



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CONSTITUTIONAL, JUDICIAL REVIEW DIVISION**

**MISC. CIVIL APPLICATION NO. 1 OF 2007**

**IN THE MATTER OF: AN APPLICATION BY SIMEON PATRICK HINZANO FOR LEAVE  
TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF: PLOT NO. CHEMBE/KIBABAMSHE/272**

**AND**

**IN THE MATTER OF: THE REGISTERED LAND ACT CAP 300**

**THE AGRICULTURAL ACT CAP 318**

**AND**

**IN ACCORDANCE WITH ORDER LIII RULES 1, 2, 3 & 4 OF THE CIVIL PROCEDURE**

**RULES AND SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP. 26**

**REPUBLIC.....APPLICANT**

**VERSUS**

**1. KILIFI LAND REGISTRAR**

**2. CHIEF LAND REGISTRAR.....RESPONDENTS**

**EX PARTE APPLICANT: SIMEON PATRICK HINZANO**

**RULING**

1. This Ruling relates to two applications -

(1) A Notice of Motion dated 8<sup>th</sup> March, 2016, and filed on 29<sup>th</sup> April, 2016 and in which the Applicant seeks an order that the Chief Land Registrar be committed to civil jail for contempt of

court by disobeying an order of court issued on 21<sup>st</sup> December, 2007.

(2) An application by way of an undated letter filed on 29<sup>th</sup> June, 2016 for transfer of the case herein to Kilifi High Court.

### **THE APPLICATION FOR CONTEMPT**

2. The Application for contempt of court by disobeying a court order relates to an order of court made way back on 21<sup>st</sup> December, 2007 and directing the Land Registrar Kilifi and the Chief Land Registrar to register the Applicant as the proprietor of the parcel of land known as **Chembe/Kibabamshe/272** in Kilifi County.

3. According to correspondence from Dr. Swazuri, the Chairman, National Land Commission, the land file disappeared from the Registry immediately after the orders were issued. Over the period of approximately nine (9) years now, the title to the parcel of land has been transacted twice, and apparently by the Applicant himself. **Firstly**, the Applicant got into an understanding with one **Stanslaus Ngala Mwangandi** to jointly sell the property, on 6<sup>th</sup> July, 2011. **Secondly**, **Stanslaus Ngala Mwangandi**, then sold the property to one **Masumbuko Mwanzaya Kufanyiza**, who then sold the property to Pink Properties on 3<sup>rd</sup> June, 2011 for a consideration of Kshs. 15 million, and a title was issued in their favour.

**Thirdly**, all the above information comes from the Affidavit of the Applicant sworn on 11<sup>th</sup> April, 2016 in support of the application for contempt.

### **DETERMINATION**

4. It sounds to me very strange and absolute abuse of the process of court that an Applicant who is well aware, and has facilitated transactions on his parcel of land, coming to court, and seeking orders to condemn the Land Registrar for acts which he or they have not committed. Contempt of court proceedings are quasi-criminal in nature and whereas proof thereof is not beyond reasonable doubt it is certainly much higher than the balance of probability, the standard in civil cases.

5. The onus is upon the Applicant to show that holders of the office of the Respondents have deliberately and knowingly disobeyed the court orders. The Applicant needs to answer the questions as to how he was able to facilitate the sale and transfer (if at all), of the land on 6<sup>th</sup> January, 2011 with one Stanslaus Ngala Mwangandi to jointly sell the property. Was he paid for the transaction between Stanslaus and Masumbuko Mwanzaya Kufanyiza and the latter to Pink Properties?

6. I would agree with the averment in paragraph 8 of the Replying Affidavit of Felix Nyakundi, the current District Land Registrar, Kilifi Land Registry, (sworn on 20<sup>th</sup> May, 2016), that the contempt application is **unfounded, misplaced, baseless and malicious** against the office of the Land Registrar Kilifi, and the Chief Land Registrar.

7. For those reasons, the Applicant's Notice of Motion dated 8<sup>th</sup> March, 2016 and filed on 29<sup>th</sup> April, 2016, is dismissed with a direction that each party bears its own costs.

8. On the undated application filed on 29<sup>th</sup> June, 2016, requesting for transfer of the case to High Court at Malindi, my answer would be that there is no case to transfer to the High court at Malindi. The Judicial Review application was determined in the Applicant's favour by orders made back on 21<sup>st</sup> December, 2011, directing the Registrar to issue title to the Applicant. From the investigations carried out by the National Land Commission and detailed in the letter dated 9<sup>th</sup> December, 2015, and in possession of the Applicant, the Applicant has been a party in the transactions for the sale and issue of title to the purchasers in respect of Plot No. CHEMBE/KIBABAMSHE/272/KILIFI COUNTY.

9. The Applicant it appears to me is the author of his own misfortune, and needs to deal with it honestly

without casting aspersions on innocent public servants. Did he deal with one Stanslaus Ngala Mwangondi in January, 2011?

10. The Applicant needs to carry out a search into the transactions relating to Plot 272/Chembe/Kibabamshe/Kilifi. As public officers, the Land Registrar and his staff will certainly assist him.

11. Other than for purposes of appeal (if any), I direct that this file be closed and archived sixty (60) days from the date of the Ruling.

12. In summary therefore, the application for contempt of court for disobeying a court order and the application to transfer the file to Malindi Law Courts are dismissed with a direction that each party bears its own costs.

13. There shall be orders accordingly.

**Dated, Signed and Delivered in Mombasa this 19<sup>th</sup> day of July, 2016.**

**M. J. ANYARA EMUKULE, MBS**

**JUDGE**

In the presence of:

Mr. Mwaasu holding brief Ms. Ndeto for Applicant

Miss Lutta for Respondents

Mr. S. Kaunda Court Assistant