



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 22 OF 2019(O.S)

**IN THE MATTER OF: THE REGISTRATION OF APARTMENT NO. 503 AT SPORTING CLUB-CORAL KEY BEACH
RESORT SITUATE ON PLOT NO. 10851/1 MALINDI**

BETWEEN

DR. VITTICI CAMILLO.....APPLICANT

VERSUS

ZUBEDI BEACH PROPERTIES LIMITED...RESPONDENT

JUDGMENT

1. By an Originating Summons dated 24th April 2019 and filed herein on 2nd May 2019 Dr. Vittici Camilo (the Applicant) prays for Orders:-
 1. That this Honourable Court be pleased to grant orders that the Registrar in Charge of the Environment and Land Court or other appropriate officer of the Court do execute the Sub-Lease for the property known as Apartment No. 503 erected on Land Portion No. 10851/1 Malindi to the Applicant or his nominee Cristina Vittici;
 2. That this Honourable Court be pleased to make such further or other orders as are just and fair in the circumstances of this Case; and
 3. That the costs be in the cause.
2. The Originating Summons which is supported by an affidavit sworn by the Applicant is premised on the grounds that:-
 - i. Zubedi Beach Properties Ltd (the Respondent) is pursuant to a sub-division registered as No. CR 37003/2 the registered proprietor as Lessee from the Government of Kenya for the term of 99 years from 1st April 1986 of all that piece of land measuring 0.6601 Ha or thereabouts situated at Malindi and known as Land Portion No. 10851/1 Malindi;
 - ii. On or about 1st March 2014, the Applicant as a bona fide purchaser for value without notice purchased Apartment No. 503 situate on the said Land Portion No. 10851/1 Malindi from M/s Overlook Management Kenya Ltd at a consideration of Euro 50,000/-;
 - iii. The said Overlook Management Kenya Ltd held a general power of attorney to sell the property known as Zubedi Beach Properties Ltd, Sporting Club which is on the said Portion No. 10851/1 Malindi;
 - iv. The Applicant is yet to be registered as the proprietor of the said Apartment No. 503 and both Marco Vancini and Raimondi Raimondi who were the directors of the Respondent are both deceased;
 - v. At all material times, including the time when the two directors died, the Applicant has been in continuous and uninterrupted occupation of the said Apartments and has been meeting all the outgoings including payment of management fees;
 - vi. The existence or validity of the Agreement made on 1st March 2014 between the Applicant and the Respondent is not in dispute; and
 - vii. There will be no prejudice occasioned to the Respondent as it is in the interest of justice and fairness that the said orders be granted.

3. About a month after the Originating Summons was instituted, it was on 3rd June 2019 served upon the Respondent via registered mail as provided under Section 1010(1) of the Companies Act, 2015. There was however no response to the Summons. Subsequently on 18th June 2019, directions were given that the Summons be disposed of by way of Affidavit evidence.

4. I have accordingly considered the Originating Summons and the submissions placed before me by Mr. Binyenya, Learned Counsel for the Applicant.

5. The Originating Summons is brought under the provisions of Order 37 Rule 3 of the Civil Procedure Rules which provides as follows:-

“A Vendor or Purchaser of immovable property or their representatives respectively may, at any time or times, take out an Originating Summons returnable before the Judge sitting in chambers, for the determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract).”

6. The Originating Summons is supported by an Affidavit sworn by the Applicant in which he avers that sometime on 1st March 2014, he purchased Apartment No. 503 situated in Land Portion No. 10851/1/ belonging to the Respondent at a consideration of Euro 50,000/-.

7. The Applicant avers he purchased the suit property from Messrs Overlook Management Kenya Ltd, a Limited Liability company that held a general power of attorney to sell the property erected on the said Land Portion No. 10851/1 Malindi and more particularly known as Zubedi Beach Properties Ltd, Sporting Club.

8. It is the Applicant's case that since he bought the said Apartment, he has never been issued with a title number as a Sub-Lessee as required by law. He has however learnt that the Respondents directors Marci Vancini and Raimondi Raimondi both of whom were alive when he entered into the transaction, have since died and there is no one to transfer the Sub-Lease to himself.

9. As it were, the Originating Summons was served upon the Respondent company through registered mail as prescribed under Section 1010(1) of the Companies Act, 2015. The same did not however elicit any response. In the premises, the Applicant's averments in the Supporting Affidavit remain uncontroverted.

10. Accordingly, it was not contested that there exists a valid Sale Agreement executed on 1st March 2014 between the Applicant and the Respondent and that by the said Agreement, the Respondent sold the said Apartment No. 503 to the Applicant to hold for the remainder of the term of its 99 year-Lease from the Government commencing 1st April 1986.

11. In the premises, I am satisfied that there is merit in the Originating Summons. The same is allowed in terms of Prayer No. 1 thereof.

12. I make no orders as to costs.

Dated, signed and delivered at Malindi this 27th day of May, 2020.

J.O. OLOLA

JUDGE