

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

CIVIL CASE NO.18 OF 2014

1. MOHAMED HAROON

2. SALIM MOHAMED OMAR t/a WONDERFUL BUTCHERY

3. ADBULLATIF MUDARIS

4. MOHAMED SALIM.....PLAINTIFFS

VRS

1. COUNTY GOVERNMENT OF KILIFI

2. MALINDI SUB UNIT.....DEFENDANTS

RULING

The application dated 17/10/2014 seeks to restrain the defendant from allocating certain market stalls to other people other than the plaintiffs. It is supported by the affidavit of Mohamed Haroon sworn on 16/10/2014. The defendant filed a replying affidavit sworn on 28/11/2014 by Patience Umazi Tsimba.

Counsel for the applicants submitted that the plaintiffs are tenants of some stalls at the Kwa Jiwa Market in Malindi. They were asked to relocate as the market is under renovation. There was an oral argument that once the renovations are over, the applicants would be re-allocated the same stalls. However, there is no guarantee that the defendant will fulfill that agreement and the applicants are apprehensive that other people might be allocated their stalls: The applicants have established good will as they have operated for quite sometime.

On his part, counsel for the respondent contends that the market is under renovation. The structure will change and the format of the market will also change. There is no guarantee that the applicants will get the same stalls. The renovated market will be divided into sections according to the type of product being sold.

From the pleadings herein, it is confirmed that the defendant agreed to ensure that the applicants are allocated market stalls once the renovations are over. Paragraph 16 of the replying affidavit confirms that fact. According to the defendant, the stall operators had made illegal extensions and renovations to the stalls and these will be affected by the ongoing renovations.

It is clear to me that the parties are in agreement. The main issue is that the defendant cannot guarantee that the plaintiffs will get the specific areas they have been operating from. Given the fact that there is confirmation that there was an agreement between the parties, I do find that the application is merited and is granted. However, the defendant's obligation shall be to ensure that the plaintiffs get stalls at the market and they shall be given the first preference when allocations are made to those stalls falling within the areas currently occupied by the applicants. This is subject to the defendant's guidelines as to product specification in the market. Should the above arrangement fail to accommodate all applicants, then the defendant should ensure that the plaintiffs get stalls in any other part of the market. The application dated 17/10/2014 is granted in the above terms. Each party shall meet their own costs.

Dated, signed and delivered at Malindi this 25th day of June, 2015.

SAID J. CHITEMBWE

JUDGE