



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**LAND CASE NO. 149 OF 2012**

**SEAGULLS VIEW LTD.....PLAINTIFF/RESPONDENT**

**=VERSUS=**

**FRED GUMO.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**BLUE STONE HOLDINGS LIMITED.....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

**Introduction**

1. The 1<sup>st</sup> Defendant has filed an Application dated 27<sup>th</sup> November 2012 seeking to strike out the suit with costs.
2. The Application is based on the grounds that the 1<sup>st</sup> Defendant is not the Registered owner of L.R. NO.5054/239, the suit property. However, the 1<sup>st</sup> Defendant has admitted that a company which he has interests in, the 2<sup>nd</sup> Defendant, owns the suit property.
3. The Plaintiff did not file a response to the said Application. However, the Plaintiff's advocate informed the court that he has since filed an Amended Plaint enjoining Bluestone Holdings Limited, the registered proprietor of the suit property, as the 2<sup>nd</sup> Defendant. The Plaintiff's Advocate submitted that the Defendant was sued in his personal capacity because a company cannot be accused for trespass, which is the Plaintiff's cause of action as against the 1<sup>st</sup> Defendant.
4. It is trite law that a suit can only be defeated if it cannot be revived by way of amendment.
5. Order 15 Rule 1(a) and (d) of the Civil Procedure Rules 2010 provides that at any stage of the proceedings, the court may order to be struck out or amend any pleading on the ground that it discloses no reasonable cause of action or defence in law or it is otherwise an abuse of the process of the court.
6. Order 1 Rule 9 and 10 of the Civil Procedure Rules further provides that a suit cannot be defeated by reason of the misjoinder or non-joinder of parties, and where a suit has been instituted in the name of the wrong persons, the court may order any other person to be added or substituted. The 1<sup>st</sup> Defendant has admitted that he is a director in the 2<sup>nd</sup> Defendant's company. The Plaintiff has since amended the Plaint and enjoined the registered proprietor of L.R. NO.5054/239. The Application has therefore been overtaken by events.

7. For the reasons I have given above, I shall, which I hereby do, dismiss the Defendant's Application dated 27<sup>th</sup> November 2012. Each party shall bear its own costs.

Dated and Delivered in Malindi this **28<sup>th</sup>** Day of **February 2014**

**O. A. Angote**

**Judge**