



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

MISCELLANEOUS CIVIL APPLICATION NO. 27 OF 2016

PAULO TARLAZZI (Suing through his attorney and/or agents) CARLA

TARLAZZI..... PLAINTIFF

=VERSUS=

ROBERT CIAVOLELLA..... DEFENDANT

R U L I N G

1. Before Me is a Notice of Motion Application dated 25th, July 2016. The Motion brought ex-parte under **Regulation 17 of the Auctioneers Rules 1997** as amended and **Order 22 Rule 66(4) & (5) of the Civil Procedure Rules** is seeking for Orders, Inter alia;

(i) THAT the application be heard ex-parte as provided by the Auctioneer Rules, 1997

(ii) THAT the Honourable Judge and/or Deputy Registrar of the court do execute the deed of transfer of 350 shares held by the Judgement Debtor in Melville Limited in favour of Mr. Antonio Maffione of Passport No. YAO148828

(iii) THAT the transfer be served upon the Company Secretary of Melville Limited to effect the necessary changes in the company's register of members.

2. Urging the application, Mr. Awele for the Applicant provided a brief history of the circumstances leading to the application and I have also perused the application, the Affidavit in support thereof sworn by Elizabeth W. Kamau as well as the annexures attached thereto.

3. From the record, it is evident that this Miscellaneous application stems from proceedings in Malindi ELC Civil Case No. 206 of 2013 (**Paola Tarlazzi vs. Robert Ciavolella**). That suit commenced by way of a Complaint dated 18th November, 2013.

4. In the said suit, the Applicant/Judgement Creditors herein had sought for an Order of a Permanent injunction restraining the Judgement-debtor from selling or meddling in all those properties known as Villa Numbers 7 and 8 situate in Portion Number 1371, Malindi.

5. The Judgement Creditor's second prayer was for an Order of payment of Euro130,000 and in the alternative the transfer in his names of all those properties known as Villa number 1371, Malindi aforesaid.

6. It is apparent again from the record that while the Defendant filed a Memorandum of Appearance through a firm of Advocates on 28th November 2013, there was an omission to file a Written Statement of Defence. Consequently, on 1st September 2014, a default Judgement was entered in favour of the Judgement Creditors. A decree was issued in that regard on 23rd October 2015 and the process of executing the decree thereby commenced.

7. It is further apparent from the record that on 25th May 2016, the Judgement Creditor obtained warrants of attachment and sale dated the same day for various shares owned by the Judgement-debtor including specifically 350 shares held in Melville Limited.

8. In the Supporting Affidavit of Elizabeth W. Kamau, the Auctioneer trading in the name of Malindi Auctioneers, the appointed auctioneers herein, they managed to sell the said 350 shares held by the Judgment debtor in Melville Limited at a public auction conducted on 12th July 2016. The full purchase price of the said shares amounting to Kshs 1,600,000 exclusive of the auction expenses was then forwarded to the Judgement-Creditor's Advocates pending the issuance of a Vesting Order and resultant transfer of the shares to the successful bidder.

9. I have perused the provisions of **Order 66 Rules 3,4 and 5 of the Civil Procedure Rules** as well as **Regulation 17 of the Auctioneers Rules 1997**(as amended) and I am satisfied that the Applicant having complied with the rules, it is just and proper that the shares be transferred to the successful bidder(indicated in the Certificate of Sale dated 20th July 2016 attached as annexure D in the Supporting Affidavit of the said Elizabeth W. Kamau) in order to enable the Judgment-Creditor to appropriate the proceeds of the sale towards the Partial satisfaction of the Judgement debt.

Accordingly, and for the avoidance of doubt, I allow the Notice of Motion application dated 25th July 2016 as prayed.

Dated, signed and delivered in Malindi on 17th day February 2017.

J. OLOLA

Judge