



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO. 38 OF 2011**

**BRUNELLA PANINI & 66 OTHERS.....PLAINTIFFS**

**=VERSUS=**

**1. POLICINO OASIS MANAGEMENT LIMITED**

**2. POLICINO OASIS LIMITED**

**3. GIOVANNI DE CARO**

**4. POLICINO COSIMO**

**5. THOMAS HINZANO NGONYO.....DEFENDANTS**

**AND**

**1. CLAUDIA ZANONI**

**2. BELLUOMINI GIULIANA**

**3. MARIA PETRINO**

**4. GIANNA ELISA RECCOSTA**

**5. ALESSANDRO CAZZANTI**

**6. MARIELLA PALAZZICLAUDIOCLAUDIO BONE**

**7. VIGNAROLI VITTORINO**

**8. VIRGNAROLI VITTORINO**

**9. LUIGI ARCARI.....INTERESTED PARTIES/APPLICANTS**

**RULING**

**Introduction:**

1. On 9<sup>th</sup> July 2013, this court appointed Brunella Panini, Maurizio Turato and Paola Ippolito to jointly manage, protect, preserve and improve the assets of Polcino Oasis Village and in connection thereof to collect all the service charges for the benefit of Polcino Oasis Village for a period of six months.
2. The said appointment has since lapsed due to effluxion of time.
3. The Interested Parties have filed an Application dated 28<sup>th</sup> November 2014 in which they are seeking for an order of this court compelling Polcino Oasis Management Limited, or the court on its own motion, to appoint an independent professional company to manage the affairs of Polcino Oasis Limited (the village) until such a date and time that Polcino Oasis Limited shall be able to run its affairs independently and efficiently.
4. All the parties in this matter are agreeable that pending the hearing of the suit, an independent professional company should be appointed to manage the village.
5. Indeed, some of the Plaintiffs in this matter brought on board the firm of Pivot Valuers Limited who conducted a service charge assessment of the Village and prepared a Report dated 6<sup>th</sup> February 2015 which was later revised.
6. The Interested Parties on the other hand preferred to have Coral Property Consultant Limited or Coast Valuers Limited to manage the Village in accordance to their Reports.
7. The advocates filed written submissions in respect to the Interested Parties' Application.
8. Mr. Ndegwa, counsel for the 5<sup>th</sup>-9<sup>th</sup> Interested Parties submitted that Pivot Valuers submitted a "final report" which did not completely address the issues raised by his clients.
9. Counsel submitted that the inclusion of a charge of Kshs.1,200,000 for an Institutional Manager cover and above Kshs.1,800,000 to be paid as management fees is not reasonable.
10. Counsel submitted that because services are enjoyable by everyone, it is illogical to have a commercial property pay less service charge than a residential property; that it is common knowledge that businesses pay a minimum of 1.5 times the price of a private apartment and as such the payable service charge should be per unit and not per square meters.
11. The Interested Parties' counsel further submitted that it is not fair that the apartments on the ground floor and first floor should pay less than other apartments on the upper floors.
12. Mr. Binyenya, counsel for the 1<sup>st</sup> -4<sup>th</sup> Interested Parties submitted that the fact that Pivot Valuers Limited had a previous engagement with the previous receiver managers has caused disquiet among the apartment owners in Oasis Village; that it is only fair that an independent manager who shall serve the apartment owners without fear or favour should be appointed and that Coral Property Consultants Limited should be appointed to take possession and management of the property.
13. Mr. Inamder, counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants associated himself with the Interested Parties' submissions.
14. Counsel submitted that it is wrong for counsel for the Plaintiffs to presume, in the absence of the agreement or a court order, that Pivot had been unequivocally appointed as a managing agent; that this court had urged the parties to look at different options and to try and select a suitable managing agent by consensus and that the other parties were opposed to the figures given by Pivot.
15. Counsel submitted that the issue of costs is important because it is the residents themselves that are going to have to foot these costs.

16. Counsel submitted that Pivots' quote is approximately Kshs.1.4 Million higher than either Coast Valuers or Coral Properties and that Coral Properties are better established and they have an indemnity cover for any claim upto a maximum of Kshs.50 Million.

17. Mr. Anami, counsel for the Plaintiffs submitted that the Defendants and the Interested Parties had initially acceded to the appointment of an independent company, Pivot Valuers Limited; that the only question that was left for determination was the possibility of Pivot Valuers adjusting the estimates downwards and that the quotation tendered by Coast Valuers Limited and Coral Properties Consultant Limited indicate a similarity in content.

### **Analysis and final findings:**

18. It is the 5<sup>th</sup> – 9<sup>th</sup> Interested Parties who moved this court to have an independent manager to manage the Polcino Oasis Village by virtue of the fact that the term of Mr. Anami's client to manage the property had lapsed.

19. When the Application by the Interested Parties dated 28<sup>th</sup> November 2014 for the appointment of an independent manager came up for hearing on 9<sup>th</sup> February 2015, Mr. Anami, counsel for the Plaintiffs, informed the court that his client was not averse to the appointment of an independent manager. After hearing counsels for all the parties, this court directed that all the parties agree on an independent manager within 14 days.

20. When the matter came up for mention on 25<sup>th</sup> February 2015, the parties had not agreed on a manager. The court then directed the Respondents and the Interested Parties to file their respective Affidavits.

21. When the matter came up again on 13<sup>th</sup> March 2015, Mr. Anami, counsel for the Plaintiffs was in possession of a report prepared by Pivot Valuers Limited dated 6<sup>th</sup> February 2015 which had not been served on the other parties.

22. On the basis of that report, a consent was recorded in which the report was to be looked into by all the parties and if agreeable, the said Pivot Valuers was to manage the suit properties on the basis of the report.

23. That consent, as I understand it, was only applicable if all the parties were in agreement with the contents therein, which they had not seen. The parties to this suit were not under any obligation to be bound by the contents of the said report or even to have the said valuer as the manager of the village. A final consent was to be recorded later.

24. The Interested Parties, after looking at the Report of Pivot Valuers of 6<sup>th</sup> February 2015, which was prepared before the "preliminary" consent of 13<sup>th</sup> March 2015 was entered into, got quotations from Coral Property Consultants Limited dated 24<sup>th</sup> April 2015 and Coast Valuers Limited. In the meantime, Pivot Valuers prepared a revised report dated 21<sup>st</sup> April 2015.

25. According to the revised report of Pivot Valuers Limited dated 21<sup>st</sup> April 2015, the budgeted service charge for the period between January 2015 to 31<sup>st</sup> December 2015 is Kshs.14,397,230.

26. On the other hand, the report of Coral Property Consultant Limited puts the total annual expenses at Kshs.12,372,348 while Coast Valuers Limited have quoted Kshs.12,245,552 as the expenses that shall be incurred to manage the Oasis Village.

27. Pivot Valuers Limited annexed on its report the Certificate of Registration showing that Mr. Cyrus M. Kiami was on 23<sup>rd</sup> June 2011 registered as an Estate Agent. It is not clear the date and year that Pivot Valuers Limited was registered as a company, if at all.

28. Coral Property Consultants Limited have annexed on their report the certificate of incorporation showing that the company was registered on 11<sup>th</sup> October 2005. The said company has also shown its personal identification number certificate. The certificate shows that the company was registered with the Kenya Revenue Authority, Domestic Taxes Department, on 27<sup>th</sup> October 2005.

29. Coral Property Consultants Limited also has a professional indemnity insurance policy with Phoenix of E.A. Assurance Company Limited for this year in respect of any claim arising out of its care to the tune of Kshs.50,000,000. Mr. Naimisha Shah has also been registered by the Estate Agents Registration Board.

30. The profile of Coral Property Consultants Limited shows that the company has been managing several properties in Mombasa since the year 2005. Pivot Valuers Limited and Coast Valuers Limited do not seem to have the same experience in managing properties.

31. Indeed, it is only Coral Property Consultants Limited that annexed a copy of its insurance policy, which is critical considering the sensitive nature of its core functions of managing private properties.

32. Consequently, and considering that the company also quoted a lower amount in terms of the expenses to be incurred by the residents of Polcino Oasis Village in managing the Estate, as compared to Pivot Valuers, the court appoints Coral Property Consultants Limited to manage the suit properties in the following terms.

**(a) Coral Property Consultants Limited, be and is hereby appointed to manage, protect and preserve the assets of Polcino Oasis Village erected on L.R. No.1862, Malindi in strict compliance with its report dated 12<sup>th</sup> April 2015 with effect from 1<sup>st</sup> July 2015 pending the hearing of the suit.**

**(b) The service charge quoted in the Report of 12<sup>th</sup> April 2015 by Coral Property Consultants Limited is payable by all the apartment owners within the village with effect from 1<sup>st</sup> January 2015.**

**(c) The service charge quoted in the Report of Coral Property Consultants Limited to be deposited in an account to be opened and, managed by Coral Property Consultants Ltd.**

**(d) Coral Property Consultants Limited to submit to this court audited accounts, with copies to all the apartment owners, on or before 31<sup>st</sup> January of every year until this suit is heard and determined.**

**(e) The surplus funds in the account that shall be opened by Coral Property Consultants Limited shall be utilised in improving the facilities of the village with the Court's approval.**

**(f) Parties are at liberty to apply.**

**(g) Each party to bear his or her own costs.**

Dated and delivered in Malindi this 26<sup>th</sup> day of **June**, 2015.

**O. A. Angote**

**Judge**