



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL APPEAL NO. 38 OF 2011

MICHAEL MUSEMBI KISOO APPLICANT/APPELLANT

VERSUS

PATRICIA LUCIA MASUA RESPONDENT

(Being an appeal from the ruling of the Senior Resident Magistrate's Court at Kithimani of Hon A.W Mwangi SRM in Senior Resident Magistrate Case No. 22 of 2007 dated 23/2/2011)

(Before B. Thurania Jaden J)

RULING

1. The application dated 1/4/2011 and filed in court on 6/4/2011 seeks orders that there be a temporary stay of execution of order of transfer of **plot No. 57 B Kabati** to the purchaser pending the hearing *inter parties* and final determination of this application.
2. Secondly, the application seeks orders that there be a stay of effecting absolute the Public Auction conducted on 12th November 2010 by **Mambu Auctioneers** pending the hearing and determination of the Applicant's appeal against the order of the court.
3. The application is supported by the affidavit sworn by the Applicant, **Michael Musembi Kisoo**.
4. In a nutshell, the appeal challenges the lower court orders rejecting to set aside the public auction thereby exposing the Applicant to the imminent transfer of the plot to the purchaser.
5. In opposition to the application, the Respondent filed a replying affidavit. It is contended that the plot has already been lawfully and procedurally sold and a certificate of sale issued by the auctioneer and the Respondent no longer has any interests in the same and that the Applicant should now pursue the purchaser.
6. Although the court gave directions that the application be canvassed by way of written submission, the Applicant did not file any. The Respondent filed their written submissions on 8/2/2013. The Applicant was served again personally for the hearing on 23/9/13 but once again there was no attendance on his part.
7. In her submissions, the Respondent submitted for the dismissal of the application for want of prosecution. That the appeal was filed without the leave of the court and that the application is incompetent and ought to be dismissed with costs.
8. The Applicants have failed to prosecute their application. There has been no attendance in court by the Applicant on several occasions despite being duly served. Consequently, I dismiss the application for non attendance by the Applicant with costs to the Respondent.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **15th** day of **May** 2014.

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B. THURANIRA JADEN

JUDGE