



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO. 156 OF 2008**

**MAGETA ENTERPRISES LTD.....APPLICANT**

**VERSUS**

**TILAK COMPANY LIMITED.....RESPONDENT**

**RULING**

The applicant, Mageta Enterprises Ltd, brought the notice of motion dated 25th February, 2014 praying that the caution placed by the director of the respondent, Zaina Mukami Chelang'a, over the parcel of land known as Nakuru/Municipality Block 11/195 (the suit property) be forthwith removed.

The application is supported by the affidavit of the director of the applicant, Kenneth Maweu Kasinga, and is premised on the grounds that by a decree of this court issued on 25th July, 2011 the applicant was declared to have been in adverse possession of the suit property and to be entitled to registration as the proprietor of the suit property and that through an order of this court issued on 20th January, 2014 the Deputy Registrar of this court was ordered to execute all the documents necessary to effect the transfer. The applicant contends that despite all the necessary transfer documents having been prepared the transfer could not be effected as it emerged that the director of the respondent (Zaina Mukami Chelang'a) had placed a caution over the suit property way back in 2000. Contending that the said director of the respondent does not hold any superior interest over the suit property and that unless the caution is lifted the transfer ordered by the court cannot be effected, the applicant has urged the court to allow the application in order to enable the execution of the said decree of the court.

When the application came up for hearing on 6th May, 2014 the application was declined for want of proper service.

Following an order for fresh service, the applicant served the respondent by way of substituted service (advertisement). That fact is borne out by the affidavit of the process server, Nelson Kisolei, sworn on 28th May, 2014. In that affidavit the process server has deposed that on 22th May, 2014 he received the application herein from the applicant's advocates, Kiplenge and Kurgat Advocates, with instruction to effect service of the same to the respondent by way of substituted service.

Upon paying for the substituted service, the matter was advertised on 23rd May, 2014 as can be attested by a copy of the newspaper extract annexed to the processor's affidavit.

Despite having been served by way of substituted service, the respondent did not file any response. That being the case, when the matter came up for hearing on 28th May, 2014 counsel for the applicant, urged the court to allow the application as it was unopposed.

Upon reading and considering the application and the affidavit evidence adduced in support thereof, particularly the decree issued on 25th July, 2011 and the court order issued on 17th January, 2014 in respect thereof, and being satisfied that the respondent was duly served with the application herein, I allow the application as prayed.

**Dated, Signed and Delivered at Nakuru this 4<sup>th</sup> Day of July 2014**

**H.A. OMONDI**

**JUDGE**