

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CIVIL APPEAL 84 OF 2011

ALBERT MURIUKI KARIAPLAINTIFF

VERSUS

SAID OMAR ABDALLAHRESPONDENT

RULING

1. The application filed on 1st July, 2011 proceeded unopposed as the respondents did not file a replying affidavit or attend the hearing. For purposes of this ruling the court is concerned with the 2nd and 3rd prayers, the former seeking to restrain the defendant from “disposing and/or further interfering in any manner with LR LAMU/LAKE KENYATTA 11/599 until further orders of this suit “Prayer 3 seeks orders to compel the District Land Registrar Lamu District, to register a temporary inhibition in respect of the said land title.

2. The application is expressed to be brought under Order 40 rule 1-4 of the Civil Procedure Rules and Section 28 of the Registered Land Act and is supported by the affidavit of the applicant.

3. Having considered the application as presented, I am of the considered view that it cannot succeed for two reasons:

1. The sale agreement dated 13th October, 2003 looked to future completion, upon acquisition of the allotment letter and the consent of the Land Control Board and payment of the balance of the purchase price. There is no evidence that these events occurred. The letter of offer AMK 2 now attached to the applicant’s affidavit is just that, it does not convey ownership. Besides it is not clear whether the offer was accepted by the defendant and the letter even handed over to the applicant, if at all, in light of the terms of the sale agreement.

2. The District Land Registrar, Lamu is not a party to this suit and no orders can issue against him.

The application is therefore dismissed.

Delivered and signed at Malindi this 26th day of July, 2012 in the presence of: Court clerk - Evans

C. W. Meoli
JUDGE