



REPUBLIC OF KENYA

Civil Miscellaneous Application 2 of 2012

IN THE MATTER OF HCCC NO. 1648 OF 1985 NYAMBURA NJUGUNA & FRANCIS KIMANI

AND

**IN THE MATTER OF THE RULING OF THE COURT THAT L.R. NO. 209/2489/23 BE SOLD
BY PUBLIC AUCTION**

AND

**IN THE MATTER OF THE SUBSEQUENT SALE OF THE SAID PROPERTY BY PUBLIC
AUCTION**

AND

**IN THE MATTER OF THE PURCHASE OF THE SAID PROPERTY BY SAMUEL NGUGI
KIMANI**

SAMUEL NGUGI KIMANI.....APPLICANT

VERSUS

NYAMBURA NJUGUNA

FRANCIS KIMANI.....RESPONDENTS

RULING

The Applicant has filed an application dated 28/8/2012 brought under Section 3A and 48 of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules seeking orders that a Vesting Order do issue in his favour in respect of all that parcel of land known as L.R. No. 209/2489/23 Nairobi and the Deputy Registrar of this Court be authorized to execute all such documents as may be necessary to effect the transfer of the said property to him.

The application is premised on the grounds and supported by an affidavit sworn by the Applicant on 28/8/2012. The Applicant deposes that on 20/4/1988 this Honorable Court ordered in Nairobi HCCC 1648 of 1985 that L.R. No. 209/2489/23 be sold by public auction. That on 20/12/1996, Regent

Auctioneers sold the said property to him for Ksh. 1.3. Million and thereafter he took possession of the property. Further that since the purchase, he has enjoyed quiet possession and enjoyment of the said property but that the property has not been transferred it into his name.

In support of his application the Applicant annexed the ruling of his Court (Mbaluto J.) dated 20/4/1998, 2 receipts evidencing payment of the purchase price, a certificate of sale, and an extract of the Court Registry register showing the contents of the Court file (HCCC 1648 of 1985). *48. Where immovable property is sold in execution of a decree and the sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.* I have perused the ruling made by this Court (Mbaluto J.) which was to the effect that the Plaintiff and Defendants would have an equal opportunity to bid for and purchase the suit property when after the net sale proceeds would divided equally between the Plaintiff of the one part and the Defendants jointly of the other part. From the documents annexed by the Applicant herein, it is clear that he placed the highest bid at Kshs. 1.3 Million, and that he paid Kshs. 325,000/- being 25% of the bid on 20/12/1996 wherein he was issued with a receipt and a memorandum by the auctioneer. The Applicant subsequently paid the balance of Kshs. 975,000/- when after he was issued with a receipt dated 6/1/1997 and a Certificate of Sale. The Applicant further avers to have taken possession of the suit property immediately after the payment of the bid and has enjoyed quiet possession since then.

There is no indication that the Respondents herein appealed against the ruling of the Court delivered on 20/4/1998 and as such, the orders made therein still remain in force.

Accordingly, I issue the following orders:

1. That Samuel Ngugi Kimani be and is hereby granted a vesting order for property known as L.R. No. 209/2489/23.
2. The Deputy Registrar be and is hereby ordered to execute all such documents that is necessary to effect the transfer of property known as L.R. No. 209/2489/23 to Samuel Ngugi Kimani.

Dated, Signed and Delivered this 8th day of April 2013

L.N. GACHERU
JUDGE

In the Presence of:-

.....For the Applicant

.....For the Respondents

..... Court Clerk