



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 2543 of 1998

**SIMON GATHUA GATERU.....
.....PLAINTIFF**

VERSUS

LUCIA WANJIRU WANYOIKE.....DEFENDANT

RULING

This application by way of Notice of Motion expressed to be brought under Order L Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeks order that:-

- (a)** The Land Registrar Thika do dispense with the production of the original title deed for Land Parcel Number **NGENDA/KAHUGUINI/T448**;
- (b)** The Land Registrar Thika do register Francis Kura Waweru as proprietor and issue him with title deed;
- (c)** That the costs of this application be provided for;

The application is based on the grounds:-

- 1) That the said original title is in possession of the Defendant Lucia Wanjiru Wanyoike.
- 2) That the Applicant is a purchaser through Public Auction and cannot get the original title from the defendant, registered owner, the respondent herein.
- 3) That the transfer cannot be registered without the production of the defendant's original title deed.

The application is supported by an affidavit sworn by Francis Kura Waweru, the applicant herein in which he has deponed that; on 14th November 2003 he purchased land Parcel Number **NGENDA/KAHUGUINI/T448** at a Public Auction held at Gatundu Town and conducted by Kangethe Enterprises; that the Honourable Court also executed the transfer forms on behalf of the defendant; that on 9th December 2005 the Gatundu South Land Control Board gave consent to transfer the land to the applicant; that on 3rd February 2006 he presented the transfer for registration at Land Office Thika when the Land Registrar declined to register

the same on the ground that the original title deed was in possession of the defendant hence this application; that he has no access to the said title deed and prays the Honourable Court to issue an order that the Land Registrar do dispense with the production of the defendant's title deed **NGENDA/KAHUGUINI/T448** and proceed to register the land in the name of the applicant.

The respondent was served but did not appear to defend the application. In his submission Mr. Macharia for the applicant urged the court to issue orders as prayed in the Notice of Motion dated 15th February 2006. He also relied on the grounds as stated on the body of the Notice of Motion as well as the affidavit sworn by the applicant.

The applicant having purchased this suit land at a Public Auction and having obtained Certificate of Sale under Order XXI Rule 83, Land Control Board consent and the transfer forms having been signed by the Deputy Registrar of this Honourable Court, the Applicant is entitled to the orders

sought. Accordingly the application is allowed in terms of prayers 1 and 2 of the Notice of Motion dated 15th February 2006.

Dated and delivered at Nairobi this 12th day June, of 2006.

J.L.A. OSIEMO

JUDGE