



REPUBLIC OF KENYA



**St. Teresa ACK Nanga Church v Odinga & 3 others (Environment & Land
Case 239 of 2015) [2023] KEELC 573 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 573 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 239 OF 2015**

E ASATI, J

FEBRUARY 9, 2023

BETWEEN

ST. TERESA ACK NANGA CHURCH APPLICANT

AND

SIMON OWINO ODINGA 1ST RESPONDENT

STEPHEN ODHIAMBO ODINGA 2ND RESPONDENT

JOSEPH ODHOCH ODINGA 3RD RESPONDENT

MARTIN OGONYO ODINGA 4TH RESPONDENT

RULING

1. Before court for determination is the notice of motion application dated February 25, 2022 *vide* which the applicant seeks for orders that the prohibitory order restraining the Land Registrar Kisumu from transferring and or charging the property be lifted and that there be a vesting order for the transfer of land title No Kisumu/Nyalenda “B”/2394 to Festus Musoda Girure of ID No xxxxx of PO Box 1242 40100, Kisumu, pursuant to the sale conducted on November 30, 2021 wherein he was the highest bidder. The application was brought pursuant to the provisions of Order 22 Rules 67, 68 and 69 of the Civil Procedure Rules and Rule 17 (5) and (6) of the Auctioneers Amendment Rules 2009.
2. The grounds upon which the application was brought are shown on the face of the application and the supporting affidavit sworn by Alfred Kisiala Kiaya on February 25, 2022 and the annexures thereto.
3. The application is unopposed and although indicated on the face of the notice of motion to be *Exparte*, an Affidavit of service sworn by Alex Otieno Omayo on March 17, 2022 indicates that the application was served upon the respondents on March 7, 2022. Similarly, an affidavit of service sworn by Alex Otieno Omayo on November 28, 2022 and filed in court on the same date shows that a hearing Notice dated November 28, 2022 had been served upon the firm of DOE Anyul & company Advocates for



the respondents to attend court on February 2, 2023 for hearing of the application. To the affidavit of service was annexed a hearing notice dated November 28, 2022 duly received at the firm of DOE Anyul & Co Advocates on November 28, 2022 for hearing of the application on February 2023. There was no attendance for the respondents on February 2, 2023.

4. The grounds of the application are that the Auctioneer was issued with instructions to sale by way of attachment and sale of immovable asset namely land parcel known as Kisumu/Nyalenda “B”/2394. That the Auctioneer subsequently sold the property after following due process on November 30, 2021 to the highest bidder namely FEstus Musoda Girure. That both the plaintiff and his Advocate have no objection to the order being issued to vest the sold property in the name of the purchaser Festus Musoda Girure.
5. To the application are annexed documents showing the process inclusive of the Auctioneer’s licence showing that the Auctioneer Kenya Alfred Kisiah was duly licence to execute the instructions, Notice of Public Auction, Certificate of Official Search showing that the property was registered in the names of the Respondents, court order dated September 3, 2019, inter alia, authorizing the attachments and sale, 45 days redemption notice and newspaper cutting containing the advertisement for the sale by public auction of the property.
6. Order 22 Rule 68 of the Civil Procedure Rules 2010 allows any court to order the sale of immovable property in execution of decrees and Rule 67 gives the court power to make an order vesting the sold property in the name of the purchaser.
7. I have considered the application. I have gathered from the court record that the sale in respect of which the vesting order is sought was sanctioned by the court vide its ruling dated September 3, 2019 wherein it allowed the attachment and the sale of the subject parcel of land No Kisumu/Nyalenda “B”/2394 by public auction in execution of the decree. The Auctioneer has demonstrated through the Supporting Affidavit that he did sale the property by public auction to Festus Musoda Girure. The applicant deposed in paragraph 8 of the supporting affidavit that the said purchaser already paid the purchase price. The vesting order sought herein will enable the purchaser to complete the sale transaction and have the land transferred in his favour. The court record also shows that in order to preserve the property the court at the instance of the decree holder had issued an order of prohibition prohibiting the respondents from selling or charging the attached property. Under Section 70 of the Land Registration Act, an inhibition placed by court order can be removed by subsequent order of the court. I find that the application is merited I allow the application in the following terms: -
 - a. The prohibitory order issued herein on September 3, 2019 restraining the Land Registrar Kisumu from transferring and or charging the property Known as Kisumu/Nyalenda “B”/2394, is hereby lifted.
 - b. A vesting order is hereby issued for the vesting and transfer of land parcel Known as Kisumu/Nyalenda “B”/2394 to Mr Festus Musoda Girure of ID No xxxxx and PO Box 1242- 40100 Kisumu forthwith.
 - c. No order as to costs.

Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF FEBRUARY, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

**E. ASATI,
JUDGE.**



In the presence of:

Maureen: Court Assistant.

Oyugi for the Applicant.

No appearance for the Respondents.

