



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**HIGH COURT CIVIL SUIT NO. 186 OF 2011 (OS)**

**IN THE MATTER OF: THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA**

**B E T W E E N**

MALINDI MUSKETEERS LTD .....PLAINTIFF/APPLICANT

**VERSUS**

1. THE HON. ATTORNEY GENERAL
2. THE LAND REGISTRAR, KILIFI
3. ERNEST KAHIRO KIMANI..DEFENDANTS/RESPONDENTS

**RULING**

1. I have considered all the arguments made in respect of the Notice of Motion filed on 7th May, 2012 and expressed to be brought under Order 2 rule 15 of the Civil Procedure Rules, on grounds which on the face of it are matters of evidence to be determined at the trial (see grounds 1 to 4 on the face of the application.) At the hearing of the application however, counsel for the 3rd defendant introduced a fresh and pure point of law. This point in my view is well taken as it does not appear that the requisite resolution authorizing commencement of these proceedings is annexed to the plaint. Neither is it pleaded.
2. However, I consider that it would be drastic to strike out the originating summons peremptorily without affording the applicants a chance to remedy the defect. For this reason, I will direct that requisite resolution by the company be filed within 14 days of today's date.
3. Costs will be in the cause.
4. I regret the delay in delivering this ruling, occasioned in part by my search for the file in a similar matter filed by the applicants as HCCC No. 182 of 2011 (OS). The intention was to satisfy myself that the provisions of Section 6 of the Civil Procedure Act have not been violated. The file has only recently been traced.

In addition, I have been destabilized by pressure from duties outside my court station in the recent months.

Delivered and signed at Malindi this **15th** day of **April, 2013** in the absence of parties.

Court clerk – Evans.

**C. W. Meoli**

**JUDGE**