

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

MISC. CASE NO. 217 OF 2018

STEPHEN BORO GITIHA.....PLAINTIFF

VERSUS

OFFICIAL RECEIVER & LIQUIDATOR OF

RURAL URBAN CREDIT FINANCE LIMITED.....DEFENDANT

RULING

1. **Steven Boro Gitiha (Gitiha)** seeks by his **Notice of Motion** dated **30th April 2018**, leave of this court to institute a suit against the official receiver and liquidator of **Rural Urban Credit Finance Limited (Rural Urban)**. **Rural Urban** is under liquidation.
2. In **1994**, **Gitiha** purchased a property, being **LR. No. Kiganjo/Kiamwangi/2008**, at a public auction which auction was at the instructions of **Rural Urban** in exercise of its statutory power of sale.
3. That purchase was successfully challenged before court by the registered owner in **HCCC No. 4275 of 1994**. That decision of the High Court was upheld by the **Court of Appeal in Civil Appeal No. 216 of 2014**.
4. **Gitiha** now seeks to recover the purchase price and other costs from **Rural Urban**. He seeks leave to file a suit against **Rural Urban** under **Section 432 (2) of the Insolvency Act**.
5. **Gitiha** has established before this court that he has a right to sue **Rural Urban** and on a **prima facie** basis he has shown that **Rural Urban** is liable to his claim. That suffices for the granting of leave. It meets the requirement under **Section 432(2) of the Insolvency Act** which states as follows:

“(2)When a liquidation order has been made or a provisional liquidator has been appointed, legal proceedings against the company may be begun or continued only with the approval of the Court and subject to such conditions as the Court considers appropriate”.

6. Accordingly, this court grants leave to **Steven Boro Gitiha** to institute proceedings against the official receiver and liquidator of **Rural Urban Credit Finance Limited** in respect to the property **LR No. Kiganjo/Kiamwangi/ 2008** which **Steven Boro Gitahi** purchased at the public auction.

DATED, SIGNED and DELIVERED at **NAIROBI** this **13th** day of **June**, 2018.

MARY N. KASANGO

JUDGE

Ruling read in open court in the presence of

Court Assistant.....Sophie

.....for the Plaintiff

.....for the Defendant