



- (i) "That the estate or interest of the second defendant in the lands known as Registration Section Prospect, Block 22E, Parcel 88, be sold.
- (ii) That the implementation of paragraph (1) above be suspended on the following conditions being fulfilled by the respondent/second defendant :
  - (a) The sum of C.I. \$8,000.00 be paid to Messrs. Hunter and Hunter, Attorneys-at-Law for the applicant/plaintiff within fourteen days of the date hereof; and,
  - (b) the balance of the judgment debt, interest and costs be paid off by way of monthly payments of C.I. \$150.00 per payment, such payments to be paid into the Courts Office.
- (iii) Interest to run on the said judgment debt, interest, and costs at seven and one half per cent ( $7\frac{1}{2}\%$ ) per annum.
- (iv) The Order for sale is enforceable on the said monthly payments falling into arrears for a period of three (3) months.
- (v) The costs of the application to be the applicant's/plaintiff's.
- (vi) Leave is hereby given for the applicant/plaintiff to appeal.
- (vii) In the event of the applicant/plaintiff lodging with the Clerk of the Courts a written notice of appeal within fourteen days of the date of this Order, the sum for security for costs of the appeal is filed at C.I. \$1,500.00. "

This Order was made under the powers granted to the Court under section 42(1) of the Judicature Law, Law 11 of 1975, which states :

" If the Court is satisfied that a person against whom judgment has been obtained has no sufficient goods which can conveniently be taken to satisfy such judgment, the Court may, if it thinks fit, on application of the judgment creditor, make an Order for the sale of the estate or interest of the judgment debtor in any lands, at any time and place and subject to such conditions as the Court thinks. "

It was as a result of the words "subject to such conditions as the Court thinks" that the Judge made the Order subject to the conditions as set out in paragraphs 2, 3 and 4.

In our view, "the conditions" which the section speaks about are conditions which relate to the sale of the land and does not include a condition which suspends the sale as specified in paragraph 2 of the Order.

Section 42(2), (3) and (4) provide for enquiries to be made and for directions to be given when an Order for sale is granted. These are the conditions which may be specified in the Order.

The sub-sections provide as follows :

"(2) The Court may direct such enquiries to be made as may be necessary for the proper carrying out of such Order.

(3) If it appears on such enquiries that any person other than the judgment creditor is entitled to any charge on the land every such person shall be served with notice of the Order, and shall be bound thereby and may attend the proceedings under the Order and have the benefit thereof; and the proceeds of sale shall, after payment thereof of all costs and charges attending the sale, the Order for sale and the enquiries aforesaid, be distributed among the persons found entitled thereto according to their respective priorities.

(4) When any land is sold by Order of the Court, it shall give all necessary and proper directions for the carrying out of such Order and, if it sees fit, order the bailiff to sell such land on such terms of remuneration as are prescribed in schedule 'C' and it shall be lawful for the bailiff to conduct such sale. "

Section 43(1) provides for sale by Public Auction but for special reasons the Court may approve a sale by private treaty.

There seems no settled practice as to the procedure in sale of land proceedings. Accordingly, we now set out the guidelines which should be followed on an application for the sale of a judgment debtor's land.

(1) If the Court is satisfied that an Order should be made, the Court would then proceed to make the necessary Order.

(2) The Court may then include in the Order :

(a) How the proceeds of sale should be applied ;

(b) That the land should be sold by Public Auction, subject to a reserve price ;

(c) Remuneration to be paid to the Bailiff ;

(d) That the Clerk of Courts should make enquiries and accounts as may be necessary for the proper execution of the Order ;

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- (e) Costs payable by the judgment debtor - such cost payable in the first instance out of the proceeds of the sale.
- (3) The Clerk of Courts should then, pursuant to the Order of the Court issue a notice of Enquiries of sale of land proceedings setting out the enquiries which are appropriate and which will be made. These may include :
- (a) What is the amount due by the defendant in respect of the judgment debt and cost and interest ;
  - (b) what is the estate or interest of the judgment debtor in the land. Details of the land should be set out ;
  - (c) whether any person or persons other than the judgment debtor is or are entitled to any interest or charge on the land ;
  - (d) what is the extent or amount of the interest or charges, if any, and what are the priorities thereof.
- (4) The Clerk of Courts would then report to the Court.
- (5) The Plaintiff's/applicant's Attorney should then file a summons to proceed setting out the particulars of the Order being sought. These may include :
- (a) That the Registrar's report be confirmed ;
  - (b) that the plaintiff be at liberty to proceed under the Order made by the Court for the sale of land of the judgment debtor and that such sale be by public auction ;
  - (c) naming the party (which is usually the plaintiff's Attorney) who is to have conduct of the sale of the property directed to be sold by the Order of the Court ;
  - (d) that the Auctioneer should be the Bailiff (as specified by the Judicature Law) ;
  - (e) That the reserve price on the said sale is fixed by the Clerk of Courts. Such reserve price to be sent in a sealed envelope addressed to the Bailiff and to be only opened by the Bailiff at the time of the sale ;
  - (f) remuneration of the Bailiff and a sum disbursements for advertising ;
  - (g) that any party to the action be at liberty to bid at the auction sale.

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The Judge will then on the hearing of the summons, make an Order in terms of the summons which may also include other directions as the Court thinks fit.

The Clerk of the Courts should request of the Plaintiff, a valuation of the land together with an affidavit of the valuator. A reserve price would then be fixed by the Clerk of Courts.

These guidelines would not preclude the Judge from ordering any other enquiries or giving other directions which may be appropriate or required in a particular case.

Arrangements would then be made for the sale of the land and after sale the Court would grant a Certificate to the purchaser as prescribed for by s. 43(2) of the Judicature Law.