



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MALINDI**

**MISCELLANEOUS CIVIL APPLICATION 39 OF 2009**

**IN THE MATTER OF AN APPLICATION FOR A VESTING ORDER OF THE PROPERTY  
KNOWN AS PLOT NO. 42 & 46 TITLE NO.LR MALINDI BLOCK 412 SOLD IN EXECUTION  
OF THE DECREE**

**MOHAMED ABBAS ALI.....APPLICANT**

**RULING**

1. Before me is an application by MOHAMED ABBAS ALI for a vesting order in his favour in respect of the property known as LR BLOCK 412 Malindi which he claims to have brought at a public auction on 18<sup>th</sup> December 2008. The said auction was carried out in execution of an order issued in Kadhi Court case NO.85 of SWALHA JABUR VS ALI TABUR.
2. From the affidavits and submissions filed in respect of the application there are disputed claims that the parties in the said case had already recorded a consent to stay execution for 30 days. The said consent is dated 5<sup>th</sup> November 2009 and is annexed as AJM2 to the Replying affidavit. And that such stay was in force at the time of the auction.
3. However, the turning point in this application is the admitted fact that the proceedings in the Kadhi`s Court were tainted by irregularity as one of the counsels, ABALI ABDALLA who appeared for the Plaintiff therein was not qualified to practice as an advocate of the High Court of Kenya. In this regard one need not go beyond the deposition in paragraphs 9 to 12 of the Applicant`s supplementary affidavit. The substratum supporting the application is an order given in proceedings shown to be deficient in validity. The applicant cannot maintain the present application in light of his own admissions in the supplementary affidavit.
4. I therefore disallow and dismiss his application. Each party will bear their own costs. It is now up to the parties to take necessary steps with regard to the suit before the Kadhi`s court.

Delivered and signed in the presence of Mr Otara holding brief for Ms. Chepkwony for the applicant, Mr Obaga holding brief for Mr Mouko for respondent on 27<sup>th</sup> July, 2012. Court clerk – Evans

**C. W. Meoli**

**JUDGE**