

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION 48 OF 2000

**IN THE MATTER OF : SALE OF PUBLIC AUCTION OF A PERMANENT
HOUSE WITHOUT LAND
BETWEEN**

ONESMUS NDONGA GICHUHI APPLICANT

AND

JUSTINE SANGA BARAWA RESPONDENT

RULING

The applicant under an Originating Summons seeks vesting order in respect of a house without land purchased by him in a public auction in execution of a decree in HCC NO. 45/1996. Affidavit in support shows that the auction was conducted on 3.10.96 and that the applicant paid shs. 250.000/-. Court did issue a certificate of sale on 27.1.2000. The application is opposed by the decree debtor Justine Sand Barawa who states that the property attached was not his and he is not aware of the payment of shs. 250.000/- or that any auction took place as he was never notified.

In his supplementary affidavit sworn he discloses that the suit premises is owned by some other third persons. It is to be noted here that anyone claiming an interest in property which is attached under a decree which does not bind him has a right to take objection proceedings under Order 21 rule 53. No such proceedings has been taken in the matter. It is also to be noted that to set aside a sale by auction in execution of decree one must comply with:

(a) Order 21 rule 78 (payment of deposit and money on public notification as the amount of decree).

b) Order 21 rule 79 (where he alleges material irregularity or fraud in publishing or conduction the sale and the applicant has sustained substantial injury by such fraud or irregularity).

c) By purchaser under Order 21 rule 80.

Where no such application is made, as in this case the auction sale shall be confirmed by court and thereupon the sale shall become absolute.

I therefore find no merit in the objections raised by decree debtor and allow the application and grant orders sought with costs of this suit to the applicant.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read on the 17th June, 2002 in presence of Mr. Mwangi Njoroge.

J. KHAMINWA

COMMISSIOENR OF ASSIZE

