

COPY

REPUBLIC OF KENYA

INTHE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 354 OF 2010

JUMA SWALEH MWARANJIRA & OTHERSPLAINTIFF/RESPONDENTS

- VERSUS -

HAMADI JUMA MWAKIBOBO DEFENDANTS/APPLICANTS

RULING

[1] The plaintiffs filed this suit on 5th October 2010. They pray for a declaration to nullify titles **Kwale/Diani Beach Block/155,157 and 346** and that the said title be expunged from entries of Kwale registry. They further ask for a declaration that they be registered as owners of the said plots. They also seek an injunction restraining the defendants and their servants, agents or successor in title (if any) from selling, subletting, leasing, transacting or dealing in any manner whatsoever in relation to **Kwale/Diani Beach Block/155,157 and 346** until the determination of this suit. They claim damages and costs. The 1st and 4th defendants entered appearance through Khatib and Company Advocates on 1st November 2010 and filed their statement of defence on 18th January 2010 denying the averments in the plaint.

[2] On 8th November 2010 J.O. Magolo & Co. Advocates entered appearance for the 7th and 8th defendants and filed their defence on 10th December 2010 also denying the claim and stating that the plaintiffs have no proprietary interest in the suit property and that the same belong to the community for communal ownership. On 25th February 2011 there was a request for judgment against 6th,9th,12th and 15th defendants who had not filed their memorandum of appearance and defence.

[3] On 15th October 2012 the advocate for the plaintiff told the court that he had applied for judgment against 2nd,3rd 4th, 5th,10th,11th and 13th respondents and that he needed time to have it endorsed. He said that they also needed time for submissions. The case was stood over to 5th November 2011. The end result was that no judgment was endorsed by the Court against any party.

[4] Mr. Khatib who had applied vide a notice of motion dated 13th June 2012 sought orders that the claim against the 14th defendant be struck off. The reason that the applicant gave for such request for striking off was that according to the 14th defendant, there was no cause of action or any reasonable cause of action against the 14th defendant. The 14th defendant filed his submissions in Court on 10th April 2012. The plaintiff never filed his submissions inspite of being given seven (7) days to do so by the Court on 11th March, 2013. I am therefore left with nothing to connect the 14th defendant with this claim other than the Plaint. On my perusal of the plaint I see nothing to connect the 14th defendant with any claim in the plaint. I completely agree with Mr. Khatib Learned Counsel of the 14th defendant that there is no cause of action against the 14th defendant. The claim against the 14th defendant is struck out with costs to the 14th defendant.

Dated and delivered in open court at Mombasa this 23rd day of

August, 2013.

S.N. MUKUNYA

JUDGE

In the presence of:

Mr. Okanga Advocate for the plaintiff/respondents

Mr. Khatib Advocate for the 14th defendant/applicant