

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 349 OF 2008

SEIF SALIM MWAKIRIMU PLAINTIFF
=VERSUS=
KINONDO AMANI LIMITED DEFENDANT

RULING

Before court is the Notice of Motion dated 14th July 2011 by which the Applicants seek to have this court review its orders of 6th July 2011. A brief history of the matter this far will suffice. On 30th June 2011 the Applicants came before the High Court under Certificate of Urgency and obtained ex parte injunctive orders. On 6th July 2011 the Defendants/Respondents through their advocate **MR. ABDALLA** came to court once again ex parte and argued that the injunctive orders obtained were due to concealment of the fact that the question of Title had been resolved by **Hon. Justice David Maraga** on 28th February 2007 in Miscellaneous Application 438 of 2006. This present application was heard inter-partes and was opposed by the Respondents.

A look at this file and the various applications therein reveal a long and protracted dispute over the ownership of the suit property namely Kwale/Galu/Kinondo/40. This is a matter that cannot be resolved by way of applications. It would require a full hearing where evidence is adduced to resolve the issue. However I note that my learned brother Hon. Justice Maraga did render a decision over the question of Title in his decision of 28th February 2007 in HCCC 438/2006. At the moment and pending any appeal against that decision that is how the matter stands – the entry conferring Title upon Seif Salim Mwakarimu was quashed. Title in the suit land was therefore conferred on **Formation House Limited** who sold the same to **Kinondo Amani Limited** the Defendants herein. The HCCC 349 of 2008 pending before Hon. Justice Ojwang has not yet been determined and there is no guarantee that it will be decided in favour of the Plaintiff. It is my opinion that the multiplicity of suits over this matter does not auger well as it only serves to cloud issues. However I am satisfied that by the ruling of 28th February 2006 Title in the suit land was vested in Formation House who did transfer said Title to the Defendants herein. The Defendants ought not be denied the right to enjoy and possess their property except for lawful cause. As such I decline to review my ruling of 6th July 2011. The same still stands.

Dated and Delivered in Mombasa this 30th day of November 2011.

M. ODERO
JUDGE

In the presence of:
Mr. Abdalla for Defendant/Respondent
Ms. Njuguna holding brief for Mr. Oddiaga for Plaintiff/Applicant