



REPUBLIC OF KENYA

High Court at Mombasa

Judicial Review 103 of 2012

UMOJA RUBBER PRODUCTS LIMITEDPLAINTIFF

VERSUS

DR. MOHAMED HAJI MOHADIN

SALIM WAZARAN KENYA COMPANY LIMITEDDEFENDANTS

R U L I N G

1) This decision considers and determines two applications. The motion of 28th May 2012 (hereinafter the 1st Application) seeks the following orders:-

1) Spent

2) Spent

3) That the second Defendant be restrained from charging, selling, parting with possession of or in any other way dealing with the suit property namely, subdivision Number 734(Original Number 284/421) of Section III MN registered at the Lands titles Registry Mombasa as C.R.20314/1 pending the hearing and determination of this suit.

2) That of 5th October 2012(hereinafter the 2nd application) which is for the following prayers:-

1) Spent

2) Spent

3)That the second Defendant be restrained from carrying out any further construction works on the property known as Sub-Division Number 734 (Original Number 284/41) of Section III M.N. registered at the Land Titles Registry Mombasa as C.R.20314/1 pending the hearing and determination for this suit inter-partes;

4)That the Commissioner of Lands, Land titles Registrar, Mombasa and The Attorney General being joined herein as Third, Fourth and Fifth Defendants herein.

5)That the Plaintiff be at liberty to amend its pleadings appropriately to plead its cause of action and relief as against The Third, fourth and Fifth Defendants.

6) That the costs of this application be provided for.

It is immediately apparent that just like the 1st application there is included in the 2nd application a prayer for temporary injunction. That stoked some controversy which will have to be resolved as prefatory matter.

3) The backdrop to this litigation needs to be told. By an agreement in writing dated 30th October 2008 the Plaintiff Umoja Rubber Products Ltd. (hereinafter “**Umoja**”) and the 1st Defendant Mr. Mohamed Haji Mohidin (hereinafter “**Mohidin**”) entered into a contract for sell and purchase of property described as Subdivision Number 734 (Original Number 284/41) Section III mainland North (hereinafter **the suit property**). Mohidin was the vendor and Umoja the purchaser. The total purchase price was Kshs.10,000,000/= and a deposit of Kshs.200,000/= was paid to Mohidin at the signing.

4) Completion which was to happen within 60 days of the date of the agreement failed because Mohidin was engaged in litigation with some third parties in Mbsa High Court No.301 of 2008 (O.S) Koto Pamba & others –vs- Dr. H.M. Mohamed (hereinafter **HCC 301/2008**). It is said for Umoja that Mohidin promised to conclude the suit so as to pave way for the completion. In the meantime Umoja avers that it caused a caveat to be registered against the title to the suit property so as to protect its interest. That caveat was said to have been registered on 30th April 2010.

5) Umoja would therefore have been surprised when on 19th April 2012 Mohidin, through the firm of Kadima Advocates, forwarded a cheque for Kshs.200,000/= to it purportedly as a refund of the deposit paid. Umoja later, on carrying out an official search, found out that the suit property had been transferred to the 2nd defendant Salim Wazaran Kenya Company Ltd (hereinafter referred to as **S.W. Ltd**). Umoja takes issue with the manner in which the caveat was removed and the transfer to S.W. Ltd. effected.

6) What Mohidin stated on his defence and in his affidavit in reply to the 1st application are not quite consistent. On the one hand he denies ever executing the sale agreement and yet on the other he accuses Umoja of failing to complete payment of the balance of the purchase price on time. He then denies that a caveat was ever properly registered and noted in the register to suit land.

7) The position of S.W. Ltd is that it is a purchaser of the suit for valuable consideration without notice. Vide a sale agreement dated 7th May 2010, S.W. Ltd bought the suit property from Mohidin at consideration of Ksh.30,000,000/=, took possession thereof, applied and obtained change of user from Agricultural to light Industrial. The intention of S.W. Ltd is to construct a Noodle factory on the suit property and construction has commenced. When and how far this construction has gone is not agreed by the parties and will be discussed in more detail later.

8) These are the circumstances which precipitated the filing of this suit in which the Plaintiff seeks the following orders against the defendants.

a) “as against the First Defendant for specific performance of the Agreement dated 30th October 2008;

b) As against both Defendants for a declaration that the alleged transfer of the property known as Subdivision Number 734 (Original Number 284/41) of Section III Mainland North 122159 and registered at the Lands Titles Registry Mombasa as Number C.R.20314/1 in favour of the Second Defendant is and was a nullity and of no effect in view of the Provisions of Section 57 of the Registration of Titles Act;

c) An order that the Second Defendant do deliver up and surrender to the Land Registrar, Land Titles Registry, Mombasa, the original Title registered as Title Number C.R 20314 for the purposes of rectification of the register and to hold the same pending completion of the sale and transfer of the suit property to the Plaintiff by the First Defendant for the purposes of registration of the transfer in favour of the First Defendant;

d) An order directing the Land Titles Registrar, Mombasa to rectify the Register relating to the

aforesaid suit property by cancelling the entry relating to the alleged transfer of the First Defendant's interest to the Second Defendant;

e) An order directing the Defendants to hand over vacant possession to the Plaintiff upon completion.

f) An injunction to restrain the Second Defendant from charging, selling alienating, parting with possession or in any other manner dealing with the suit property referred to in prayer (b) hereinabove;

g) Any further or other relief that this Honourable Court may deem just;

9) Simultaneously with filing the suit the Plaintiff approached the court with the 1st application and obtained some Ex parte orders on 29th May 2012. Pending the hearing of that application inter partes, and some 4 months later, the Plaintiff moved court through the 2nd application. In the Certificate of urgency that accompanied this latter application it was revealed that the application was necessary because,

“The Defendant had ceased construction works at the suit property which have now been recommenced and are being continued at an extremely quick pace.”

10) It is necessary to start, as a preliminary matter, by determining whether the application for injunction in the 2nd application is an abuse of court process as argued by counsel for S.W. Ltd. It was argued that the 2nd application was an attempt by Umoja to obtain an order that had been declined by Kasango J.

11) So as to put this argument in good perspective it is necessary to reproduce prayer 2 & 3 of the application of 28th May 2012.

“2. That the Second Defendant be restrained from charging, selling, alienating parting with possession of/or in any other way dealing with the suit property namely, Subdivision Number 734 (Original Number 284/41) of Section III MN registered at the Lands Titles Registry Mombasa as C.R. 20314/1 pending the hearing and determination of this application inter-partes;

3. That the Second Defendant be restrained from charging, selling, alienating parting with possession of or in any other way dealing with the suit property namely, Subdivision Number 734 (Original Number 284/41) of Section III MN registered at the Lands Titles Registry Mombasa as C.R.20314/1 pending the hearing and determination of this suit;”

12) That motion was brought under a certificate of urgency in which Vikram Chhotalal Kanji advocate stated the urgency to be that:-

“the second Defendant has wrongfully taken possession of the property which is the subject of this suit and commenced construction thereon”

(my emphasis)

13) That the commencement of construction or the construction itself was perceived by Umoja as a threat that needed to be checked by an injunction is also discerned by what Mr. Dilip Shah said in Paragraph 13 of his affidavit. This is what he stated:-

“That I visited the property and it appears that the 2nd Defendant has now taken possession as there is some activity going on the site. It is imperative in the circumstances that the suit property is preserved pending the hearing and determination of this suit given the nature of the relief sought. It would be gravely prejudicial to all parties if the status of the suit property was not preserved.” (my emphasis)

14) The Ex parte order made by the Judge was very specific. It read as follows:

“I grant an order, therefore, stopping any transfer, alienation or parting with possession of Subdivision No.734 (Original 284/41) of Section iii MN registered in the Land Title Registry Mombasa as C.R.20314/1 pending the hearing of the Notice of Motion dated 28th may 2012 is heard inter parties on 11th of June 2012.”

The Judge had been asked for a much more encompassing Order that included restraining S.W. Ltd from “in any other way dealing with the suit property”. The meaning to be given to these words was not a point of unanimity between counsel. I shall return to this.

15) Umoja’s 2nd application of 5th October 2012 was more pointed on the issue of construction. It read:-

“2. That the second Defendant be restrained from carrying out

any further construction works on the property known as Subdivision Number 734 (Original Number 284/41) of Section III M.N. registered at the Land Titles Registry Mombasa as C.R.20314/1 pending the hearing and determination of this application.

3. That the second Defendant be restrained from carrying out and further construction work on the property known as Subdivision Number 734 (Original Number 284/41) of Section III M.N. registered at the Land Titles Registry Mombasa as C.R.

20314/1 pending the hearing and determination of this suit inter-partes.”

16) Mr. Khagram appearing for Umoja sought to persuade the court that the 1st Application did not address the issue of construction and this court should assign a natural meaning to the words “dealing in”. He also urged that the court should apply the ejusdem generis rule. In his view, therefore, the words “dealing in” as used in the 1st Application meant disposition. For Mr. Kimani the advocate for S.W. Ltd, thought it a term of art deliberately used in legal practice to encompass any activity and would be broad enough, in the instance case, to include construction.

17) To my mind the real intention of Umoja using the words “in any other way dealing” in the 1st application should be discerned not by giving those words some legal or artistic ascription but by examining what Umoja saw as the threat(s) that needed to be stopped by that application. Clearly an apprehension that triggered Umoja into action was revealed in its Advocates Certificate of Urgency, that is, the commencement of construction. That this was a real apprehension was buttressed by what was said by Mr. Shah in his affidavit (see paragraph 13 of this decision). With respect, it would be absurd for Umoja to suggest that its 1st Application for injunction did not seek to stop the construction that had commenced when it was the commencement of construction that agitated it into bringing the application.

18) And I think I am right in drawing this inference because of what Mr. Janak Shah, a Director of Umoja, said in his affidavit in support of the 2nd Application. He stated therein:-

“That following service of the order made herein on the 28th May 2012 upon the second Defendant, the second Defendant had ceased further construction works at the suit property on the basis of which we assured (sic) that the second Defendant would desist from altering the status quo or continuing reconstruction works further pending the finalization of this two suits. At that time, only the foundation had been laid.” (my emphasis)

What I hear Umoja saying is that although the Order of Kasango J. fell short of its expectation in that

it did not stop further construction the conduct of S.W. Ltd of voluntarily ceasing construction gave it a respite.

19) That said, I am unable to find that the 2nd Application by Umoja is an abuse of court process because there was full disclosure of the 1st Application and the order made by the Judge. It seems to me, and I hope I am right, that the 2nd Application was to deal with what Umoja alleges was a new development on the ground, that is, re-commencement of construction. As the 1st Application had not been dealt with inter partes then there would be at least two options open to Umoja:-

- i) to amend that application (after necessary leave)
- ii) to file a further affidavit (after necessary leave) to bring to the

to the attention of the court the alleged new developments and to press on with the 1st application on the basis of the further information.

To bring a second and separate application for injunction while another was pending has the potential of disrupting the orderly disposal of proceedings. Mercifully the parties agreed to have both application heard and dealt together. As no prejudice is suffered by the Defendants, the court will move on to deal with those two applications on their merit.

20) A less controversial prayer is the request by Umoja to enjoin the Commissioner of Lands, the Lands Titles Registrar Mombasa and the Attorney General as Defendants herein. This is prayer 4 of the 2nd application. A chief grievance of Umoja is that the unlawful removal of its caveat paved the way for the unlawful transfer of the property from Mohidin to S.W. Ltd. The Land Titles Registrar, Mombasa would be the custodian of the Register to the suit property and the question as to whether a caveat was properly lodged and the circumstances under which it was removed cannot be answered satisfactorily without his participation. The Land Registrar Mombasa would be a necessary party. As for the The Attorney General, he can be enjoined as a party by virtue of Section 12 of the Government Proceedings Act Cap 40 which requires civil proceedings by and against the Government to be instituted by or against the Attorney General. It is however, not quite clear to me why The Commissioner of Lands is a necessary party. But as no suit can be defeated merely because of misjoinder (Order 1 Rule 9 of the Civil Procedure Rules) I will allow the joinder of all the three parties. Umoja may, as the matter progresses, demonstrate the necessity of enjoining the Commissioner.

21) I now turn to consider the prayers for injunction and as usual that will be tested on the principles set out in Gella –vs- Cassman Brown & Co. Ltd [1973] EA 358. The Plaintiff must show a prima facie case with probability of success. Second, that unless an injunction is granted, irreparable damage or loss which may not be adequately compensated in damages is likely to ensue and where in doubt of the aforesaid grounds, the application will be determined on a balance of convenience. It also needs to be mentioned here that the cause of action herein arose before the repeal of The Indian Transfer of property Act [1882] (ITPA) and The Registration of Titles Act (Cap 281) (RTA) by The Land Registration Act. By virtue of the Savings and Transitional provisions of Section 107 of The Land Registration Act, the rights, interests and relationship of the parties herein are governed by the ITPA and the RTA.

22) In assessing the viability of the Umoja's claim the court must consider the evidence so far presented on the basis of what is pleaded always remembering that at this interlocutory stage the court must relent from making any firm findings that may have the effect by determining the main suit with finality. As I see it, four main issues will have to be determined by the trial court:-

a) Whether there is a valid contract between Umoja and Mohidin and whether the latter breached it.

b) Whether or not the parties herein breached the doctrine of *les pendens*, and if so, the effect of that breach on their claim to the suit property.

c) Whether or not there was properly registered a caveat in favour of Umoja and if so whether its removal was lawful.

d) If the answer to (c) above is in the affirmative, whether the transfer to S.W. Ltd is lawful.

23) On the evidence, there seems to be an agreement for sale of the suit property from Mohidin to Umoja upon which a deposit was paid. The refund of Kshs.200,000/= made by Mohidin's Lawyer to Umoja seems to be consistent with the existence of that agreement and the payment of the deposit.

24) Stated expressly in the sale agreement is that completion of the agreement was conditional upon Mohidin removing squatters from the suit property prior to the completion date. And then this clause;

“A2 in the event the vendor fails to remove the squatters on the completion date as stated in Special Consideration A.1. the purchase may at its sole discretion complete this transaction. In this regard the vendor shall not rescind this agreement for not having complied with Special Consideration A.1”.

The evidence this far is that Umoja was still willing to proceed with the transaction and was waiting for Mohidin to remove the squatters. For Mohidin to sell the property to another person without first lawfully rescinding or abrogating the agreement with Umoja would seem to be a breach.

25) It was also the argument of Umoja that the sale and transfer of the suit property to S.W. Ltd breached the provision of Section 52 of The Indian Transfer of Property Act (ITPA) which provides:

“During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor-General in Council, of a contentious suit or proceedings in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.”

This was because at the time of that sale, the suit property was the subject matter of pending proceedings being Mbsa HCC No.301 of 2008 (Koto Pamba & 8 others –vs- Dr. H.M. Mohamed).

26) S.W. Ltd countered this argument by stating that Umoja would equally be in breach of the doctrine of *les pendens* as that very litigation was pending when on 30th October 2008 the agreement between Umoja and Mohidin was made.

27) There was then the argument as to consequences of a party acting in ignorance or in spite of *les pendens*. On the strength of the holding of Madan J (as he then) was in Mawji –vs- International University and Another [1976] KLR 185 counsel for Umoja asked this court to unhesitatingly impose a prohibitory order against the title held by S.W. Ltd. This is what Judge Madan said,

“We are unburdened by trammellings obtainable or operable in India upon the conditions of which country the Transfer of Property Act is, I say it respectfully, in many respects archaically based. I think the situation in Kenya is, or it ought to be, this: the court has power to prevent a breach of the provisions of section 52 in proceedings before it in which any right to immovable property is directly and specifically in question by imposing a prohibitory order against the title of the property to prevent all dealings in it pending the final determination of the proceedings, except under the authority of the court and upon such terms as it may impose.”

Counsel was of the view that the sale and transfer to S.W. Ltd would be void.

28) Relying on Mulla, The Transfer of Property Act 1882 (10th edition) counsel for S.W. Ltd argued that breach of *les pendens* merely makes any interest created thereafter inoperative against the

rights of the parties to the pending suit. The effect of the maxim is not to nullify the interest but to make it subservient to the rights of the litigating parties. The sale and transfer would be voidable not void.

29) It will not be necessary for me to make a determination of that issue in deciding the application before court. This is because both sales to Umoja and S.W. Ltd were done in spite of the litigation in civil suit HCCC No.301 of 2008. Both were entered when that litigation was pending. Both would be in breach of the doctrine of *les pendens*. If the consequence for breach is to make a transaction voidable at the instance of the outcome of the pending proceedings suit then both would be voidable. If the consequence is to make the transactions void, then both would be annulled. For purposes of the interlocutory application before me the prospects of the plaintiff's claim is not improved by invoking this doctrine.

30) I turn to the issue of the caveat. This court agrees with Umoja that once a caveat is duly lodged and received by the Registrar, then it can only be removed through the procedure set out in Section 57(5), and 57(6) of RTA. These provide:-

“(5) The proprietor or other person claiming land may, by summons, call upon the caveator to attend before the court to show cause why the caveat should not be withdrawn, and the court may, upon proof that the caveator has been summoned, and upon such evidence as the court may require, make such order in the matter, either *ex parte* or otherwise, as it deems it; and, where a question of right or title requires to be determined, the proceedings shall be as nearly as may be in conformity with the rules of the court in relation to civil causes.

(6) Except in the case of a caveat lodged by the registrar, the caveator may make application in writing to the registrar to remove the caveat, and thereupon and upon payment of the prescribed fee the registrar shall give forty-five days' notice in writing to the caveator requiring that the caveat be withdrawn, and, after the lapse of the service of the notice at the address mentioned in the caveat, the registrar shall remove the caveat from the register by entering a memorandum that is discharged, unless he has been previously served with an order of the court extending the time as herein provided.”

A caveat can also be withdrawn by the caveator [Section 57(9)] Once removed or withdrawn, then the Registrar shall such make an entry of such removal or withdrawal in the register.

31) It is the contention of Umoja that it never received any notice of the intention to withdraw the caveat and its removal was blatantly unlawful. On his part, Mohidin denies knowledge of the existence of this caveat. In which event the removal of the caveat (if it existed) would not have been at the behest of Mohidin.

32) So the first issue is whether there existed a properly lodged and registered caveat. Umoja presented to this court a copy of a caveat which shows that it was presented to the Land Titles Registry on 30th April 2010 at 3.00p.m. Also shown was a copy of the certificate of title to the suit property showing that the caveat had been duly registered. Once the existence of the caveat is put to question then the issue cannot be resolved without confronting the Land Registrar for an explanation. As of now the Registrar is not party to these proceedings. The Registrar, in my view, was a necessary party right from the outset. It is the Registrar who would confirm or otherwise the entries made in the register and the circumstances under which the caveat (if any) was removed. For some reason, Umoja left out the person who would be best placed to answer the allegations surrounding the registration and removal of the caveat. This has the effect of weakening the Plaintiff's case as neither Mohidin nor S.W. Ltd could effect the transfer in the register. I am not certain that Umoja's claim against the two Defendants can succeed without an impeachment of the conduct and action of the person said to have unlawfully removed the caveat and effected the transfer. I would think that Umoja acknowledged this flaw in its case and hence the application for leave to enjoin the Registrar. But this court must in determining the application before it consider the current, not prospective, pleadings.

33) S.W. Ltd, in fact thinks that Umoja's claim is not only weak but a hopeless cause. Citing Sections

6,7,8 and 22 of The Land Control Act, it was the contention of S.W. Ltd that the transaction between Umoja and Mohidin was void and unenforceable as no application for consent in respect to the transaction had been made to the appropriate Land Control Board within six (6) months of the making of their agreement. There is almost a consensus by the parties herein that the transaction between Umoja and Mohidin is a controlled transaction within the provisions of the Land Control Act and consent from the appropriate Land Control Board required. It was agreed that prior to S.W. Ltd, obtaining approval for change of user, the user of the suit property was agricultural. And one of the completion documents named in clause B of Umoja's sale agreement was a consent to transfer, presumably consent of the appropriate Land Control Board.

34) Umoja had an answer to this. The sale agreement was entered on 30th October 2008. But a day later, on 31st October 2008, the High Court in HCCC No.301 of 2008 (O.S) restrained Mohidin from transferring, selling disposing off, fencing, charging and/or dealing with the suit property. The effect of this order, it was argued, was that the parties could not apply for the consent as to do so would be to disobey the court order. For this reason, it was further argued, the six (6) months period could not run against Umoja. The order of injunction has since been vacated vide a ruling delivered on 28th August 2012 and it is the position of Umoja that it will seek extension of the period should this court declare the transfer to S.W. Ltd a nullity and revert the ownership back to Mohidin.

35) I agree with Umoja that it would be in breach of the court order in HCC No.301 of 2008 if the parties were to apply for the consent while that order subsisted. For this reason an argument that the transaction has not breached the provisions of Section 8 of the Land Control Act is plausible. This court is willing to accept that circumstance may have arisen in which the High Court can consider the extension of the six (6) months period. The High Court has powers under the proviso to Section 8 (1) of The Land Control Act to extend that period where it considers that there is sufficient reason to do so. Section 8(1) reads:

“8.(1) An application for consent in respect of a controlled transaction shall be made in the prescribed form to the appropriate land control board within six months of the making of the agreement for the controlled transaction by any party thereto:

Provided that the High Court may, notwithstanding that the period of six months may have expired, extend that period where it considers that there is sufficient reason so to do, upon such conditions, if any, as it may think fit.”

36) On my part, and at the stage, I would be slow to hold the transaction as void for non-compliance with the provisions of the Land Control Act. But for reasons stated earlier, and on the pleadings and evidence so far, I am not sufficiently assured that Umoja has made out a prima facie case with probability of success.

37) Is Umoja likely to suffer irreparable damage if the injunction is not granted? Umoja says that it bought the suit property with the intention of expanding its existing factory in Mtwapa Mombasa. In paragraph 8 of his affidavit in support of the application the 2nd Application Mr. Janak Shah states as follows:

“That the Plaintiffs' expansion plan have now been put on halt as it has been difficult to identify a similar property within close proximity of the Plaintiffs' current manufacturing unit in Mtwapa. The logistics of having a second unit which is not within reasonable distance makes the Plaintiffs' expansion plans unviable for the logistical reasons due to prohibitive costs.”

Although Umoja did not furnish any evidence to back this averment, it is the view of this court that if the suit property was to be put beyond the reach of Umoja then it would suffer loss, if in the end it succeeded in this litigation. That said, Umoja has never had possession of the suit land and possession is with S.W. Ltd. S.W. Ltd have carried out substantial construction thereon and from photographs taken on 12th October 2012 it had constructed a boundary wall and a Godown to the roof. It had, earlier on 28th March

2012, obtained an approval for change of user from Agricultural to light Industrial. This was before this suit was filed. If Umoja was to succeed in its claim, then all these developments would be brought down and removed and the land restored to its original state. And if the title to S.W. Ltd was to be cancelled then even the change of user would have to go. For this reason, the loss that Umoja may suffer as of now is not irreparable. What is required, I think, is to maintain a state of affairs that does not place the suit land beyond the reach of Umoja.

38) In considering what order to grant this court will have to balance the convenience of the parties. I have little doubt in holding that it tilts in favour of S.W. Ltd keeping possession and continuing with its development. I reach this decision because as at the time this suit was filed the following had already happened.

i) S.W. Ltd was in possession.

ii) S.W. Ltd had already obtained change of user of the property.

iii) S.W. Ltd had already fenced the property.

iv) The foundation to the factory was already complete.

And as the court order of 28th May 2012 did not restrain S.W. Ltd from continuing with construction there has been further development. The photographs taken on 12th October 2012, shows a factory building which has been constructed to the roof.

39) Although this court will not stop the S.W. Ltd from continuing with its development S.W. Ltd. must always bear in mind that should Umoja succeed in this suit then it must shoulder the cost of restoring the suit property back to its original state. That will be the ever present risk.

40) This court, and it bears repetition, is eager to make an order that does not place the suit property beyond the reach of the eventual victor. For this reason I shall confirm the orders granted by Judge Kasango on 28th May 2012 and only add that the S.W. Ltd is further restrained from in any other manner disposing of the suit property. These are the orders of the court.

i. The Defendants are hereby restrained by an order of injunction from changing, selling, alienating, parting with possession or in any other manner disposing of the suit property namely subdivision number 734 (original number 284/41) of Section III MN registered at the Lands Titles Registry Mombasa as CR. 20314/1 pending, the hearing and determination of this suit.

ii. The undertaking as to damages furnished by the Plaintiff on 11th October 2012 shall be treated as spent and the Plaintiff shall furnish a fresh undertaking within 14 days of delivery of this decision.

iii. The Plaintiff is granted leave to enjoin the Commissioner of Lands, The Land Titles Registrar Mombasa and The Attorney General and is at liberty to amend its pleadings appropriately to plead its cause of action and relief us against the Commissioner of Lands, The Land Titles Registrar Mombasa and The Attorney General.

iv. The Plaintiff shall file and serve its amended plaint within 14 days hereof with leave to the defendants to file their replies thereto. If any, within 14 days of service.

v. The plaintiffs shall have costs of the application of 28th May 2012 but each party shall bear its own costs on the application of 5th October 2012.

F. TUIYOTT

J U D G E

Dated and delivered this 11th day of April, 2013.

In the presence of:

.....**for plaintiff**

.....**for 1st Defendant**

.....**for 2nd Defendant**

J U D G E