

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ELC CASE NO. 98 OF 2000

SAMWEL AYIENDA MOKUA.....PLAINTIFF

VERSUS

TINGA TRADING COMPANY LTD.....1ST DEFENDANT

ALFRED KENNETH MAKORI.....2ND DEFENDANT

RULING

INTRODUCTION

1.This Ruling is in respect of the Purchaser/Applicant's Notice of Motion dated 22nd November 2019 seeking that this Honourable court be pleased to order that the Deputy Registrar of this Honourable Court to sign all documents necessary to effect the transfer of land parcel number LIETEGO SETTELEMENT SCHEME /83 to the Applicant.

2. The Application is supported by the grounds set out in the Applicant's affidavit sworn on 22nd November 2019. The long and short of it is that the Plaintiff/Respondent's land was sold to the Applicant in a public auction way back in 2007 pursuant to a consent judgment between the Plaintiff and Defendant whose terms the Plaintiff failed to honour. Thereafter, the Plaintiff filed a plethora of Applications in an effort to stop the transfer of the suit property to the Applicant to no avail. In its ruling dated 26.7.2019 the court dismissed the Respondent's Application and confirmed the sale of land parcel number LIETEGO SETTELEMENT SCHEME /83 by the Applicant. The Applicant avers that despite the said ruling, the Respondent had refused to sign the relevant transfer documents.

3. The Respondent filed a Replying Affidavit signifying his opposition to the Application. In the said affidavit he seems to be challenging the validity of the sale, an issue that has been settled by this court and the Court of Appeal.

4. The Application was canvassed by way of written submissions and both parties filed their submissions which I have considered.

The singular issue for determination is whether the Deputy Registrar should sign the relevant transfer documents on behalf of the Plaintiff.

5. Having considered the history of this matter and the various rulings culminating in the ruling of my brother Justice Mutungi on 26.7.2019, I have no doubt in my mind that there is absolutely no reason why the Application should not be granted. The Court having confirmed the sale, and the Applicant having demonstrated that the Plaintiff is reluctant to sign the transfer documents, it is in the interest of justice that the documents be signed by the Deputy Registrar.

6. The reasons advanced by the Plaintiff and the submissions of his erstwhile counsel have been the subject of various rulings and as I understand it, the issue of the validity of the sale is now settled.

7. That being the position, I find merit in the Application and I grant it in terms of prayer 2 of the Notice of Motion. The costs of this Application shall be borne by the Respondent.

Dated, signed and delivered at Kisii this 8th day of February 2021.

J.M ONYANGO

JUDGE