



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL CASE 105 OF 2010**

**PETER MAINA NDEGWA ..... PLAINTIFF/DECREE-HOLDER**

**VERSUS**

**ARTHI HIGHWAY DEVELOPMENT CO. LTD..... DEFENDANT/JUDGMENT-DEBTOR**

**RULING**

On 16<sup>th</sup> January 2012 a consent was entered before the Deputy Registrar in the following terms:-

- 1. The Chamber Summons dated 15/12/2011 be and is hereby certified urgent.**
- 2. The Deputy Registrar to execute the transfer on behalf of the judgment Debtor to effectively vest ownership of Land Reference Number 7149/115 (IR 114440) to the purchaser.**
- 3. The Auctioneer be and is hereby allowed to pay the decretal sum to the judgment creditor and the balance thereof to the advocate for the judgement debtor.**
- 4. That costs be in the cause.**

The formal order of the consent was signed by the Deputy Registrar on 18<sup>th</sup> January 2012.

Following the making of the above consent order, the judgment debtor Arthi Highway Developers Ltd has now come to court through a Notice of Motion dated 24<sup>th</sup> February 2012, filed by their counsel Njeru Nyaga & Company. The Notice of Motion was brought under Order 40 Rule 1 and Order 50 of the Civil Procedure Rules as well as section 1A, 1B, 3A and 48 of the Civil Procedure Act (Cap 21). It has four prayers. However, at the hearing of the application, Mr Nyaga, for the judgment-debtor stated that his client was interested only in substantive prayer 2 of the application, as they no longer wanted attachment of the account. Prayer 2 is as follows:-

**“2. That the Honourable Court be pleased to order the Auctioneers KANGERI WANJOHI T/A KINDEST AUCTIONEERS to deposit the balance of the sale proceeds being Kshs.25,614,000/= with the advocates for the judgment debtor within 3 days.”**

Counsel argued that though the application was served, neither the auctioneers nor their counsel responded. Counsel contended that, though the auctioneers complied with part of the consent of January 16<sup>th</sup> 2012 by releasing the decretal amount, they failed to comply with the limb of releasing the balance to the advocates for the judgment debtor as ordered.

Since the application is not opposed, I will grant the prayer. However, I am of the view that 3 days is too short for deposit of such a large amount of money. I will therefore, order that the amount be released within seven (7) days. As the counsel for the judgment debtor has not urged costs, I will order that costs be in the cause.

Consequently, I grant prayer 2 of the application dated 24<sup>th</sup> February 2012, but the amount will be deposited within seven (7) days from today's date.

It is so ordered.

Dated and delivered this **11<sup>th</sup>** day of **July** 2012.

.....

**George Dulu**

**Judge**

**In the presence of:**

Nyalo – Court clerk

N/A for respondent.