



**International Kenya (II) Limited v Land Registrar Nakuru County (Environment and Land Miscellaneous Application E014 of 2023) [2024] KEELC 678 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 678 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2023  
MAO ODENY, J  
FEBRUARY 15, 2024**

**BETWEEN  
BUSINESS PARTNERS INTERNATIONAL KENYA (II) LIMITED . APPLICANT  
AND  
THE LAND REGISTRAR NAKURU COUNTY ..... RESPONDENT**

**RULING**

1. This ruling is in respect of a Notice of Motion dated 21<sup>st</sup> August 2023 by the Applicant seeking the following orders:
  - a. That this Honorable court be pleased to issue an order directing the respondent to register in favour of the applicant/purchaser/chargee herein the transfer in respect of land parcel No. Nakuru/Municipality/Block 4/306 located off Karima Road – KIE complex, Nakuru Town-Nakuru County.
  - b. That this Honorable court be pleased to issue an order directing the respondent to execute all the relevant documents necessary to effect the transfer for land parcel No. Nakuru Municipality/Block 4/306 located off Karima Road – KIE Complex, Nakuru Town – Nakuru County into the name of the applicant/purchaser/chargee herein.
  - c. That the costs of this application be provided for.
2. The application was supported by the annexed affidavit of Michael Muthengi the Country Manager of the Applicant on 21<sup>st</sup> August 2022 where he deponed that Rivanas Properties Limited is the registered owner of land parcel No. Nakuru Municipality/ Block 4/306.
3. He stated that the Applicant is duly licensed to provide credit facilities and pursuant to a loan agreement dated 30<sup>th</sup> September 2016, the Applicant advanced Rivanas Properties Limited



- Kshs.31,500,000/= which loan facility was secured by a charge dated 25<sup>th</sup> October 2016 over the suit property.
4. He also stated that the loan facility was to be repaid within fifty-four months with monthly installments of Kshs.608, 793/= but Rivanas Properties Limited defaulted in the repayment of the loan. That the Applicant served Rivanas Properties Limited all the requisite notices before instructing Hallmark Valuers Company Limited to conduct a valuation report where the reserved price of the suit property was placed at Kshs.15,000,000.
  5. He further deponed that the suit property was advertised for sale on 23<sup>rd</sup> and 30<sup>th</sup> November 2020 and an auction took place on 10<sup>th</sup> December 2020 but none of the bidders was able to buy the land at the reserved price of Kshs.15,000,000/= which led to the suit property being re-advertised on 18<sup>th</sup> January 2021 and 1<sup>st</sup> February 2021 for a public auction scheduled for 11<sup>th</sup> February 2021.
  6. He stated that under Section 100(3) of the Land Act, the applicant proceeded to bid for the suit property and purchased it at the reserve price of Kshs.15,000,000/=. That despite successful purchase of the suit property, the respondent has declined to effect the said transfer as provided for under Section 100(4) of the Land Act.
  7. The respondent filed a replying affidavit sworn by C.A Liayi the Land Registrar Nakuru on 7<sup>th</sup> November 2023 where he deponed that as per their records, land parcel No. Nakuru Municipality/ Block 4/306 was first registered to Samuel Kamau Ngugi and Anne Wamuyu Kamau as joint tenants which was later registered in the name of Rivanas Property Limited and is currently charged to the applicant for Kshs.31,500,000/=.
  8. The Respondent stated that he cannot effect the alleged transfer unless the Applicant provides evidence that the sale of land to the chargee meets the provisions of the law.

### **Applicant's Submissions**

9. Counsel for the applicant relied on Sections 97 and 100 of the Land Act and identified two issues for determination namely; whether the applicant took all the necessary steps in exercising its statutory power of sale and whether the orders sought by the applicant should be granted.
10. On the first issue, counsel relied on the case of Palmy Company Limited versus Consolidated Bank of Kenya Limited [2014] eKLR and submitted that the applicant followed the requisite provisions before exercising its statutory power of sale.
11. On the second issue, counsel relied on Section 100(4) of the Land Act and submitted that the respondent had not specified the evidence he required from the applicant in order to register the transfer. She also submitted that the respondent had not given any reason why the transfer was not registered and further that he had not requested for further evidence from the applicant.
12. Counsel relied on the case of Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015] eKLR and urged the court to allow the application as prayed.
13. The respondent did not file any submissions to the application.

### **Analysis And Determination**

14. The issue for determination is whether the court should order the respondent to register land parcel No. Nakuru Municipality/ Block 4/306 in the name of the Applicant.



15. It is the Applicant's contention that it advanced a loan of Kshs.31,500,000/= to Rivanas Properties Limited. That Rivanas Properties Limited defaulted in the repayment of the said loan and the applicant therefore exercised its statutory power of sale.
16. It is also the Applicant's contention that it purchased the suit property under section 100 of the Land Act which provides as follows:
- “(1) Other than in the circumstances provided to in subsection (3), a chargee exercising the power of sale may, with leave of the Court, purchase the property.
- (2) A court shall not grant leave unless the chargee satisfies the court that a sale of the charged land to the chargee is the most advantageous way of selling the land so as to comply with the duty imposed on the chargee by section 97(1).
- (3) If the charged land is to be sold by public auction, the chargee may bid for and purchase the charged land at that public auction so long as the price bid for the charged land by the chargee is the greater of—
- (a) the highest price bid for that land at the auction; and
- (b) an amount equal to or higher than the reserve price, if any, put upon the land before the auction, whichever amount is the greater.
- (4) If a chargee who has sold charged land to the chargee applies to the Registrar to be registered as the lawful owner of land under a land or lease, the Registrar may require that chargee to provide any evidence that the Registrar may specify showing that the provisions of this section have been complied with and the Registrar shall not be obliged to register any such land or lease until the chargee has so satisfied the Registrar.”
17. It is further the Applicant's contention that upon purchase the respondent refused to transfer the suit property to the Applicant's name claiming that he required evidence that the sale to the Applicant met the requisite provisions of the law.
18. In the case of *Ecobank Kenya Limited v First Choice Mega Stores Limited* [2018] eKLR held as follows:
- “11. It is evident from the provisions of Section 100 of the Act, that a chargee can only purchase a charged property being sold in exercise of power of sale conferred under the charge with the leave of the court and even then, such purchase would need to comply with the duty imposed on the chargee by Section 97 (1). The court before giving any leave has to be satisfied the purchase by the chargee given the circumstances would be in the best interest of the chargor such that the purchase by the chargee would represent the highest possible price attainable at the point in time the purchase is being made. That is what is envisaged under Section 100 (3) of the Act. In my view for the sale to the chargee to be the most advantageous way of selling the land as Section 100 (2) envisages, the price obtained must be higher than all the bids obtained for the property at the public auction. Section 100 is couched in such a manner as to ensure where leave is granted for a chargee to participate in the purchase of the land, the interest of the chargor is not prejudiced and in that regard,



the chargee is duty bound to exercise the duty of care imposed by Section 97(1) in carrying out the sale.” (Emphasis mine)

19. It was the Applicant’s case that it exercised its rights under Section 100(3) of the Land Act and proceeded to bid for the suit property where it emerged as the highest bidder.
20. As was held in *Ecobank Kenya Limited v First Choice Mega Stores Limited* (supra), a chargee can only purchase charged property being sold in exercise of power of sale conferred under the charge with leave of court. It is quite evident that the applicant did not seek the leave of court before bidding for the suit property.
21. I find that the alleged sale that occurred on 11<sup>th</sup> February 2021 did not comply with the provisions of Section 100 of the Land Act, therefore the respondent cannot be compelled to transfer the suit property to the applicant’s name until the requirements are met.
22. Consequently, the application dated 21<sup>st</sup> August 2023 is hereby dismissed for failure to seek the leave of the court as per Section 100 of the Land Act.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 15<sup>TH</sup> DAY OF FEBRUARY 2024.**

**M. A. ODENY**

**JUDGE**

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure.

