

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

Civil Case 11 of 2001

ALI MAHFOUDH ABUBAKAR.....PLAINTIFF

VERSUS

1.HAMOUD MOHAMED

2.FEISAL BARAKAT

3. HUSSEIN BARAKAT

4. MUNICIPAL COUNCIL OF MALINDI.....DEFENDANT

RULING

The applicant seeks leave to cite the respondents for contempt. He is supposed to come *ex parte* but he served the contemnors. He relies on facts which he relied on in a similar application which was dismissed by Justice Ouna on 15.3.2002. Justice Ouna in his ruling found that the facts before him upon which the application was based were insufficient to support a case upon which to grant leave. He refused the application. The applicant filed a fresh application basing the same upon those earlier facts of the same alleged breach. There was an objection on the ground that this application is *Res Judicata* the earlier one. I have considered the application, the arguments from all the three counsel for the various parties. I have examined the affidavits in support and in opposition. It is my ruling that this application is *Res Judicata* the one argued on 15th March, 2002. It cannot succeed therefore.

There are other grounds raised against the application which are quite valid and upon which the application would be refused. I see no need of considering them.

I accordingly dismiss the application with costs to the respondents.

Dated and delivered at Malindi this 21st day of May 2002.

D.A.ONYANCHA

JUDGE

Mr.Kienzo: I apply for leave to appeal against todays ruling in even the applicant wishes to appeal.

Ruling

I have considered the application for leave to appeal. I hold that it ahs no merit. The application is refused.

D.A.ONYANCHA.

JUDGE