



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 89 OF 2009**

**CHARLES KARANJA MASHUA.....JUDGMENT DEBTOR/APPLICANT**

**VERSUS**

**JONAH MZEE ORUMOI.....1<sup>ST</sup> DECREE HOLDER/RESPONDENT**

**ROSE TITO METUO.....2<sup>ND</sup> DECREE HOLDER/RESPONDENT**

**JOSEPH PARSANE ORUMOI.....3<sup>RD</sup> DECREE HOLDER/RESPONDENT**

**JULIUS SARUMUE ORUMOI.....4<sup>TH</sup> DECREE HOLDER/RESPONDENT**

**THE ATTORNEY GENERAL.....5<sup>TH</sup> DECREE HOLDER/RESPONDENT**

**RULING**

1. In the Application dated 16<sup>th</sup> May, 2017, the Judgment debtor/Applicant is seeking for the following orders:

*a. That the order issued on the 15<sup>th</sup> May, 2017 by the Deputy Registrar issuing warrant of attachment of sale for Loitokitok/Olkaria/254 be reviewed, varied/or set aside.*

*b. That there be stay of execution of the order issued by the Deputy Registrar on the 15<sup>th</sup> May, 2017 pending determination of this Application.*

*c. That the costs of this Application be provided for.*

2. The Application is premised on the grounds that the Notice to show cause issued on 6<sup>th</sup> November, 2014 was heard and determined in the absence of the Judgment debtor; that the Judgment debtor is indisposed and is currently undergoing specialized treatment in the United Kingdom and that the Judgment debtor intends to settle the debt.

3. In response, the Decree holders' advocate deponed that the Ruling on Taxation of Costs payable by the 1<sup>st</sup> to the 4<sup>th</sup> Defendants by the Plaintiff was made on 24<sup>th</sup> September, 2014; that the Plaintiff has had more than three (3) years to settle the costs and that the fact that the Plaintiff had travelled to the United Kingdom cannot be a reason for setting aside the order that was given on 15<sup>th</sup> May, 2017.

4. The Applicant has not denied that he owes the Defendants the taxed costs. The record shows that when the matter came up for the Notice to show cause why execution should not issue on 16<sup>th</sup> March, 2017, the Applicant's counsel informed the court that the Applicant could not attend court because he was attending to a boundary dispute. The court found the reason given by the Applicant's advocate to be unsatisfactory and ordered for the warrant of attachment to issue.

5. It is therefore not true that the orders of 15<sup>th</sup> May, 2017 were given by the Deputy Registrar without hearing the Applicant. Indeed, the Applicant has had since the year 2014 to pay up the taxed amount which he has failed to do. By the time the Plaintiff travelled out of the country, he was aware that the Notice to show cause was to be heard on 15<sup>th</sup> May, 2017.

6. In the circumstances, I find that no good reason has been given as to why I should set aside the orders of the Deputy Registrar of 15<sup>th</sup> May, 2017.

7. For those reasons, I dismiss the Application dated 16<sup>th</sup> May, 2017 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 13<sup>TH</sup> DAY OF APRIL, 2018.**

**O.A. ANGOTE**

**JUDGE**