



REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

MISCELLANEOUS APPLICATION NO. 32 OF 2012

IN THE MATTER OF: MALINDI HIGH COURT CIVIL SUIT NO.186 OF 2011 (OS),

MALINDI MASKETTEERS LIMITED

=VERSUS=

THE HON. ATTORNEY GENERAL

THE LAND REGISTRAR, KILIFI

ERNEST KAHIRO KIMANI

AND

IN THE MATTER OF: MALINDI HIGH COURT CIVIL SUIT NO.182 OF 2011 (OS)

MALINDI MASKETEERS LIMITED

=VERSUS=

1. THE HON. ATTORNEY GENERAL

2. THE LAND REGISTRAR, KILIFI

3. KARISA MOLE MBITHA

AND

**IN THE MATTER OF: SECTION 3A, 1A, 1B OF THE CIVIL PROCEDURE RULES CAP
21 LAWS OF KENYA**

AND

**IN THE MATTER OF: ARTICLES 35 AND 159 OF THE CONSTITUTION OF THE
REPUBLIC OF KENYA**

AND

**IN THE MATTER OF: THE KENYA POLICE FORENSIC DOCUMENT EXAMINATION
REPORT DATED 10TH AUGUST, 2012**

BETWEEN

MALINDI MASKETEERS LIMITED.....APPLICANT

=VERSUS=

THE HON. ATTORNEY GENERALRESPONDENT

RULING

1. The Notice of Motion filed by the Applicant in what appears to be Judicial Review proceedings brought without leave, sought three key orders:
 1. **That this application be certified as urgent and service thereof be dispensed with in the first instance.**
 2. **That the final and comprehensive forensic report by the Kenya Police on Forensic Document examination is now ready for presentation**
 3. **That this honorable court which is due to give a ruling on the application dated 23rd August, 2012 be pleased to order and direct the District Criminal Investigation Officer, Malindi (DCIO) to present, submit or facilitate the final document examination report dated 23rd August, 2012 to the Court, make a proper finding and ruling on the application dated 23rd August 2012 in the interest of justice.”**
2. The substance of the grounds cited is that the Applicant has since the reservation of the ruling now sought to be “suspended” or “deferred” in HCCC No. 186 OF 2011 come across certain important evidence.
3. The application is expressed to be brought under Article 35 and 135 of the Constitution and Section 1A, 1B and 3A of the Civil Procedure Act.
4. Not surprisingly, the Respondents took issue with the procedure adopted by the Applicant and raised preliminary objections. These question the propriety of the proceedings and the jurisdiction of the court.
5. In particular, the 1st Respondent has argued that under Section 193A of the Criminal Procedure Code, civil and criminal proceedings can run in tandem hence the criminal complaint filed by the applicant need not be tied up with proceedings in HCC 186 of 2011.
6. The applicant seeks refuge in Articles 35 and 159 of the Constitution, as well as Section 1A, 1B and 3A of the Civil procedure Act.
7. I have considered the submissions made by the respective parties. The proceedings before me are confusing. They relate to an existing civil matter. If the Applicant has discovered any new matter or evidence, there is a definite procedure for invoking the jurisdiction of the court. That however, ought to be done in the specific suits and not in a separate matter. Neither Article 159(2) nor the Civil Procedure Act grants the court a discretion to grant the sort of orders sought by the Applicant, by the procedure it has adopted.
8. The court's jurisdiction must be properly invoked, as much as possible to avoid anarchy through dilution of certainty of the operation of the law. The Applicant is a party in the two causes in which it seeks orders and, in particular, did participate in proceedings leading to the reserved ruling. The present proceedings in my opinion amount to an unprocedural attempt to have another bite at the cherry and is an abuse of the court process.

9. In any event ruling was delivered in HCC 186 of 2011 (OS) on 15th April, 2013 and did not turn on the matters the Applicant was seeking to introduce. Rather, an objection had been raised and was upheld regarding the commencement of that suit by the Plaintiff therein without the relevant company resolution. I uphold the Preliminary Objections raised in this matter and will order the present proceedings struck out with costs to the Respondents.

Delivered and signed at Malindi this **25th** day of **November, 2013** in the presence of Mr. Obaga holding brief for Mr. Kilonzo for 2nd and 3rd Respondent.

Court clerk – Samwel

C. W. Meoli

JUDGE