



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 150 OF 2008 (O.S)

DAVID OYIARE NTUNGANI.....PLAINTIFF

VERSUS

MATUIYA OLE NAISUAKU ORKET.....DEFENDANT

RULING

1. In the Application dated 19<sup>th</sup> August, 2020, the Plaintiff has sought for the following orders:

- a. That the Applicant/Decree Holder be granted leave to effect execution by way of attachment and sale by Auction of 6.5 Hectares as formally prayed for in the filed Form 14, Appendix A, Order 22, subject to valuation and any other directions from the court, of the immovable property namely KJD/Lorngusua 1292, measuring in total 33.5 Hectares, Kajiado County, Kajiado Central sub-County, Ololeilai Location, Ololeilai Sub-Location, Ng'ataek, village belonging and registered in the name of the Defendant/Judgment Debtor, Matuiya Ole Naisuaku Orket to satisfy decretal costs and incidental expenses.
- b. That pending the hearing directions on prayers "3" to "7" herein prohibitory inhibitive orders do issue, prohibiting the Judgment Debtor from transferring or charging, or encumbering or alienating the property in any way and prohibiting all persons from taking any benefit from such purported transfer, charge encumbrance, or alienation, and that the prohibitory inhibition be registered against the title.
- c. That the Decree Holder be granted provisions of up to Kshs. 450,000.00 over and above the decretal costs plus interest to meet incidental costs including land parcel rent and rates, sub-division and valuation costs.
- d. That without prejudice to any prayer herein seeking to sell 6.5 Hectares the court be pleased to give direction as to such size of the land parcel as can be sold to meet the decretal sum, interest and incidentals expenses.
- e. That in its absolute discretion the court be pleased to grant the Decree Holder/Plaintiff leave to participate in any process of sale of the land in execution of the decretal sum.
- f. That any other or further orders and directions in the interest of justice do issue.
- g. That costs of this Motion be paid by the Judgment Debtor/Defendant.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he obtained Judgment on 12<sup>th</sup> May, 2017 decreeing him as the owner of the parcel in dispute in this case, and for vacant possession within sixty (60) days of Judgment and that he obtained assessment of his costs on 14<sup>th</sup> May, 2020 at Kshs. 1,902,659.00 which remain unpaid to date hence this Application for execution.

3. The Plaintiff deponed that he is not aware of any other resources the Defendant/Judgment Debtor has other than land parcel L.R. No. KJD/Lorngusua/1292 registered solely in his name and that he seeks execution by way of attaching and selling a portion of the said parcel to realise his taxed costs.

4. The Plaintiff deponed that through his advocate, he lodged an Application for execution as prescribed in law, and that he seeks for execution for his costs by auction sale of immovable property, being 6.5 Hectares subject to valuation; that the Defendant's entire land measures 33.5 Hectares; that the general market price of land per hectare in the vicinity of the parcel of land in Ilbisil area, Kajiado County, Kajiado Central Sub-County, Ololeilai location, Ololeilai Sub- Location, Ng'ataek village is about Kshs. 400,000 per Hectare and that a valuation be done to determine both the market and the forced sale prices of the Defendant's land so as to meet the liability of Kshs. 2,682,031.26.

5. It was deponed that as part of the Auction sale, there would be a need to conduct a valuation, and to pay for sub-division of the parcel of land, and also pay all accrued county and central Government dues including rates and rents, all of which would need to be covered by the Judgment Debtor. According to the Plaintiff, this is the basis for the prayer for a provision of expenses of up to Kshs. 450,000.00.

6. Although the Defendant's advocates were served with the Application, they did not file a response. The Application proceeded as unopposed. Indeed, vide a Ruling dated 14<sup>th</sup> May, 2020 by the Registrar of this court, the Plaintiff's party and party costs were taxed at Kshs. 1,902,659. After the Bill of Costs was taxed, the court issued warrants of attachment and sale of part of 6.5 Hectares of land known as KJD/Lorngusua/1292 to settle the said costs and the attendant disbursements.

7. Order 22 Rule 68 of the Civil Procedure Rules provides that the court may order for the sale of immovable property in execution of a decree by way of public auction. Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause public notice and advertisement of the intended sale to be given in such manner as the court may direct.

8. Such public notice shall be drawn up after notice to the Decree-Holder and the Judgment-Debtor, and shall state the time and place of sale, and specify as fairly and accurately as possible - the property to be sold; any encumbrance to which the property is liable; the amount for the recovery of which the sale is ordered; and every other thing which the court considers material for a purchaser to know in order to judge the nature and value of the property (*Order 22 Rule 57 of the Civil Procedure Rules*).

9. Order 22 Rule 48 provides that where the property to be attached is immovable, the attachment shall be made by an order prohibiting the Judgment-Debtor from transferring or charging the property in anyway, and all persons from taking any benefit from such purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property.

10. Considering that the Plaintiff is seeking to sell a portion of the land belonging to the Defendant, the said land ought to be valued first, then sub-divided with a view of selling the portion that will satisfy the decree, together with the attendant disbursements. That being the case, the acreage of the land that should be hived off the Defendant's land can only be ascertained after valuation of the land. That being the case, I shall allow the Plaintiff's Application dated 19<sup>th</sup> August, 2020 as follows:

**a. The Plaintiff/Decree Holder is hereby granted leave to effect execution by way of attachment and sale by Auction of a portion of land known as KJD/Lorngusua 1292, subject to valuation.**

**b. Pending the sub-division and sale of a portion of land known as KJD/Lorngusua 1292, a prohibitory order is hereby issued, prohibiting the Judgment Debtor from transferring or charging, or encumbering or alienating the property in any way and prohibiting all persons from taking any benefit from such purported transfer, charge, encumbrance, or alienation, and the prohibitory inhibition to be registered against the title.**

**c. The Plaintiff to engage a valuer and a surveyor to value the parcel of land known KJD/Lorngusua 1292 and hive off a portion of the land which will satisfy the decretal amount; the fees for valuation; the survey fees, the land rates and land rent and the said portion of land to be sold in a public auction pursuant to the provisions of the Civil Procedure Rules.**

**d. The Plaintiff/Decree Holder is hereby granted permission to bid for or purchase the portion of the Defendant's property that will be sold pursuant to the above orders.**

**e. Each party to bear his own costs.**

**DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 16<sup>TH</sup> DAY OF APRIL, 2021**

**O. A. ANGOTE**

**JUDGE**