



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**MISCELLANEOUS APPLICATION NO. 3 OF 2019**

**AMELI INYANGU & PARTNERS ADVOCATES .....APPLICANT**

**VERSUS**

**MILLENIUM MANAGEMENT LIMITED .....RESPONDENT**

**CORAM: Hon. Justice R. Nyakundi**

**Ms. Ameliinyangu Advocates for the Applicant**

**Ms. Fred Adhoch Advocates for the Respondent**

**RULING**

The applicant vide Certificate of Urgency dated 11.5.2020 prayed for the issue of a writ of prohibition against the respondent suit property referred as **5046/4/KILIFI – CR NO 14251** on account that it's the only asset attachable to satisfy the pending decree of the Court.

On the same date the Certificate was ordered served upon the respondent pursuant to rules and regulations governing judiciary guidelines during the **COVID – 19 pandemic**.

**Determination**

This application is quite unique and novel and I do not wish to disguise my surprise that such an application should be considered necessary and proper in view of the chequered history of this litigation. The scope of this application is to be determined under Section 38 of the Civil Procedure Act.

Prohibition is a process of preventing the respondent from intermeddling with the identifiable property for having been considered as the only asset to satisfy the decree obtained by the applicant. Considering the aforesaid Section it is apparent that prohibition on transfer of property is not absolute.

**Mr. Adhoch** on behalf of the applicant has prefaced his arguments by stating that the respondent is likely to alienate, dispose or transfer the property to a third party as a means of defeating the execution and enforcement of the money decree. That contention is clearly not supported with materials on record.

There is no evidence that simultaneous to this Certificate of Urgency the applicant has initiated proceedings in execution of the decree. Mere speculation that the respondent is likely to alienate or dispose off the suit property by way of sale to avoid settling the decree is not sufficient for this Court to grant a writ of prohibition as adverted to by the applicant.

Therefore, the Certificate of Urgency on this issue alone is dismissed.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 29<sup>TH</sup> DAY OF MAY 2020**

.....

**R. NYAKUNDI**

**JUDGE**

**In the presence of:**

1. Ms. Wambui holding brief for FredAdhoch for the respondent