



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 1300 of 2002**

**BUSURU RICHARD MARKS T/A BUSURU R.M. & PARTNERS, ARCHITECTS.....DECREE HOLDER**

**VERSUS**

**B. A OMUSE T/A AFRO-ANGLO INVESTMENTS LIMITED.....JUDGEMENT DEBTOR**

**R U L I N G**

Bonaventure Andrew Omuse herein referred to as the Judgment-Debtor had filed this application by way of Notice of Motion dated 25<sup>th</sup> July 2007 and expressed to be brought under Sections 3, 3A and 63 (e) of the Civil Procedure Act seeking orders

- (1) That the sale by Public Auction of all those parcels of land known as L.R. No. 2116/IV/26, and LR No. Trans Nzoia/chemichemi/60 by Messrs Gillete Traders Auctioneers on 7<sup>th</sup> August 2007 be stayed pending the hearing and final determination of this application interpartes.
- (2) That the Notification of Sale issued by Messrs Gillete Traders Auctioneers for the sale of LR No 2116/26 and LR No Trans Nzoia/Chemichemi/60 on 7<sup>th</sup> August 2007 be stayed and or set aside and
- (3) That the costs of this application be borne by the Decree Holder.

The Application is based on the grounds as stated on the body of the Notice of Motion and supported by an affidavit sworn by the applicant. Before the Notice of Motion could be heard, Mr. Khalwale counsel for the Decree Holder raised a preliminary objection on the ground that the application is expressed to be brought under Sections 3, 3A and 63 of the Civil Procedure Act and therefore the same is not tenable as no stay of sale can be granted under those provisions of the law. He submitted further that a sale can only be stopped by way of injunction under order XXXIX or Order XXI of the Civil Procedure Rules. Secondly there is a similar application by the applicant seeking similar prayers which has not been prosecuted. And lastly counsel submitted that the applicant had obtained a court order delivered on 30<sup>th</sup> May 2007 in which the court made it very clear that there an earlier court order dated 12<sup>th</sup> July 2005 which has not been set aside and it is therefore improper to file another application.

This preliminary objection is opposed by the applicant. Mr. Akotto counsel for the Judgment Debtor

submitted that there has been a new development in that the Decree-Holder has advertised the suit premises for sale by Public Auction in complete disregard of this court's order dated 26<sup>th</sup> July 2007. The order stated in part:-

**“That the sale by Public Auction of all those pieces or parcels of land known as LR No 2116/IV/26 and LR No. Trans Nzoia/Chemichemi/60 by Messrs Gillette Traders Auctioneers on 7<sup>th</sup> August 2007 be and is hereby stayed pending hearing and determination interpartes.”**

The said application had been fixed down for hearing on 29<sup>th</sup> November 2007 but despite that the Decree Holder has brought to this court a myriad of Applications in quick succession and all under certificate of urgency without addressing the issues raised in the applicant's earlier application in a bid to employ a multiplicity of modes of execution with respect to the decree herein.

In his ruling delivered on 30<sup>th</sup> May 2007 Khamoni J did comment on the same issue of multiplicity of application. He said at page 2

**“Learned counsels in this suit especially counsel for the Decree/Holder, with all due respect, would do better restraining themselves from filing a multiplicity of distracting applications as those only serve to confuse and unnecessarily complicate the matter thereby preventing the administration of justice.”**

I concur with the learned Judge in that regard. This preliminary objection falls in that category. Since the Decree-Holder had already advertised the suit property for sale in total disregard of a stay order granted by this court the Judgment-Debtor was forced to make an application for the stay of the sale.

Section 3A of the Civil Procedure Act is invoked to prevent abuse of the process of the court.

In the result the Decree-Holder's preliminary objection to the Judgment Debtor Notice of motion dated 25<sup>th</sup> July 2007 is dismissed with costs.

Dated and delivered at Nairobi this 11th day of February 2008.

**J. L. A. OSIEMO**

**JUDGE**