



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**(Mlimani Commercial Courts Commercial and Tax Division)**

**CIVIL CASE 914 OF 2002**

**SHAKESPERE INVESTMENTS.....1<sup>ST</sup> PLAINTIFF**  
**DONALD B. KIMUTAI.....2<sup>ND</sup> PLAINTIFF**  
**VERSUS**  
**PAUL KIPSANG' KOSGEI.....DEFENDANT**

**RULING**

In this application (by notice of motion dated 13<sup>th</sup> January, 2006) the Plaintiffs/Decree-Holders seek two main orders:-

1. -----
2. ***That the court does order that the deputy registrar of the court do execute transfer documents for the transfer of Land Parcel No.UASIN GISHU/AINABKOI NORTH/62 from the Defendant/Judgement Debtor, PAUL KIPSANG' KOSGEI, to the purchaser in execution of decree herein, one SAMUEL WAGORO NGUGI.***
3. ***That the court does order that the Defendant/Judgment- Debtor do remove himself and all persons claiming under him from the same parcel of land.***
4. -----

The application is predicated upon Order 21, rules 84 and 86 (1) of the Civil Procedure Rules. Sections 3A and 98 of the Civil Procedure Act, Cap. 21 have also been quoted. The grounds of the application are to the effect that the aforesaid Samuel Wagoro Ngugi purchased the land in question in a public auction when the same was sold in execution of decree herein, and that the Defendant/Judgment-Debtor has failed, refused and/or neglected to execute the necessary transfer documents to facilitate registration of the land in favor of the purchaser, and further, that the Defendant/Judgment-Debtor and his servants and/or agents have refused to deliver vacant possession of the land unto the purchaser. There is an affidavit sworn by the 2<sup>nd</sup> Plaintiff/Decree-Holder in support of the application which sets out the history of the matter as pertains to the sale of the land in execution of decree.

The Defendant/Judgment-Debtor opposes the application as set out in his replying affidavit filed on 1<sup>st</sup>

February, 2006. His main ground of opposition is that there was no land control consent for the sale of his property by public auction in execution of decree. He relied upon the Land Control Act, Cap. 302.

I have considered the submissions of the learned counsels appearing. Before I can consider the reliefs sought I must decide if the sale by public auction is void under provisions of the Land Control Act aforesaid as urged for the Defendant/Judgment-Debtor. Section 6 (1) of the Act declares that various transactions, including sale and transfer, dealing with any agricultural land which is situated within a land control area is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with the Act. Subsection (3) of the same section exempts the following transactions:-

***(a) the transmission of land by virtue of the will or intestate of a deceased person, unless that transmission would result in the division of the land into two or more parcels to be held under separate titles; and***

***(b) transactions to which the government or the Settlement Fund Trustee or (in respect of Trust land) a county council is a party.***

Nothing would have been easier than to include among these exceptions transactions involving sale of agricultural land in execution of court decrees, had the legislature intended that these should be exempted. It is therefore beyond argument that sales of agricultural land situated within a land control area in execution of court decree requires land control consent as provided for under section 6 of Cap. 302. Hayanga, J. similarly held in the case of **JOSIAH MUNYUA KIMEMIA vs POST BANK CREDIT LIMITED AND 2 OTHERS**, Nairobi HCCC No. 2783 of 1996 (unreported). No decision of the Court of Appeal on that specific point was cited to me. But in my view the law is clear enough from a reading of the statute, and judicial authority is hardly necessary. It is common ground in this matter that the parcel of land in question is agricultural land situated within a land control area. It is further common ground that no land control consent was sought or obtained as required by the provisions of the law quoted above.

The present matter has a long and unpleasant history as is evident from the various previous rulings made herein. It would be best if it were brought to a final end. That notwithstanding, the law is the law and must be followed. The sale of the Defendant/Judgment-Debtor's land in execution of decree herein to Samuel Wagoro Ngugi is void for all purposes for want of land control consent. The court will not make orders to complete a sale that is declared by the law to be void. The Defendant/Judgment-Debtor must thus get a reprieve, no matter how undeserved. But I note that the High Court has jurisdiction under the proviso to section 8 (1) of the Act to extend the period within which land control consent may be sought. There is no such application for extension of time before the court.

For the reasons given above I must regrettably refuse the application by notice of motion dated 13<sup>th</sup> January, 2006. It is hereby dismissed. In the circumstances of this case I will make no orders as to costs of the application. Order accordingly.

**DATED AND SIGNED AT NAIROBI THIS 10<sup>TH</sup> DAY OF MAY, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 12<sup>TH</sup> DAY OF MAY, 2006.**