



REPUBLIC OF KENYA

High Court at Malindi

Civil Case 55 of 2011

CAROL SILCOCKPLAINTIFF

VERSUS

KASSIMU SHARRIF MOHAMEDDEFENDANT

RULING

1. I have considered the Defendant's application filed on 16th July, 2012, the supporting affidavits and the plaintiff's replying affidavit. I have also considered the respective submissions as filed by the parties.

2. The application is brought under Order 45 rule 1,2 , 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The chief ground upon which the application is premised is that the plaint commencing this suit is incompetent as it was filed by a non-existent firm of advocates. That there is an error on the face of the record. The Defendants held out as evidence of this contention a letter from the Law Society of Kenya attached to the supporting affidavit and a further alleged search attached to the Further Affidavit.

3. I have perused these documents. The plaintiffs submit correctly in my view that the letter from the Law Society of Kenya was non-conclusive as it advised a further search with the Registrar of Business Names. That is alleged to be the subject of annexure "KSM 7" to the Defendant's further affidavit. The said document is an inquiry addressed to the said Registrar of Business Names by the defendant's advocates. On the face of it, the letter is a handwritten endorsement reading N/R or N/K. It is not countersigned. This according to the defendant represents the words "no records" - in respect of the subject firm – Mayaka and Lagat advocates. With respect, the search fee receipt notwithstanding, this endorsement as it is cannot be proof of the non-existence of the said firm of Advocates.

4. What could have been easier than for the counsels to obtain proper confirmation from the relevant registrar" Besides, even if the confirmation was tendered, it is arguable whether that would amount to an error on the face of the record. On a related point, none of the parties has addressed the court on the fact that by a consent filed by the parties on 25th November, 2011 the original pleading, the plaint was amended. At the time the firm of Richard O. & co. Advocates had come on record for the Plaintiff. Thereafter the suit proceeded to full hearing. Both parties were represented by qualified counsel until the time of judgment.

5. In the circumstances, I am inclined to suspect that the Defendants are now opening a new defence front to deflect the judgment of the court when the defendant has admitted elsewhere that

he sold the suit property during the pendency of the suit. I will dismiss the defendant's application with costs and direct that the application filed on 27th August, 2012 and 5th September, 2012 by the Plaintiff be heard on a date to be set immediately upon the delivery of this ruling.

6. Further, taking note of annexure CS2 to the Plaintiff's Replying Affidavit filed on 3rd September, 2012, I would for the sake of upholding the rule of law and good order, direct that the status quo in respect of the suit property be maintained pending the hearing of the two pending applications. For this purpose, the status quo refers to the state obtaining as at the date of this ruling.

Delivered and signed at Malindi this **21st** day of **December, 2012** in the presence of Mr. Maosa for the Defendant, Mr. Macharia for the Plaintiff, Mr. Anami for the Interested Party.

C. W. Meoli

JUDGE

21-12-12

COURT – Let the applications filed on 27th August, 2012 and 5th September, 2012 be heard on 25th February, 2012.

C. W. Meoli

JUDGE

21-12-12

MR. MAOSA – I apply for certified copy of proceedings.

C. W. Meoli

JUDGE

21-12-12

Court – Certified copies of proceedings and ruling to be provided.



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