 79 or 80 of Order XXI. The Applicant has now made this application to claim what he believes rightfully belongs to him. The Respondent was served but has taken no trouble to appear in court.

7. What then is the fate of this application? I think that in the absence of a response from the Respondent and for the other reasons I have set out above, it is difficult to resist the Applicant's quest for orders in terms of prayers (a), (b) and (c) of the application dated 16/07/2008. The evidence on record shows that the Applicant was the successful bidder at the auction held on 30/03/2005. I have considered the provisions of the law and I am satisfied that the orders sought are merited. Accordingly, I make the following orders:-

1. *That the sale of the property being all that piece of parcel of land known as LOC.2/KANGARI/1985 together with the buildings and improvements erected and being thereon to the purchaser/applicant herein GABRIEL GIKONYO NDIRANGU held on 30th March 2005 be confirmed and made absolute.*

2. *THAT the said property, known as LOC. 2/KANGARI/1985 be and is hereby vested in the name of the purchaser/applicant Gabriel Gikonyo Ndirangu free from all encumbrances.*

3. *THAT costs of this application shall be borne by the Defendant's herein.*

It is so ordered.

DATED and delivered at Nairobi this 26th day of September, 2009.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Miss Makori holding brief for Karago (present) for the Plaintiff

M/s Njiru Boniface (absent) for the Defendant.

Weche – court clerk