



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC NO. 79 OF 2017

GEOFFREY NDICHU MUIRURI.....PLAINTIFF/RESPONDENT

VERSUS

JOSEPH NDURA MBUCHIRI.....DEFENDANT/APPLICANT

RULING

By a Notice of Motion Application **dated 17th December 2018**, the Defendant/ Applicant herein sought for the following orders against the Plaintiff/ Respondent;

- 1. THAT this Honourable Court be pleased to make an order for sale of the Judgment debtors land known as L.R No. Komothai/Gathugu/2148, by Joseph DBK Kimani, trading as Pyramid Auctioneers.***
- 2. THAT this Honourable Court be pleased to settle the terms of sale of the Judgments debtors land known as L.R No. Komothai/Gathugu/2148.***
- 3. THAT costs of this Application be borne by the Plaintiff/ Judgment debtor.***

The Application is premised on the grounds that the Judgment debtor does not have any attachable moveable property except the land which has already been attached to answer the decree and that it is in the interest of Justice the land is sold and that the Court settles the terms of the sale of the Judgment debtors land to facilitate its sale expeditiously.

In his supporting Affidavit, **Kenneth Kibathi**, Advocate for the Applicant averred that Judgment was entered on **12th November 2018**, for costs to a tune of **Kshs. 106,215** plus interest in favour of the Defendant. He averred that there is no stay of execution in place and the Defendant desires to execute the Decree. Further, it was his contention that the Judgment debtor has no known moveable property which can satisfy the decretal sum and that the Judgment Debtor though previously served with a proclamation letter has ignored to satisfy the said Decree.

It was his contention that the Judgment debtor's suit property **L.R No. Komothai/Gathugu/2148**, is the only attachable asset that can be traced by the decree holder and it is therefore in the interest of justice that the said piece of land be sold to satisfy the decree. He contended that **Mr. Joseph DBK Kimani t/a Pyramid Auctioneers**, be given the authority to effect the sale.

The Application was canvassed by way of written submissions which the Court has carefully read and considered. The Court has also considered the Application, the supporting affidavit and the annexures thereto and renders itself as follows;

It is not in doubt that Judgment was entered as against the Plaintiff/ Respondent and a decree to that effect indicated that the the Plaintiff/Respondent would bear the costs of the suit. Further it is not in doubt that the bill of costs was further taxed and the same adopted as Judgment of the Court. It is therefore this Court's considered view that the Defendant/ Applicant is entitled to the execution in satisfaction of the said Judgment.

Order 22, rule 9 of the Civil Procedure provides

“Where an application is made for the attachment of any immovable property belonging to a judgment-debtor, it shall contain at the foot—

(a) a description of such property sufficient to identify the same, and, in case such property can be identified by boundaries, or numbers in Government records or surveys, a specification of such boundaries or numbers; and

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same."

Further **Order 22, rule 10** of the Civil Procedure Rules provides

"Where an application is made for the attachment of any land which is registered in the Land Registries, the court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing, any transferable interest in the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors."

A look at the Application reveals that the description of the property to be attached has been set out by the Applicant as **L.R No. Komothai/Gathugu/2148**. Further, the Applicant has produced before this Court an official search dated **26th November 2018**, indicating that the Plaintiff/ Respondent is the registered owner of the property.

Though served with the instant Application, the Plaintiff/ Respondent has not objected to the same and therefore the allegations by the Defendant/ Applicant remain uncontroverted. Having satisfied this Court that the provisions of law as set out above have been complied with, this Court finds that the prayer seeking to sell the Judgment debtors property is merited and therefore it is allowed.

However this Court recognises that at this point, the value of the said property is unknown therefore it will be necessary to order for a valuation report to be prepared so that the property is sold at the right market value. Thereafter the Defendant can settle his claim and the Plaintiff/ Respondent can have the remaining amount if any.

Having now carefully considered the pleadings herein, the instant **Notice of Motion** application and the written submissions, the Court finds that the *said Application dated 17th December 2018, is merited and is allowed entirely. Further, the Court orders that a Valuation report be prepared for purposes of valuing the land and the Defendant/ Applicant recover the amount due and the remainder if any be submitted to the Plaintiff/ Respondent.*

It is so ordered.

Dated, Signed and Delivered at Thika this 7th day of May 2020

L. GACHERU

JUDGE

7/5/2020

Jackline - Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic and in light of the directions issued by His Lordship, the Chief Justice on **15th March 2020**, this **Judgment** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all Judgments and Rulings be pronounced in open Court.

By Consent of :

No appearance for the Plaintiff/Respondent

Mr. Kibathi for the Defendant/Applicant

L. GACHERU

JUDGE

7/5/2020