



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CIVIL CASE NO.101 OF 2011**

**1. MICHELE CALIENDO**

**2. MAURIZIO CARLO BESANA.....PLAINTIFFS**

**=VERSUS=**

**1. SUN REEF LTD**

**2. DI VITA GIUSEPE**

**3. REGISTRAR OF TITLES MOMBASA**

**4. MARIANGELA ALTERINI.....DEFENDANTS**

**5. FRANCESCO VELRONI..... INTENDED DEFENDANTS**

**R U L I N G**

1. What is before me is the Application by the Plaintiffs dated 13<sup>th</sup> July, 2015 seeking for the following orders:

**(a) That the Plaintiffs be granted leave to serve the 1<sup>st</sup> and 2<sup>nd</sup> Defendants the amended Plaint by way of substituted service either through a newspaper with the widest national circulation or their last known address.**

**(b) THAT the costs of this application be provided for.**

2. The Application is premised on the grounds that despite all reasonable and diligent efforts, the Plaintiff's advocates have been unable to effect service of the amended Plaint upon the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

3. According to the Plaintiffs, the whereabouts of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are unknown and that despite all reasonable and diligent efforts, they cannot be traced.

4. According to the Replying Affidavit of the 3<sup>rd</sup> and 4<sup>th</sup> Defendant's Attorney, service on the 2<sup>nd</sup> Defendant ought to be done through the process set out for service of process on the person who is ordinarily resident abroad.

5. The Plaintiffs have not denied the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' deposition that the 2<sup>nd</sup> Defendant is a person who is ordinarily resident abroad. Indeed, there is no evidence to show that the 2<sup>nd</sup> Defendant is a Kenyan citizen and that service by way of advertisement will be proper.

6. Consequently, the Plaintiffs should endeavour to comply with the provisions of Order 5 Rules 21 and 29 of the Civil Procedure Rules which provides on how service of process out of the jurisdiction of Kenya is done.

7. For those reasons, I dismiss the Application dated 13<sup>th</sup> July, 2015 with no orders as to costs.

Dated and delivered in Malindi this **19<sup>th</sup>** day of **February**, 2016.

**O. A. Angote**

**Judge**