



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL SUIT NO. 308 OF 2007**

**AGAM INVESTMENTS LIMITED .....PLAINTIFF/DECREE HOLDER**

**- V E R S U S -**

**VOI DEVELOPMENT COMPANY LTD ..... 1<sup>ST</sup> DEFENDANT**

**CHRIS CANNAN ..... 2<sup>ND</sup> DEFENDANT**

**JOHN KELL CAMPBELL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Court is requested by Plaintiff's Notice of Motion dated 27<sup>th</sup> August 2014 to give effect to the judgment of this Court of 11<sup>th</sup> March 2011. By that Judgment this Court ordered the 1<sup>st</sup> Defendant to transfer and register **Plot Numbers LR Nos. 15031/41, 15031/42, 15031/118, 15031/119, 15031/120, 15031/123 and 15031/124** [the properties] in favour of the Plaintiff. It is that order in that judgment Plaintiff seeks to be effected.
2. Plaintiff by that Notice of Motion seeks that this Court do compel 1<sup>st</sup> Defendant to execute transfers in favour of Plaintiff of the properties, delivery to Plaintiff's Advocates those executed transfers alongside with all other necessary documents which will enable those transfers to be registered.
3. This Court judgment of 11<sup>th</sup> March 2011 was appealed against by the Defendant and the Court of Appeal by its judgment of 7<sup>th</sup> February 2014 dismissed the appeal.
4. The 1<sup>st</sup> Defendant in its opposition to the application deponed that the orders sought were premature because 1<sup>st</sup> Defendant desired to appeal to the Supreme Court and in that regard filed an application to the Court of Appeal for a Certificate to be issued pursuant to Article 163(4) (b) of the Constitution.
5. That deposition by 1<sup>st</sup> Defendant was disproved by Plaintiff's Learned Counsel's further affidavit whereby he annexed an extracted order of the Court of Appeal of 17<sup>th</sup> June 2014 showing 1<sup>st</sup>

Defendant withdrew the application for leave to file an appeal to the Supreme Court. In my view the 1<sup>st</sup> Defendant having withdrawn that application there can be no other ground for denying the Plaintiff the prayers it seeks. It is for that reason the Plaintiff will be granted orders sought.

6. In conclusion therefore I do grant orders as follows:

- a. **The 1<sup>st</sup> Defendant/Judgment Debtor is hereby compelled to execute Transfers in triplicate for the Transfer of the suit premises, LR. Nos. 15031/41, 15031/42, 15031/118, 15031/119, 15031/120, 15031/123 and 15031/124 in favour of the Plaintiff/Decree Holder and to deliver to the Plaintiff/Decree Holder's Advocates those duly executed Transfers, the Original Deed Plans for Plot Nos. LR. Nos. 15031/123 and 15031/24, the Judgment Debtor's copy of PIN Certificate, the colour photographs of the 1<sup>st</sup> Defendant's 2 Directors as well as the PIN Certificates for any of the 1<sup>st</sup> Defendant's 2 Directors together with the original Grant registered as CR No. 13016/1 for purposes of registering the Transfer. In default the Deputy Registrar of this Court is hereby authorized and directed to execute the Transfers to transfer to the Plaintiff the said properties together and further the Court order that such transfers by the Deputy Registrar be effective and shall be acted upon by the Land Registrar for purposes of registering those Transfers.**
- b. **Should the 1<sup>st</sup> Defendant/Judgment Debtor refuse to release the original Grant No. C.R. NO. 13016/1 and to execute the Transfer with all the documents necessary to register those Transfers the 1<sup>st</sup> Defendant's/Judgment Debtor's entire property comprised in Grant No. C.R. 13016/1 measuring 8369 acres shall be attached and sequestered for so long as it will take the 1<sup>st</sup> Defendant to comply and further an order is hereby made for the arrest and imprisonment of the 1<sup>st</sup> Defendant's Directors including Mr. Eliud Timothy Mwangi for a term of six (6) months at the Shimo La Tewa Prison Mombasa or until the 1<sup>st</sup> Defendant complies with the order issued herein.**
- c. **The Plaintiff is awarded costs of the Notice of Motion dated 27<sup>th</sup> August 2014.**

**DATED and DELIVERED at MOMBASA this 4<sup>TH</sup> day of DECEMBER, 2014.**

**MARY KASANGO**

**JUDGE**