



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MALINDI**  
**CIVIL SUIT NO. 179 OF 2012**

**RAIYA CONSTRUCTION LIMITED .....PLAINTIFF**

**VERSUS**

**SUNSAND DUNES LIMITED .....DEFENDANT**

**RULING**

1. I have studied the amended pleadings herein and proceedings in respect of the consent order recorded in court by the parties on 14<sup>th</sup> March, 2013. Admittedly, the said consent was intended to compromise the Notice of Motion filed by the Defendant on 1<sup>st</sup> February, 2013 seeking inter alia a mandatory injunction to allow the defendant to carry out a valuation of the premises and works on plot No. 20120 Mambui and thereafter an order directing the plaintiff to hand over the site.
2. The terms of the consent are clear and an application to set aside the same has reportedly been abandoned by the defendant. Under the terms of the consent the defendant was to deposit a sum of Kshs. 16, 304, 500/- as security for the plaintiff's claim. The monies were not deposited.
3. The plaintiff is now asking the court to grant an order to enable survey and/or valuation of the premises for purposes of "moving the matter forward". With respect, this oral request is no different from the second prayer in the compromised application. The defendant company knowingly compromised the said application in the terms of the consent order. In my considered view, by granting the defendant's present request, the court will be circumventing the terms of the said consent. The defendant's oral application for access for purposes of valuation and or survey of the suit premises is therefore denied.
4. I would strongly suggest that the parties explore the possibility of arbitration or other ADR mechanism suitable, in light of the nature of the dispute.

**Delivered and signed at Malindi this 20<sup>th</sup> day of June, 2014 in the presence of Mr. Sumba for the Defendant. Mr. Obaga holding brief for Mr. Anyimba for the Plaintiff.**

**Court clerk - George**

**C. W. Meoli**

**JUDGE**

**Further Order**

Let parties file their documents and take a hearing date in the registry.

**C. W. Meoli**

**JUDGE**