



REPUBLIC OF KENYA



**Kawamambanjo Limited & another v National Bank of Kenya Limited & 6 others (Civil Case 878 of 2009) [2025] KEHC 2920 (KLR) (Commercial and Tax) (10 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2920 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 878 OF 2009  
AA VISRAM, J  
MARCH 10, 2025**

**BETWEEN**

**KAWAMAMBANJO LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**TIMOTHY BENSON KAMANDE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NATIONAL BANK OF KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**DAVID KARIUKI GICHANGA T/A WATTS ENTERPRISES  
AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**JULIET THEURI ..... 3<sup>RD</sup> DEFENDANT**

**MR GICHURU ..... 4<sup>TH</sup> DEFENDANT**

**CHARLES PATRICK VINCENT WALKER ..... 5<sup>TH</sup> DEFENDANT**

**JOHN NJOROGE MICHUKI ..... 6<sup>TH</sup> DEFENDANT**

**NEW HOMES DEVELOPMENT LIMITED ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

**Introduction**

1. I have considered the Application dated 21<sup>st</sup> May, 2024, together with the affidavit in support filed on even date. The same is not opposed and an affidavit of service is available on the Court record.
2. The factual background to the Application is that by way of a Complaint dated 2<sup>nd</sup> December, 2009, the Plaintiffs instituted the suit herein seeking among other orders, injunctive orders restraining the Defendants' from disposing the suit property known as L.R. No. 170/35 Redhill, Nairobi,



cancellation of the Auction sale and nullification of the subsequent transfer to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

3. The matter proceeded to full trial and the Court, by its judgment delivered by the Honourable Justice G. Nzioka, dismissed the Plaintiffs' suit. Judgment in the matter was entered on 15<sup>th</sup> September, 2020, where the Court held that the sale of the suit property being L.R. No. 170/35 was proper, legal and valid.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants have since failed, neglected and/or refused to honour the orders of the Court by continuing to hold on to the original title documents and other public auction sale and transfer documents therefore preventing the transfer from being effected in the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, necessitating the instant Motion Application dated 21<sup>st</sup> May, 2024.
5. The sole issue for determination is whether the orders sought in the Motion Application dated 21<sup>st</sup> May, 2024, should be granted as prayed for?
6. While the Court notes that the Application is not opposed, I am still cognizant that this Court is duty bound to make due consideration of the prayers sought and arrive at the necessary finding. This is in line with the decision of the Supreme Court in Civil Appeal No.26/2018, *Gideon Sitelu Konbellah – vs- Julius Lekakeny ole Sunkuli, & 2 Others* [2018] eKLR cited in *In re Estate of Adam Haji Ali Talib (Deceased)* [2021] eKLR where the Court held that:-

“... the upshot is that as the 2<sup>nd</sup> and 3<sup>rd</sup> respondents had stated categorically that they do not oppose the Application, the Court will be excused for therefore deeming the Application as being unopposed entirely.

(10) Be that as it may, as a Court of Law, we have a duty in principle to look at what the Application is about and what it seeks. It is not automatic that for any unopposed Application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the Application is meritorious and the prayers may be granted...” (Emphasis mine)

7. Guided by the above, I note that the Applicant submitted that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants became bona fide purchasers for value upon executing the Memorandum of Sale. As bona fide purchasers for value, they are protected by the provisions of Section 99 (2) of the *Land Act* No. 6 of 2012.
8. The law is clear on the position of a holder of a title in respect to the land. Section 24(a) of the *Land Registration Act* provides for the interest conferred by registration. It provides:-

Subject to this act the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all the rights and privileges belonging or apparent thereto.

9. Section 26(1) of the *Land Registration Act* provides as follows:-

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer shall be taken by all the Courts as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except;

- a) On the ground of fraud or misrepresentation to which the person is proved to be a party or;



- b) Where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.
10. Based on the record, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants became bona fide purchasers for value upon executing the Memorandum of Sale, and therefore, the rightful owners having purchased the same lawfully by way of an auction.
  11. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants pleaded that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have continued to hold on to the original title documents and other public auction sale and transfer documents in a bid to prevent the transfer from being effected to the names of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.
  12. The Applicant further submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have refused to sign the transfer forms having written a letter to them requesting for the same.
  13. Counsel relied on the provisions of Section 98 of the [Civil Procedure Act](#) which provides as follows:-

Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other documents, or to endorse any negotiable instrument, the Court may, on such terms and conditions, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

14. Counsel further relied on the Court's decision in [Kencent Holdings Limited & another v Mati Charo Matsere & 330 others](#) [2021] eKLR where it was observed that:-

“The issue regarding execution of documents by the 1<sup>st</sup> Plaintiff can be sorted if this Court issues an order directing the Deputy Registrar of this Court to sign all documents needed to be signed by the 1<sup>st</sup> Plaintiff for the discharge of charge to be effected. I therefore issue an order directing the Deputy Registrar of this Court to sign all documents needed to be signed by the 1<sup>st</sup> Plaintiff to discharge the charge and any such documents will be deemed to have been executed by the 1<sup>st</sup> Plaintiff for all intended purposes.”
15. I am further guided by the decision of the Court in [Charles Mukoma Kimaru v Johnstone Muchomba Kaguya](#) (2020) eKLR where it was held:-

- “20. It has now emerged that after the judgment of the Court that the respondent with a view to defeat the execution of the judgment has refused and/or neglected to sign the relevant transfer documents which refusal/neglect is calculated to defeat this Court's judgment. The only way the judgment and decree of the Court can be effected is by authorizing the Deputy Registrar to sign all instruments of transfer of land to the Applicant in place of the respondent within the confines of the law as provided for.
21. I am satisfied in the circumstances that this is a proper case in which the Court should exercise its discretion under Section 98 of the [Civil Procedure Act](#) and do hereby nominate the Deputy Registrar of this Court to execute the instrument



of transfer in favour of the Applicant to enable him enjoy the fruits of the judgment of 4<sup>th</sup> October, 2018.”

16. Additionally, the Court *in Re Estate of Wilfred Munene Ngumi (deceased)* while allowing the Application for the Deputy Registrar of the Court to execute completion documents thus held as follows:-

“...It is evident from the Applicant’s affidavit in support of the Application and oral arguments by her Advocate, Mr. Kahiga, that the Respondents have refused to sign the necessary documents to facilitate execution of the Court’s judgment/decree. To prevent abuse of the Court process, by the above legal provisions, this Court has inherent powers to prevent such abuse. I therefore find and hold that the petitioner’s summons dated 23/9/2019 and filed on 25/9/2019 to be merited...”

17. Based on the law set out above, and given that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have failed, neglected and/or refused to honour the orders of this Honourable Court, I find that this is a proper case in which the Court should exercise its discretion under Section 98 of the *Civil Procedure Act* and nominate the Deputy Registrar of this Court to execute the instrument of transfer in favour of the 3<sup>rd</sup> and 4<sup>th</sup> Applicants, to enable them enjoy the fruits of the judgment of 15<sup>th</sup> September, 2020.

18. The Application is accordingly allowed as prayed for.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS {{^}} 10<sup>TH</sup> DAY OF MARCH, 2025.**

**ALEEM VISRAM, FCIArb**

**JUDGE**

In the presence of;

.....Court Assistant  
..... for 1<sup>st</sup> Plaintiff  
..... for 2<sup>nd</sup> Plaintiff  
.....for 1<sup>st</sup> Defendant  
..... for 2<sup>nd</sup> Defendant  
..... for 3<sup>rd</sup> Defendant  
..... for 4<sup>th</sup> Defendant  
..... for 5<sup>th</sup> Defendant  
.....for 6<sup>th</sup> Defendant  
.....for 7<sup>th</sup> Defendant

