



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL SUIT NO. 46 OF 2013**

**POLYCAP OKUMU OCHOLA..... 1<sup>ST</sup> PLAINTIFF**  
**GUARDFORCE SECURITY LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**V E R S U S**

**DUBAI KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**ZACHARIAH BARAZA T/A**  
**SIUMA AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff filed this suit against both the Defendants on 29th April 2013.
2. From the pleadings it is clear that the first Defendant advanced a loan to the Plaintiff which was secured by the Plaintiff's property **No. MN/1/1861 Nyali Mombasa**. The Plaintiff pleaded that on 19th March 2013 the first Defendant through its agent 2nd Defendant issued a notice to sell that security by public auction. It was the Plaintiff's prayer in the plaint for permanent injunction to be issued restraining the Defendants from advertising, selling or transferring that property.
3. By a consent order of 23rd July 2013 between the Plaintiff and the 1st Defendant the Plaintiff undertook to pay the amount of Kshs. 15 million to the first Defendant by instalments. It was also agreed that on final payment of that amount the suit between the Plaintiff and the first Defendant would be marked as settled. In that consent the Plaintiff agreed to pay the first Defendant costs of the suit.
4. That consent did not include the 2nd Defendant. The suit therefore between the Plaintiff and the second Defendant continues to subsist. It is for that reason that I find the second Defendant's prayer for costs of the suit to be awarded to him to be premature. Costs of the second Defendant can only be ascertained at the conclusion of the suit filed against it and only if such costs are awarded to the second Defendant.

5. The Court therefore declines to award the second Defendant's costs as sought. The second Defendant should first seek to conclude the case between it and the Plaintiff. It is so ordered.

**Dated and delivered at Mombasa this 19<sup>th</sup> day of December, 2013.**

**MARY KASANGO**

**JUDGE**