



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NUMBER 170 OF 2010(O.S.)

IN THE MATTER OF AN APPLICATION BY DYSSELEER MIREILLE LESOIPA UNDER SECTION 17 OF THE MARRIED WOMEN PROPERTY ACT 1882 AS AMMENDED

DYSSELEER MIREILLE LESOIPA.....PLAINTIFF/APPLICANT

VERSUS

MANUEL LESOIPA

***alias* EMMANUEL LESOIPADEFENDANT/RESPONDENT**

RULING

1. By a Judgment dated 9th February 2015, the court directed that the suit property **Samburu/Maralal Township/112** be sold and/or parties buy each others entitlement in respect thereof.

Though a Notice of Appeal was filed, no stay of execution was obtained.

By a Notice to show cause heard on the 27th July 2016 the court directed that execution of the decree dated the 17th February 2015 be effected.

2. The plaintiff in her application dated the 30th August 2016 seeks orders that:

1. Spent

2. The Deputy Registrar be pleased to order that Plot Samburu/Maralal Township/112 be sold by private treaty to M/S Nuclear Investments Ltd for the sum of Kshs.15,000,000/= in execution of the decree among other prayers.

3. In support of the application, the applicant in her affidavit sworn on the 30th August 2016 depones that pursuant to the judgment, she has procured a purchaser for the property which information was communicated to the respondent but he failed to co-operate by identifying an alternative purchaser or to buy out. I have seen several letters of offer sent to the respondent but it is said that no response has been received.

4. It is further deponed that the defendant, his wife and gents have taken possession of the plot in contravention of the court orders and have therefore denied the applicant her share of rent collected from the said plot.

5. In opposing the application the Respondent says that the property ought to be sold by public auction,

not by private treaty. Citing the Judgment of the court, it is submitted that the court did not direct sale of the property by private treaty and that the execution process provided under the provisions of **Order 22 rule 57 of Civil Procedure Rules** ought to be adhered to.

6. I have given the parties time to negotiate an amicable settlement on the mode of sale of the suit property, that being the only contention between the parties, but none has been arrived at.

The applicant has procured a purchaser for a sum of Kshs.15,000,000/=. The Respondent has declined to accept the offer nor procure a better one. The court judgment did not direct the mode of sale of the property.

Order 22 of the Civil Procedure Rules 2010 provides for the modes of execution of court decrees.

Rule 68 provides that:

“Sale of immovable property in execution of decree may be ordered by the court.”

The **Civil Procedure Act, Cap 21 Laws of Kenya, Section 38** provides modes of executions.

These are:

- a) *By delivery of any property specifically decreed.*
- b) *by attachment and sale or by sale without attachment of any property.*
- c) *In such other manner as the nature of the relief granted may require.*

7. **Section 44** too does not state that the sale of a property ought only be by public auction. From averments of the applicant, I am persuaded that the Respondent is resisting execution of the decree by raising issues in its preliminary objection, and specifically by objecting to the sale of the property by private treaty. See **Section 51 of the Act**.

It is common knowledge that sale of property of whatever nature in a public Auction is subject to valuation and attendant notices. It increases costs and the purchase price may be “**forced**” as opposed to a private treaty where the parties negotiate a reasonable purchase price. It is not clear why the Respondent is opposed to the sale by private treaty. He has given no reasons. He has not procured a buyer himself, nor is he willing or ready to buy out the applicant.

8. **Order 22 rule 56(1)** and the **Civil Procedure Rules** provides:

“Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the court or by such other person as the court may appoint in this behalf, and shall be by public Auction in the prescribed manner.”

Rule 57(1) provides the issuance of the necessary notices and advertisements as may be issued by the court.

9. In the circumstances of this matter, though not the only mode of **sale in execution of a decree, sale by public auction may be the best option** as there appears to be suspicion between the parties.

See **Fubeco China Fushun -vs- Naiposha Co. Ltd and 11 Others (2014) e KLR**. I have stated attendance costs and perhaps delay due to the notices that have to be issued pursuant to provisions of **Order 22 Rule 56 and 57 of the Civil Procedure Rules**.

10. To facilitate a just and expeditious disposal of the dispute and that being only the mode of sale of the suit plot, and having taken into account both parties concerns and interests in the matter and after due

consideration by both parties arguments, **it is my finding that the suit plot be advertised for sale by public auction where the public including the proposed purchaser may participate, and the proceeds be applied as stated in the court's judgment dated the 9th February 2015. I further direct that the process of sale should start and end within 90 days of this ruling unless otherwise extended by a court order upon application.**

11. Litigation must come to an end to enable successful parties enjoy the fruits of their litigation. Endless applications not only prolong finalization of a suit but also put parties to uncalled for financial expenses and prejudices. See **Sections 1A, 1B and 3A of the Civil Procedure Act.**

Consequently the application dated 30th August 2016 is disallowed, but compromised in the manner stated above in Paragraph 10.

12. There shall be no orders as to costs.

Dated, Signed and Delivered this 20th Day of July 2017.

J. N. MULWA

JUDGE