



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 14 OF 2013

TARIQ BAMAHIRIZPLAINTIFF

VERSUS

ALIYA SALIM SOUD & 3 OTHERSDEFENDANTS

RULING

The Notice of Motion Application dated the 7th day of March, 2013 is premised on Section 1A, 1B and 3A of the Civil Procedure Act and order 40 rule 7 of the Civil Procedure Rules.

It seeks orders for setting aside *ex parte* orders granted to the Applicant/Plaintiff against the 1st and 2nd Defendants on 22nd February, 2013.

It also seeks for orders that the suit be struck out for being incompetent.

The grounds are that the Applicant deliberately lied to Court and withheld material facts and information thus misleading the Court into granting *ex parte* orders.

In that he failed to disclose to the Court that he had relinquished any claim he had in the suit property when on 12th October, 2012 the Applicant through his Advocate surrendered the title to the suit property, the transfer executed in favour of the Applicants company Brittany Holdings Ltd. together with all other completion documents.

It is further conceded that the Applicant was at all times aware that after the surrenderer of the said documents the property had been sold to a third party and possession of the same given to the said third party.

The 1st and 2nd Defendants transferred the said property to the third party on 31st January, 2013 when all the documents were released to the third partys Advocate Balala & Abed further that the applicant had forfeited to the 1st and 2nd Defendants all monies paid on account of the purchase price by agreement between the Applicant and the 1st and 2nd Defendants.

I have perused the file and I am satisfied that the Respondents in this application were duly served. There are two affidavits of service. One by the process server and the other by the Advocate for the

Defendants and several annexures to that effect. There are no grounds in opposition filed nor a replying affidavit.

It is evidently clear that the ex parte orders obtained were through non-disclosure of material facts as alluded by the Respondents in this application . Had they been disclosed to the Court these orders could not have been granted.

I accordingly set aside the ex parte orders made against the 1st and 2nd Defendants on 22nd February, 2013.

I decline to grant prayer 4 at this instance.

Same can be dealt with by way of a substantive formal application or by agreement of parties to have the matter referred to the Environment and Lands Court.

Costs in the cause.

Ruling dated and delivered in open Court this **24th** day of **June, 2013**.

In the presence of:-

Mr. Kariuki for 1st and 2nd Defendant

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M. MUYA

JUDGE

24TH JUNE, 2013