



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 186 OF 2013

1. FAVALE SALVATORE
2. LUCA MATTEOTTI
3. SABATINI ROSALIA
4. RUCHETTA MARCELLA
5. CANASSI ELIA
6. PREANI ALDO
7. LIBERO GRATZIANO
8. PESCI SERGIO
9. LUINI FRANCESCO
10. CODOGNO SANTE.....PLAINTIFFS/APPLICANTS

=VERSUS=

1. ANGELS BAY HOLDING LTD
2. MAMBRUI PROMOTIONS LTD.....DEFENDANTS/RESPONDENTS

R U L I N G

Introduction:

1. The Application by the Plaintiffs is the one dated 26th March 2014. The Applicants are praying that leave be granted for them to further re-amend the Further Amended Plaintiff dated 8th February 2014 in accordance with the annexed Further Re-amended Plaintiff.

2. The Application is premised on the ground that as at the time of filing the suit, the actions of the Defendants had not occurred and hence the prayer for a permanent injunction to restrain them from harassing the Plaintiffs was not necessary at that time; that the Plaintiffs are now prone to harassment and that in confirming with the Ruling of the court of 21st March 2014, it has become apparent and necessary

that the Plaintiff be amended further.

3. In response, the Defendants' director deponed that the prayers sought in the Application should not be granted because the proposed amendments are as diametrically different from the original suit as to constitute a total departure from the suit in its entirety.

4. The Defendants' director further deponed that that Plaintiffs have been shifting every time they come to court; that the material none disclosure and the deliberate piecemeal disclosure for information is designed to mislead the court and to buy time for the Plaintiffs so as to cause damage to the Defendants and that the Application should be dismissed.

5. The Plaintiffs' advocate filed written submissions which I have considered. I have also considered the authorities on record.

6. I have perused the draft Further Re-amended Plaintiff. In the said draft, the Plaintiffs are seeking to include the house number that each Plaintiff owns within Angels Bay Village, Mambui. The Plaintiffs are also seeking to introduce the specific provisions of the Lease which in their view stipulates the rights and obligations of parties.

7. The Plaintiffs have also sought to include the prayers for prohibitory and mandatory injunctions which were not included in the initial claim, because, according to their affidavit, the issue of harassment that they have been subjected to arose after they filed the suit.

8. The Civil Procedure Act and the Rules have given this court a wide discretion to allow amendments of pleadings at any stage for the purpose of determining the real questions in controversy between the parties, or for correcting any defect or error in any pleading.

9. I have looked at the proposed amendments. The inclusion of the number of the respective houses owned by the Plaintiffs in my view is vital to their case. The failure to include the numbers for the specific houses owned by the Plaintiffs in the initial Plaintiff was an error which can be corrected by way of amendment.

10. The inclusion of a permanent injunction in the Plaintiff is necessary considering that the Plaintiffs have alleged that the Defendants have been harassing them since they filed the suit.

11. The proposed amendments are not prejudicial to the Defendants considering that the Defendants have the right to file an amended defence to respond to the allegations raised in the Further Re-amended Plaintiff.

12. For those reasons, I allow the Plaintiff's Application dated 26th March 2014 in the following terms:

(a) Leave be and is hereby granted to the Plaintiffs to further re-amend the Further Amended Plaintiff dated 8th February, 2014 in accordance with the draft Further-Re-amended Plaintiff annexed on the Applicant's Application within 14 days from the date hereof with no order as to costs.

Dated and delivered in Malindi this 24th day of **October, 2014.**

O. A. Angote

Judge