



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC MISC. APPL. NO. 138 OF 2013

IN THE MATTER OF: THE ENVIRONMENT AND LAND COURT ACT, 2011

AND

IN THE MATTER OF: THE RATING ACT CHAPTER 267 OF THE LAWS OF KENYA

BETWEEN

NAIROBI CITY COUNTY.....PLAINTIFF/DECREE HOLDER

AND

J.M. OKEA.....DEFENDANT/JUDGMENT DEBTOR

AND

WELVIN INVESTMENTS LIMITED.....PURCHASER/APPLICANT

RULING

By an order dated **13th February 2014** this Court issued a vesting order to the Applicant following the purchase of **LR. No. BLK 110/442 Thome** in execution of a decree issued by the 1st Class Magistrate Court, Nairobi on **25th June 2013** in **Civil Suit No. 9 of 2013**. The Applicant has however discovered that the property is encumbered hence the instant application dated **30th October 2015**.

The Applicant seeks an order the Court be pleased to direct **Thabiti Finance Company Limited (in liquidation)** to release the title document to the Applicant upon payment of any agreed dues.

The supporting affidavit is sworn by **Njugi B. Gachogu**, Advocate on record for the Applicant. Thereunder he deposes that the Plaintiff obtained a decree against the Defendant in respect of rates arrears for the subject property. Pursuant thereto, the Plaintiff sold the property to the Applicant and a vesting order was granted by the Court. It is deposed that the Applicant learnt that the suit premises is charged to **Thabiti Finance Company Limited (in Liquidation)**, a fact that was not within its knowledge at the time of obtaining the decree and vesting order, thus it has been unable to transfer the subject property. Counsel referred to correspondence between itself and the finance company limited, marked "NBG1", and deposed that the said company can only release the charged title upon a court order. It was deposed that it is only just that the instant application be allowed to enable the Applicant to proceed as appropriate.

This application was served upon **Thabiti Finance Company Limited (in Liquidation)** following an order of the Court. An affidavit of service sworn by **Bernard M. Musyoka** on **8th February 2016** details how the application was served upon the finance company. Annexed to the affidavit is a copy of the application and hearing notice which bear a stamp of the finance company. Notably, there was no response filed by the finance company or appearance in court despite service. The deponent states that service was effected upon the Secretary of the finance company. Whereas this is proper service in accordance with **Order 5 Rule 3(b) of the Civil Procedure Rules**, it is admitted that the title has a charge registered in favour of the finance company. On perusal of the correspondence annexed to the affidavit, the balance outstanding on the account is **Kshs. 5.5 Million**. Due to the nature of the order sought by the Applicant it would be proper for this Court to get a representation from the finance company. This Court has a duty under Section 63(e) of the Civil Procedure Act to make such order that is just to prevent the ends of justice from being defeated.

In the circumstances, and there being officers of the liquidation agent in conduct of this matter, as can be identified from the correspondence availed in the Applicant's affidavit, the court directs and orders that **Ms. Hellen Chepkwony** be served with this order in person. The liquidation agent is hereby granted leave of 21 days from the date of service to file a response to the application.

It is so ordered.

Dated, Signed and Delivered this **7th** day of **October, 2016**.

L.GACHERU

JUDGE

In the Presence of:-

None attendance for the Plaintiff/Decree Holder

None attendance for the Defendant/Judgment Debtor

Chege Kamau holding brief for Mr Njugi for Purchaser/Applicant

Vincent : Court Clerk

L.GACHERU

JUDGE

Court:

Ruling Read in open Court in the presence of the above advocates holding brief for Mr Njugi for the applicants.

L.GACHERU

JUDGE