



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**LAND CASE NO. 171 OF 2013**

**VROS PRODUCE LTD.....1<sup>ST</sup> PLAINTIFF**  
**DEW REALITY LTD.....2<sup>ND</sup> PLAINTIFF**

**=VERSUS=**

**THE CHIEF LANDS REGISTRAR.....1<sup>ST</sup> DEFENDANT**  
**THE HON. ATTORNEY GENERAL .....2<sup>ND</sup> DEFENDANT**

**OFFICER IN CHARGE**

**KIJIPWA POLICE STATION .....3<sup>RD</sup> DEFENDANT**  
**POLICE COUNTY COMMISSIONER**

**KILIFI COUNTY.....4<sup>TH</sup> DEFENDANT**  
**THE INSPECTOR GENERAL**

**NATIONAL POLICE SERVICE.....5<sup>TH</sup> DEFENDANT**

**VROS PRODUCE LTD.....6<sup>TH</sup> DEFENDANT**

**LUCAS OWITI.....7<sup>TH</sup> DEFENDANT**

**LEWIS GOGO.....8<sup>TH</sup> DEFENDANT**

**JOSEPH MZUNGU NYOKA.....9<sup>TH</sup> DEFENDANT**

**ABDALLA MOHAMED KAREMA.....10<sup>TH</sup> DEFENDANT**

**ABDILAH BADI.....11<sup>TH</sup> DEFENDANT**

ABUBAKAR ZUBEYR RAJAB.....	12 <sup>TH</sup> DEFENDANT
AGNES SIDI RUWA.....	13 <sup>TH</sup> DEFENDANT
AGNES TUSMA CHIBINDO.....	14 <sup>TH</sup> DEFENDANT
AGRIPINA WACHENJE.....	15 <sup>TH</sup> DEFENDANT
AISHA JUMA HAMIS.....	16 <sup>TH</sup> DEFENDANT
AISHA MOHAMMED ABDULRAHMAN.....	17 <sup>TH</sup> DEFENDANT
ALEX KARISA KATOI.....	18 <sup>TH</sup> DEFENDANT
ALFRED KADZITU SHUNGU.....	19 <sup>TH</sup> DEFENDANT
ALI MOHAMMED MWINYI.....	20 <sup>TH</sup> DEFENDANT
ALI MWANYAE ZIA.....	21 <sup>ST</sup> DEFENDANT
ALI RUNYA KUDUNDA.....	22 <sup>ND</sup> DEFENDANT
ALI YUSUF MOHAMED.....	23 <sup>RD</sup> DEFENDANT
ALOIS KAZUNGU FONDO.....	24 <sup>TH</sup> DEFENDANT
AMAS KI MWARO.....	25 <sup>TH</sup> DEFENDANT
AMBROS BADA.....	26 <sup>TH</sup> DEFENDANT
AMIDA MAKARANI.....	27 <sup>TH</sup> DEFENDANT
AMINA JELA.....	28 <sup>TH</sup> DEFENDANT
AMINA MOHAMED OMAR.....	29 <sup>TH</sup> DEFENDANT
AMINA MOSE MINZANGU.....	30 <sup>TH</sup> DEFENDANT
ANDERSON TUNE SHINDO.....	31 <sup>ST</sup> DEFENDANT
ANDREW JACKSON KUKA .....	32 <sup>ND</sup> DEFENDANT
ANN MBULA KAMEMBA.....	33 <sup>RD</sup> DEFENDANT
ANN OSCAR GOBWERO.....	34 <sup>TH</sup> DEFENDANT
ANTHONI LEWA JILANI.....	35 <sup>TH</sup> DEFENDANT
ANTHONY TUNJE KALAMA.....	36 <sup>TH</sup> DEFENDANT
ARNOLD MVONYI NASORO.....	37 <sup>TH</sup> DEFENDANT

ASHA ATHMAN ALI.....	38TH DEFENDANT
ASHA MOHAMED OMAR.....	39TH DEFENDANT
ASHA ROPHAS KANDERI.....	40TH DEFENDANT
ASHA SALIM NDORO.....	41ST DEFENDANT
AUGUSTINE MWANGO KAI.....	42ND DEFENDANT
BAKARI WADIGO IDD .....	43RD DEFENDANT
BANDA KITSAO BEJA.....	44TH DEFENDANT
BARNABAS KARISA MWAVUO.....	45TH DEFENDANT
BEATRICE DZIDZA SHERA.....	46TH DEFENDANT
BENJAMIN ROGITO.....	47TH DEFENDANT
BENSON KATANA FOLENI.....	48TH DEFENDANT
BENSON ONGERO ROGITO.....	49TH DEFENDANT
BIADY JUMA KHAMISI.....	50TH DEFENDANT
BIGAIL KINA SHADRACK.....	51ST DEFENDANT
BISHUU MOHAMED SHEE.....	52ND DEFENDANT
BONFACE AUYE AREGE.....	53RD DEFENDANT
BONFACE MONGO MADZAYO.....	54TH DEFENDANT
BONFACE SARO NGOWA.....	55TH DEFENDANT
BONFACE TUNDE SHINDO.....	56TH DEFENDANT
BONSTONE KADENGE KARISA.....	57TH DEFENDANT
BRYSON MWAITA.....	58TH DEFENDANT
CAROLINE GARAMA MVOI.....	59TH DEFENDANT
CAROLYNE CHAGA.....	60TH DEFENDANT
CELLINA KWAMBOKA ONGORO.....	61ST DEFENDANT
CHAI STEVEN MUNGA.....	62ND DEFENDANT
CHANDI KAHINDI MTENGO.....	63ND DEFENDANT
CHANGAWA KAINGU NDORO.....	64TH DEFENDANT
CHARLES CHAI JEFWA.....	65TH DEFENDANT

<b>CHARLES CHIRO.....</b>	<b>66TH DEFENDANT</b>
<b>CHARLES GITARI.....</b>	<b>67TH DEFENDANT</b>
<b>CHARLES KITITI.....</b>	<b>68TH DEFENDANT</b>
<b>CHARLES LWANGA.....</b>	<b>69TH DEFENDANT</b>
<b>CHARLES MKOMA MKALI.....</b>	<b>70TH DEFENDANT</b>
<b>CHARLES MUPE CHAI .....</b>	<b>71ST DEFENDANT</b>
<b>CHARLOTTE MAKU CHINYEI.....</b>	<b>72ND DEFENDANT</b>
<b>CHARO KARISA CHENGO.....</b>	<b>73RD DEFENDANT</b>
<b>CHENGO BIRYA .....</b>	<b>74TH DEFENDANT</b>
<b>CHENGO KALUMA MENZA.....</b>	<b>5TH DEFENDANT</b>
<b>CHIGIRI NYALLE CHONGA.....</b>	<b>76TH DEFENDANT</b>
<b>CHILANGO JAMBO MWARINGA.....</b>	<b>7TH DEFENDANT</b>
<b>CHIRO CHISHENGA.....</b>	<b>78TH DEFENDANT</b>
<b>CHIRO DUNGA MWALOGO.....</b>	<b>79TH DEFENDANT</b>
<b>CHVATSI JONATHAN MWANGIRI.....</b>	<b>80TH DEFENDANT</b>
<b>CHIVATSI KATAMA CHIVATSI.....</b>	<b>81ST DEFENDANT</b>
<b>CHIVATSI SIMBA MWANGIRI.....</b>	<b>82TH DEFENDANT</b>
<b>CHRISPAS KAZUNGU CHARO.....</b>	<b>83RD DEFENDANT</b>
<b>CHRISTINE CHARO SAHA.....</b>	<b>84TH DEFENDANT</b>
<b>CHRISTINE MKASI MKARE.....</b>	<b>85TH DEFENDANT</b>
<b>CHRISTINE MWALEWA MKIRI.....</b>	<b>86TH DEFENDANT</b>
<b>CHRISTOPHER MONGO MADZAYO.....</b>	<b>87TH DEFENDANT</b>
<b>CLARIS JUMBALE.....</b>	<b>88TH DEFENDANT</b>
<b>CLARIS MKAMBE MNGAMO.....</b>	<b>89TH DEFENDANT</b>
<b>CLEMENT SHERA.....</b>	<b>90TH DEFENDANT</b>
<b>COLLINS CHIRU BANDARI.....</b>	<b>91ST DEFENDANT</b>
<b>COLLINS MWADENDE KAZUNGU.....</b>	<b>92ND DEFENDANT</b>
<b>COSMAS MWANGOME MASHAKA.....</b>	<b>93RDDEFENDANT</b>

<b>DHAHABU MZUNGU.....</b>	<b>94TH DEFENDANT</b>
<b>DAKTARI MRUSIN.....</b>	<b>95TH DEFENDANT</b>
<b>DAMA DECHE GUNI.....</b>	<b>96TH DEFENDANT</b>
<b>DAMA HARRISON CHAI.....</b>	<b>97TH DEFENDANT</b>
<b>DAMA KATANA MTHENGO.....</b>	<b>98TH DEFENDANT</b>
<b>DANCAN CHIRO TUNJE.....</b>	<b>99TH DEFENDANT</b>
<b>DANIEL MAREFU KONDE.....</b>	<b>100TH DEFENDANT</b>
<b>DANIEL KAROTICH TANGALAS.....</b>	<b>101TH DEFENDANT</b>
<b>DANIS MRITHE MWANU.....</b>	<b>102TH DEFENDANT</b>
<b>DANNY MWAJANJI KABAYA.....</b>	<b>103TH DEFENDANT</b>
<b>DARIUS BENGI SODA.....</b>	<b>104TH DEFENDANT</b>
<b>DALMUS KARISA WANJE.....</b>	<b>105TH DEFENDANT</b>
<b>DAUDI CHARO DUNDA.....</b>	<b>106TH DEFENDANT</b>
<b>DAVID GAMBO ZOE.....</b>	<b>107TH DEFENDANT</b>
<b>DAVID KARISA CHARO.....</b>	<b>108TH DEFENDANT</b>
<b>DAVIS MBELA CHARO.....</b>	<b>109TH DEFENDANT</b>
<b>DENIS NYAMAWI MWAMUYE.....</b>	<b>110TH DEFENDANT</b>
<b>DENNIS MWANGALA MRIMA.....</b>	<b>111TH DEFENDANT</b>
<b>DENNIS CHAMOTO SHERA.....</b>	<b>112ND DEFENDANT</b>
<b>DICKSON OKWA YUMBA.....</b>	<b>113RD DEFENDANT</b>
<b>DINYCE MAGOMBE SHERA.....</b>	<b>114THDEFENDANT</b>
<b>DOMINQUE LEWA MRABU .....</b>	<b>115TH DEFENDANT</b>
<b>DORAH IDZA PUPU.....</b>	<b>116TH DEFENDANT</b>
<b>DORCAS TUNU.....</b>	<b>117TH DEFENDANT</b>
<b>ESTHER KANYEVU KALAMA.....</b>	<b>118TH DEFENDANT</b>
<b>ESTHER MBEYU MDANDANDO.....</b>	<b>119TH DEFENDANT</b>
<b>ESTHER MWAMBEGU NGALA.....</b>	<b>120TH DEFENDANT</b>
<b>ESTHER TABU SEIF .....</b>	<b>121ST DEFENDANT</b>

EUNIC OTIENO ARAN.....	122ND DEFENDANT
EUSTINA MOSE KONDE.....	123RD DEFENDANT
EVALYN WILLIAM CHARO .....	124TH DEFENDANT
EVANS KAI.....	125TH DEFENDANT
EZEKIEL CHIRUME.....	126TH DEFENDANT
FANO POLA KARISA.....	127TH DEFENDANT
FATAH MOHAMED HAFIDH.....	128TH DEFENDANT
FATUMA ALI AMANI.....	129TH DEFENDANT
FATUMA HASSAN FUNDI.....	130TH DEFENDANT
FATUMA SAID SALIM.....	131ST DEFENDANT
FATUMA SULEIMAN KAI.....	132ND DEFENDANT
FATUMA YUSUF JUMA.....	133RD .DEFENDANT
FEDIS MWAMUYE.....	134TH DEFENDANT
FEISAL JILANI SHAIRI.....	135TH DEFENDANT
FELIX MWARINGA MAE.....	136TH DEFENDANT
FESTUS MASHA KITSAO.....	137TH DEFENDANT
FILOMENA SHUNGU.....	138TH DEFENDANT
FLORENCE KASICHANA MBAVU.....	139TH DEFENDANT
FLORENCE MBENI MWARUSI.....	140THDEFENDANT
FLORENCE MITCHEL CHIMWENE.....	141ST DEFENDANT
FLORENCE MWIKALI KATHENGE.....	142ND DEFENDANT
FRANCIS KARISA CHARO.....	143RD DEFENDANT
FRANCIS MATATA MKAMBE.....	144TH DEFENDANT
FRANCIS RICHARD.....	145TH DEFENDANT
FRANCIS SAHA DUME .....	146TH DEFENDANT
FRANKLIN NYALLE MWATUA.....	147TH DEFENDANT
FRANKLIN NYOKA.....	148TH DEFENDANT
FREDRICK KALENGA WANJE.....	149TH DEFENDANT

FURAH KALUME MENZA.....	150TH DEFENDANT
FURAH KAZUNGU.....	151ST DEFENDANT
GARAMA CHANGAWA BOKOLE.....	152ND DEFENDANT
GARAMA KADZOMBA.....	153RD DEFENDANT
GEORGE DYKA JFWA.....	154THDEFENDANT
GEORGE MWACHIZI.....	155TH DEFENDANT
GERALD MAINA.....	156TH DEFENDANT
GETRUD MWANGIRI.....	157TH DEFENDANT
GILANIX KAZUNGU MRANJA.....	158TH DEFENDANT
GINBERT MITSANZE IHA .....	159TH DEFENDANT
GLADYS SODA JUMBALE.....	160TH DEFENDANT
GRACE SAMBA KALACHU.....	161ST DEFENDANT
HALIMA HASSAN.....	162ND DEFENDANT
HAMISI KAMBI KAINGU.....	163RD DEFENDANT
HAMISI SULEIMAN MANGI.....	164TH DEFENDANT
HAMPHREY K. MWACHIRU.....	165TH DEFENDANT
HARO GEJI ZOSI.....	166TH DEFENDANT
HARRISON NYALE CHARO.....	167TH DEFENDANT
HASSAN CHARO.....	168TH DEFENDANT
HELLEN ASWANI ANALO.....	169TH DEFENDANT
HELLEN JUMBALE KITI.....	170TH DEFENDANT
HENRY KATANA KAZUNGU.....	171ST DEFENDANT
HENRY KIRINGI MATU.....	172ND DEFENDANT
HENRY MMEONA SALANO .....	173RD DEFENDANT
HUSNA RAI GONZI.....	174TH DEFENDANT
IDD ALI.....	175TH DEFENDANT
JACINTA W. TUNJE.....	176TH DEFENDANT
JACKLINE KUVUTA TEI.....	177TH DEFENDANT

<b>JACKLINE WAKIO MWAMBEGE.....</b>	<b>178TH DEFENDANT</b>
<b>JACKSON LEWA KAGUNYA.....</b>	<b>179TH DEFENDANT</b>
<b>JACKSON MWATANA GATERE.....</b>	<b>180TH DEFENDANT</b>
<b>JACOB AMBROZ BADA.....</b>	<b>181ST DEFENDANT</b>
<b>JAMES KARISA KATOI.....</b>	<b>182ND DEFENDANT</b>
<b>JAMES KIFALU.....</b>	<b>183RD DEFENDANT</b>
<b>JAMES MAGUNDA DENA.....</b>	<b>184TH DEFENDANT</b>
<b>JAMES MWAGAMBO.....</b>	<b>185TH DEFENDANT</b>
<b>JAME MWAJINJE.....</b>	<b>186TH DEFENDANT</b>
<b>JAMES SULEIMAN.....</b>	<b>187TH DEFENDANT</b>
<b>JAMES WANGOMBE.....</b>	<b>188TH DEFENDANT</b>
<b>JANDO DAVID MAMJOMBA.....</b>	<b>189TH DEFENDANT</b>
<b>JANDO DAVID MWANYALE.....</b>	<b>190TH .DEFENDANT</b>
<b>JANE NJERI CHEGE.....</b>	<b>191ST DEFENDANT</b>
<b>JANE WANJE JUMWA.....</b>	<b>192ND DEFENDANT</b>
<b>JANET DAMA KAHINDI.....</b>	<b>193RD DEFENDANT</b>
<b>JANET HADIJA TEMBO.....</b>	<b>194TH DEFENDANT</b>
<b>JANET HADIJA TEMBO.....</b>	<b>195TH DEFENDANT</b>
<b>JANET KABIBI NGOWA.....</b>	<b>196TH DEFENDANT</b>
<b>JAVAN GIRI DZITSO.....</b>	<b>197TH DEFENDANT</b>
<b>JEFRY MZEE WANA KISOMBE.....</b>	<b>198TH DEFENDANT</b>
<b>JEMIMA MUENI MUTISYA.....</b>	<b>199TH DEFENDANT</b>
<b>JERUSHA NGONYO.....</b>	<b>200TH DEFENDANT</b>
<b>JEZZY MUTUA KAMANZA.....</b>	<b>201ST DEFENDANT</b>
<b>JILANI CHIKO MWADZOYA.....</b>	<b>202ND DEFENDANT</b>
<b>JILANI CHIKO MWADZOYA .....</b>	<b>203RD DEFENDANT</b>
<b>JOB MOKIRE NYAMONGE.....</b>	<b>204TH DEFENDANT</b>
<b>JOHN CHARO NYOKO.....</b>	<b>205TH DEFENDANT</b>

JOHN KAHINDI KARISA.....	206TH DEFENDANT
JOHN KATORE KOMBE.....	207TH DEFENDANT
JOHN KENGO CHOME .....	208TH DEFENDANT
JOHN LECHIANDENYI KIFOTO.....	209TH DEFENDANT
JOHNSON CHARO MALIDZO.....	210TH DEFENDANT
JOHNSON CHENGO KALUME.....	211TH DEFENDANT
JONATHAN KOMBE HARE.....	212TH DEFENDANT
JONATHAN MWANGOVYA LANGI.....	213TH DEFENDANT
JONES JABIR.....	214TH DEFENDANT
JONES MWACHUMBO MWAKAWI.....	215TH DEFENDANT
JOSEPH KHAMIS OMAR.....	216TH DEFENDANT
JOSEPH M. KICHUNDA.....	217TH DEFENDANT
JOSEPH MWAMBEO NGALAMA.....	218TH DEFENDANT
JOSHU SALANO MGANGAI.....	219TH DEFENDANT
JOSLINE NYAMVUA SAID.....	220TH DEFENDANT
JOSPHAT NYAKORA.....	221ST DEFENDANT
JOSPHAT OMARE ORANGE.....	222ND DEFENDANT
JOSEPHINE KADZO MVOYI.....	223RD DEFENDANT
JOSPHINE NJOKI.....	224TH DEFENDANT
JOYCE CHIKI BENGO.....	225TH DEFENDANT
JUDITH CLEMENCE BAHATI.....	226TH DEFENDANT
JUDITH FAIDA SHUNGU.....	227TH DEFENDANT
JUDITH WANJE DUMA.....	228TH DEFENDANT
JULIANA NDUKU MULI.....	229TH DEFENDANT
JULIUS KARISA KATANA.....	230TH DEFENDANT
JULIUS NGALA SEFU.....	231ST .DEFENDANT
JULIAS OBARE.....	232ND DEFENDANT
JULIUS IHA KAHATI.....	233RD DEFENDANT

JUMA MAHENDO MWAMUJIMBO.....	234TH DEFENDANT
JUMA MBUTO NYAWA.....	235TH DEFENDANT
JUMA MUYESI KAPOMBE.....	236TH DEFENDANT
JUMA NGALA TSUMA.....	237TH DEFENDANT
JUSTIN TSUMA CHIBINDO.....	238TH DEFENDANT
KABIBI NGOA SARO.....	239TH DEFENDANT
KACHE JOHN .....	240TH DEFENDANT
KACHE KALAME CHARO.....	241ST DEFENDANT
KACHE KENGA.....	242ND DEFENDANT
KACHE MOLE.....	243RD DEFENDANT
KADENGE KAHINDI KENGA.....	244TH DEFENDANT
KADII JAPHET MRAMBA.....	245TH DEFENDANT
KADZO HARE RUWA.....	246TH DEFENDANT
KADZO MWANGALLA.....	247TH DEFENDANT
KAASO BINDO MWARABI .....	248TH DEFENDANT
KAHINDI CHARO MUMBA.....	249TH DEFENDANT
KAHINDI KARISA MWARANDU .....	250TH DEFENDANT
KAHINDI KAZUNGU NDULI.....	251ST DEFENDANT
KAHONZI MWAMUYE KATANA.....	252ND DEFENDANT
KAHUTSU KAINGU FUNGO.....	253RD DEFENDANT
KAINGU MDZOMBA NGALA.....	254TH DEFENDANT
KALUME CHARO MASHA.....	255TH DEFENDANT
KANG'OMBE BAYA THOYA.....	256TH DEFENDANT
KANZE JOHNSTONE KALAMA.....	257TH DEFENDANT
KANZE KAZUNGU.....	258TH DEFENDANT
KANZE SAMUEL.....	259TH DEFENDANT
KARISA CHARO CHENGO.....	260TH DEFENDANT
KARISA KITSAO KAPOMBE.....	261ST DEFENDANT

KARISA MANGI.....	262ND DEFENDANT
KARISA MGANDI BEJA.....	263TH DEFENDANT
KASENO CHARO JEFA.....	264TH DEFENDANT
KASHUTU SIRYA.....	265TH DEFENDANT
KASICHANA KAHINDI.....	266TH DEFENDANT
KATANA CHIFU KITI.....	267TH DEFENDANT
KATANA MRAYANI.....	268 TH DEFENDANT
KAUTHAR JUMA BAKARI.....	269TH DEFENDANT
KAZUNGU CHENGO POMBE .....	270TH DEFENDANT
KAZUNGU FOLO.....	271ST DEFENDANT
KENNEDY KINZI MUYE.....	272ND DEFENDANT
KENNEDY OTIENO NYALLAH.....	273TH DEFENDANT
KENNEDY S. MWAGONA.....	274TH DEFENDANT
KEVIN MULEWA KALAMA.....	275TH DEFENDANT
KHADIJA FAMAU YUSUF.....	276TH DEFENDANT
KHAMISA M. MWANGUYA .....	277TH DEFENDANT
KHAMIS MAMBO.....	278 TH DEFENDANT
KHAMIS POLE.....	279TH DEFENDANT
KHWEJA KALONGO.....	280TH DEFENDANT
LAUZI PIRI MWATELA.....	281ST DEFENDANT
LAWRENCE NDZOMO CHIVADZI.....	282ND DEFENDANT
LEMMI MUGOMBA MWATUA.....	283 TH DEFENDANT
LENOX MATANO KADERE.....	284TH DEFENDANT
LENOX SHEHELE PIRI.....	285TH DEFENDANT
LICKY KANAZI KATANA.....	286TH DEFENDANT
LILIAN GONA KALUME.....	2.87TH DEFENDANT
LILIAN MUKAMBECHIKO.....	288TH DEFENDANT
LINET DAHABU.....	289TH DEFENDANT
LUCKY THOYA BAYA.....	290TH DEFENDANT

LYDIA KOMBO .....	291TH DEFENDANT
LYDIA MEDZA NYOKA.....	292TH DEFENDANT
LYDIA MUGHOI LEWA.....	293TH DEFENDANT
MACKLINE KATANA MTHENGO.....	294TH DEFENDANT
MACKMILAN KALAMA WASHE.....	295TH DEFENDANT
MAGADALINE KUVUNA NYINGE.....	296TH DEFENDANT
MAIMUNA YAKUB MAGHANGA.....	297TH DEFENDANT
MWAKUMACHIMUYE WASHE.....	298TH DEFENDANT
MALANGA BICHIZI NZINGA.....	299TH DEFENDANT
MALAMBE KAMEMBA.....	300TH DEFENDANT
MAPENZI GOBWERO.....	301ST DEFENDANT
MAPENZI KALAMA JEFWA.....	302NDDEFENDANT
MARGARET ROGERS NYAMAWI.....	303TH DEFENDANT
MARGRET CHARO NYALE.....	304TH DEFENDANT
MARGRET MASHA .....	305TH DEFENDANT
MARGRET MWAKOYE MUNGA.....	306TH DEFENDANT
MARIAM LUVUO MWATSUMA.....	307TH DEFENDANT
MARIAM MOHAMED STADI.....	308TH DEFENDANT
MARAIM MWASAMBU POLE.....	309TH DEFENDANT
MARIAM SULEIMAN.....	310TH DEFENDANT
MARIAAM ZUBERI RAJAB.....	311ST DEFENDANT
MARTIN BURU MWADZAHU.....	312ND DEFENDANT
MARTINA MWAKA MKIRI.....	313TH DEFENDANT
MARY ADHIAMBO ADELI.....	314TH DEFENDANT
MARY CHIDSAKA MUGALL.....	315TH DEFENDANT
MARY MADZYO.....	316TH DEFENDANT
MARY MALOMBO MURAMBA.....	317TH DEFENDANT
MARY MBUMCHE KOMBE.....	318TH DEFENDANT
MARY MEOWA SALONO.....	319TH DEFENDANT

MARY OKUTOYI AWALO.....	320TH DEFENDANT
MARY RUWANGE MOHAMED.....	321ST DEFENDANT
MARY UCHI MWAMUYE.....	322ND DEFENDANT
MASHA KARISA MASHA.....	323RD DEFENDANT
MASIKA MWATSUMA MAKUPE.....	235TH DEFENDANT
MATANO MWAMUDZU MWANGATA.....	326TH DEFENDANT
MATANO SALIM MWATANO.....	327TH DEFENDANT
MATHEW KATANA IHA.....	328TH DEFENDANT
MAULIDI BAKARI MWARILAE.....	329TH DEFENDANT
MAXWELL RUNYA KAMBO.....	330TH DEFENDANT
BARAKA KAZUNGU RUNYA.....	331ST DEFENDANT
MELA GERALD MBAGHA.....	332NDDEFENDANT
MBOBZA PATRICK KAZUNGU.....	333RD DEFENDANT
MBODZE MUNGA NGALLA.....	334TH DEFENDANT
MBUCHE MWAGUNDA.....	335TH DEFENDANT
MELON WITO NDORE.....	336TH DEFENDANT
MERCY MBESTA MADZAYO.....	337TH DEFENDANT
MERCY MNAZI.....	338TH DEFENDANT
MGANGA CHARO.....	339TH DEFENDANT
MICHAEL GARI KAI.....	340TH DEFENDANT
MICHAEL M KATURI.....	341ST DEFENDANT
MICHAEL NGALLA NDZANO.....	342ND DEFENDANT
MICHELLE SIAN NYARIYO.....	343RD DEFENDANT
MIRIAM ACHIENG FRANCIS.....	344TH DEFENDANT
MKALA DZENZA MKALA.....	345TH DEFENDANT
NYANZI RUNYA.....	346TH DEFENDANT
MOFAT JEFWA MWANGO.....	347THDEFENDANT
MOHAMED IBRAHIM OMAR.....	348TH DEFENDANT

MOHAMED JUMA OMAR.....	349TH DEFENDANT
MOHAMED KATANA MASHA.....	350TH DEFENDANT
MOHAMED MBAYI CHARO.....	351ST DEFENDANT
MOHAMED MUMBA TSUMA.....	352TH DEFENDANT
MOKINDO HAMIS HAZARA.....	353RD DEFENDANT
MONENE ATHONY CHIBUMI.....	354TH DEFENDANT
MONICA MNYAZI LEWA... ..	355TH DEFENDANT
MORIS K KAZUNGU.....	356TH DEFENDANT
MORRIS KARISA NGOVUNI.....	357TH DEFENDANT
MORRIS N NZAI.....	358TH DEFENDANT
MORRIS TANGAI NDIRE.....	359TH DEFENDANT
MOSES NDARO KIRONGO.....	360TH DEFENDANT
MOSES NICHOLAS ONONO.....	361ST DEFENDANT
MOSES RIMBA NGALA.....	362ND DEFENDANT
MTWANA NDEGE KADILI.....	363RD DEFENDANT
MWAGANDA M MWANGALA.....	364TH DEFENDANT
MWAGANDI ALBERT NJAMA.....	365TH DEFENDANT
MWAKA MGOMA NTSENGA .....	366TH DEFENDANT
MWAKWEKWE NYOKA MWAMAU .....	367TH DEFENDANT
MWAMUYE KATANA KATOYA.....	368TH DEFENDANT
MWAMUYE MWABONJE.....	369TH DEFENDANT
MWAMUYE NYAMAWI MWAMUYE.....	370TH DEFENDANT
MWANAHAMIS KAZUNGU.....	371ST DEFENDANT
MWANA HARUSI HAMIS SALIM.....	372ND DEFENDANT
MWANAKOMBO RASHID.....	373RD DEFENDANT
MWANAMVUA BAKARI SALIM.....	374TH DEFENDANT
MWASAMBU MWATELA NDORE.....	375TH DEFENDANT
NAIMA MNYAZI CHULA.....	376TH DEFENDANT

NAJMA ZUBERI RAJAB...	377TH DEFENDANT
NANCY M KARISA.....	378TH DEFENDANT
NASOR MAULID TABWARA.....	379TH DEFENDANT
NASORO MRICHE JENJEW.....	380TH DEFENDANT
NDUNE MASKATI.....	381ST DEFENDANT
NEEMA MKAMBE CHARO.....	382ND DEFENDANT
NELLY MKAMBE CHARO.....	383RD DEFENDANT
NELLY CHIZI MUMBO.....	384TH DEFENDANT
NGALA MWADZOYA.....	385TH DEFENDANT
NGALA MWADZOYA.....	386TH DEFENDANT
NGALLA JUMA.....	387TH DEFENDANT
NICHOLAS MNEMBA CHIKO.....	388TH DEFENDANT
NICHOLAS MWABONJE SHERA.....	389TH DEFENDANT
NICHOLUS MKOMA.....	390TH DEFENDANT
NICODEMUS KAZUNGU KOMBE.....	391ST DEFENDANT
NICODEMUS MASHA KAINGU.....	392ND DEFENDANT
NICOLAS MWACHIRO... ..	393RD DEFENDANT
NIXON MWATSUMS NYALE.....	394TH DEFENDANT
NORAH MORAA ORANGI.....	395TH DEFENDANT
NURU MWASEMU TSEMBERERE.....	396TH DEFENDANT
MURULAIN CHASHUDIN MITHOONANI.....	397TH DEFENDANT
NYADZUA GAMBO ZOE.....	398TH DEFENDANT
NYEVU KADALU NZAI.....	399TH DEFENDANT
NYINGE CHIRO NYINGE.....	400TH DEFENDANT
NZOVU ME.....	401ST DEFENDANT
OMAR BAKARI OMAR.....	402ND DEFENDANT
OMAR TUNZA HASSAN.....	403RD DEFENDANT
OSCAR KAI SHUME.....	404TH DEFENDANT

<b>PAMELA MORAGE SIRINGI.....</b>	<b>..405TH DEFENDANT</b>
<b>PANDE CHIVATSI NYOKA.....</b>	<b>406TH DEFENDANT</b>
<b>PASCAL CHARO KARISA.....</b>	<b>407TH DEFENDANT</b>
<b>PASCAL J. FONDO.....</b>	<b>409TH DEFENDANT</b>
<b>PASCO GOBWERO.....</b>	<b>410TH DEFENDANT</b>
<b>PATIENCE MWAKA MWANGOVI.....</b>	<b>411TH DEFENDANT</b>
<b>PATIENCE MWAMUYE.....</b>	<b>412TH DEFENDANT</b>
<b>PATRICK NDUNGU MAINA.....</b>	<b>413THDEFENDANT</b>
<b>PATRICK RASHID KAZUNGU.....</b>	<b>414TH DEFENDANT</b>
<b>PATRICK RIA KAVIHA.....</b>	<b>415TH DEFENDANT</b>
<b>PAUL MWANYANJE MWANGIRI.....</b>	<b>416TH DEFENDANT</b>
<b>PAUL NGALLA SAMUEL.....</b>	<b>417TH DEFENDANT</b>
<b>PAULINE MWASAMBU.....</b>	<b>418TH DEFENDANT</b>
<b>PETER MUYE RIMBA.....</b>	<b>419TH DEFENDANT</b>
<b>PHILLEMON RAMADHAN.....</b>	<b>420TH DEFENDANT</b>
<b>PRICILLA MASHA NGUMBA.....</b>	<b>421ST DEFENDANT</b>
<b>PRISCA KILIFI RINGA.....</b>	<b>422ND DEFENDANT</b>
<b>PURITY JUMWA KAHATI.....</b>	<b>423RD DEFENDANT</b>
<b>RACHEL MBODZE GARI.....</b>	<b>424TH DEFENDANT</b>
<b>RACHEL MUYE.....</b>	<b>425TH DEFENDANT</b>
<b>RACHEL MWAMONGO.....</b>	<b>426TH DEFENDANT</b>
<b>RAHELI DANIEL TETE.....</b>	<b>427TH DEFENDANT</b>
<b>RAJAB KADZENGA DUME.....</b>	<b>428TH DEFENDANT</b>
<b>RASHID A MAKARANI.....</b>	<b>429TH DEFENDANT</b>
<b>RAYMOND KAHINI MWANYAMBA.....</b>	<b>430TH DEFENDANT</b>
<b>RAYMOND MWACHUPA.....</b>	<b>431ST DEFENDANT</b>
<b>REHEMA HAJI HAMIS.....</b>	<b>432ND DEFENDANT</b>
<b>REHEMA SALIM NDORO.....</b>	<b>433RD DEFENDANT</b>

<b>RICHARD NYAMAWI MWANGALA.....</b>	<b>434TH DEFENDANT</b>
<b>RIMBA MTSANGO TAMBALE.....</b>	<b>435TH DEFENDANT</b>
<b>RISPER ANYANGO ADOL...4.....</b>	<b>436TH DEFENDANT</b>
<b>ROBERT MWANGEMI MUNGA.....</b>	<b>437THDEFENDANT</b>
<b>ROCKY GAMBO ZOE... ..</b>	<b>438TH DEFENDANT</b>
<b>RODA MALEMBA LEWA.....</b>	<b>439TH DEFENDANT</b>
<b>ROGERS NGALA CHOME.....</b>	<b>440TH DEFENDANT</b>
<b>ROMAN KITSAO CHANGWA.....</b>	<b>441ST DEFENDANT</b>
<b>ROMAN M SHERA.....</b>	<b>452TH DEFENDANT</b>
<b>RONNY TEI KABAYA.....</b>	<b>442ND DEFENDANT</b>
<b>ROSE D. LAZARO.....</b>	<b>444TH DEFENDANT</b>
<b>ROSE NGACHE KEYA.....</b>	<b>445TH DEFENDANT</b>
<b>ROSEMARY ADHIAMBO ADALE.....</b>	<b>446TH DEFENDANT</b>
<b>RUHUSA KATANA GONA.....</b>	<b>447TH DEFENDANT</b>
<b>RUKIA NZARO KARISA.....</b>	<b>448TH DEFENDANT</b>
<b>RUTH KANINI KYALO.....</b>	<b>449TH DEFENDANT</b>
<b>RUTH KIVATSI NYOKA.....</b>	<b>450THDEFENDANT</b>
<b>RUTH NGOKA FUNNY ... ..</b>	<b>451ST DEFENDANT</b>
<b>SAFARI CHANZER ANGORE.....</b>	<b>452ND DEFENDANT</b>
<b>SAFARI ROFAS KAINGU ... ..</b>	<b>453RD DEFENDANT</b>
<b>SAID KHAMIS M.....</b>	<b>454TH DEFENDANT</b>
<b>SAIDA MORRIS JUMAA.....</b>	<b>455TH DEFENDANT</b>
<b>SALIM BADI MUNYI ... ..</b>	<b>456TH DEFENDANT</b>
<b>SALIM KADZOGAMBA.....</b>	<b>457TH DEFENDANT</b>
<b>SALMA LOZI MWATSUMA.....</b>	<b>458TH DEFENDANT</b>
<b>SALOME MAGOMBE MUYESI ... ..</b>	<b>459TH DEFENDANT</b>
<b>SALOME MWAKA ZUMA.....</b>	<b>460TH DEFENDANT</b>
<b>SALOME SAMUEL GALO.....</b>	<b>461ST DEFENDANT</b>

SAMIA ANTHONY KIVWENGE.....	462ND DEFENDANT
SAMMY CHENGO KARISA.....	463RD DEFENDANT
SAMMY CHENGO YAA.....	464TH DEFENDANT
SAMSON CHARO MWARABU.....	465TH DEFENDANT
SAMSON MGAMGE MWEMBONI .....	466TH DEFENDANT
SAMSON MSHONO.....	467TH DEFENDANT
SAMSON MWATSUMA MUSHU.....	468TH DEFENDANT
SAMSON NDIROMKARE.....	469TH DEFENDANT
SAMSON ZIRO MUNGA .....	470TH DEFENDANT
SAMUEL LEWA KAZUNGU.....	471STDEFENDANT
SAMUEL LEWA PEPO.....	472ND DEFENDANT
SAMUEL M MWANGEMI.....	473RD DEFENDANT
SAMUEL MATATA SHUNGU.....	474TH DEFENDANT
SAMUEL MBOGO KATANA.....	475TH DEFENDANT
SAMUEL MBURU.....	476TH DEFENDANT
SAMUEL MLEWA KAZUNGU.....	477TH DEFENDANT
SAMUEL MWANGO SHUME.....	478TH DEFENDANT
SAMUEL N. MWANGEMI.....	479TH DEFENDANT
SAMUEL NYUNDO KMALA.....	480TH DEFENDANT
SANTA MULONGO LAZORO.....	481ST DEFENDANT
SARAH KACHE KARISA.....	482ND DEFENDANT
SAUMUU MWAKALAMA PAUL.....	483RD DEFENDANT
SCOLLA LOZI KARISA.....	484TH DEFENDANT
SELINA NAZI JULIUS.....	485TH DEFENDANT
SERA EVA KIVULA.....	486TH DEFENDANT
SERAH KAMENE MULI.....	487TH DEFENDANT
SHADRACK SHAGI MAJUTO.....	488TH DEFENDANT
SHAMSA ALI NASOR.....	489TH DEFENDANT

<b>SHEHELE GULANI SHEHELE.....</b>	<b>490TH DEFENDANT</b>
<b>SHEILA SODA MWACHIRU.....</b>	<b>491TH DEFENDANT</b>
<b>SHUKURU KALAMA FONDO.....</b>	<b>492ND DEFENDANT</b>
<b>SHUME ROMBOMA WASHE.....</b>	<b>493RD DEFENDANT</b>
<b>SIDI MASHA.....</b>	<b>494TH DEFENDANT</b>
<b>SIDI SALMAN TSUMA.....</b>	<b>495TH DEFENDANT</b>
<b>SIMONE IHA KALAMA.....</b>	<b>496TH DEFENDANT</b>
<b>PATRICK KALAMA.....</b>	<b>497TH DEFENDANT</b>
<b>DENNIS CHAMOTO SHERA.....</b>	<b>498THDEFENDANT</b>
<b>MZUNGU NYOKA.....</b>	<b>499THDEFENDANT</b>
<b>ALI BADI.....</b>	<b>500THDEFENDANT</b>
<b>ABIDHALI BADI.....</b>	<b>501ST DEFENDANT</b>
<b>AMBROSE BADA.....</b>	<b>502ND DEFENDANT</b>
<b>ALI JUMA.....</b>	<b>503RD DEFENDANT</b>
<b>MOHAMED JUMA.....</b>	<b>504TH DEFENDANT</b>
<b>SAID BADA.....</b>	<b>505TH DEFENDANT</b>
<b>JAMES KASHOMBO .....</b>	<b>506TH DEFENDANT</b>
<b>STEPHEN BADA .....</b>	<b>507TH DEFENDANT</b>
<b>KAMLESH MOLE.....</b>	<b>508TH DEFENDANT</b>
<b>MGANGA MOLE.....</b>	<b>509TH DEFENDANT</b>
<b>KARISA KALAMA.....</b>	<b>510TH DEFENDANT</b>
<b>KAZUNGU.....</b>	<b>511TH DEFENDANT</b>
<b>ABUBAKAR.....</b>	<b>512TH DEFENDANT</b>
<b>JAMES MWAJINJE.....</b>	<b>513TH DEFENDANT</b>
<b>SIMBA BEZIRO .....</b>	<b>514TH DEFENDANT</b>
<b>CLEMENT CHAMOTO SHELA.....</b>	<b>515TH DEFENDANT</b>
<b>ANNISA HASSAN.....</b>	<b>516TH DEFENDANT</b>
<b>REHEMA NDOLO.....</b>	<b>517TH DEFENDANT</b>

DANIEL KARISA MFULO.....	518TH DEFENDANT
THIME HASSAN .....	519TH DEFENDANT
CHIRUME KALAMA KARISA.....	520TH DEFENDANT
CHARO MSHIPA.....	..521ST DEFENDANT
JACOB AMBROSE.....	522ND DEFENDANT
LEWA SAID.....	523RD DEFENDANT
FURAHA OSCAR.....	524TH DEFENDANT
NYAKORA.....	525THDEFENDANT
SAIDIA GOBWERO.....	526TH DEFENDANT

## R U L I N G

### **Introduction**

1. What is before me is the Plaintiff's Notice of Motion dated 30<sup>th</sup> September 2013. Although the Application has numerous prayers, the Plaintiffs opted to pursue prayer numbers 2, 4, 11, 17, 19 and 21. The reliefs that are being sought by the Plaintiffs are as follows:
  - a. **THAT the Honourable court be pleased to consolidate Malindi High Court Petition No. 9 of 2013 and HCCC Land Case No. 12 of 2013 at Malindi High Court with this instant suit.**
  - b. **THAT the judgment, decree and all consequential orders arising out of Malindi High Court Petition No. 9 of 2013 be stayed pending the hearing and determination of this application and the suit.**
  - c. **THAT pending the hearing and determination of this suit, the Honourable Court be pleased to issue an injunction restraining the 1<sup>st</sup> Defendant from registering any new titles and/or effecting, alienating, subdividing or transferring:**

**CR. NO. 29323-**

**MN/SECTION IV/274, CR. NO. 29324-MN/SECTION IV/272, CR NO. 29325  
MN/SECTION IV/271, CR NO. 29326-MN/SECTION IV/275, CR.  
NO.29327-MN/SECTION IV/276, CR NO. 29328-MN/SECTION IV/273, CR NO.  
29329-**

**MN/SECTION IV/278, CR.NO. 29330-MN/SECTION IV/277, CR. NO. 29331-**

**MN/SECTION IV/280, CR. NO.29332-MN/SECTION IV/279, CR. NO. 29333-**

**MN/SECTION IV/282, CR.NO. 29334-MN/SECTION IV/281, CR. NO. 29335-**

**MN/SECTION IV/284,CR. NO. 29336-MN/SECTION IV/283, CR. NO. 29337-**

**MN/SECTION IV/286, CR NO. 29338-MN/SECTION IV/285, CR. NO. 29339-**

**MN/SECTION IV/288, CR. NO.29340-MN/SECTION IV 282, CR. NO. 29341-**

**MN/SECTION IV/290, CR. NO.29342-MN/SECTION IV/289, CR. NO.29343-**

MN/SECTION IV/286, CR. NO.29344-MN/SECTION IV 291, CR. NO. 29345-  
MN/SECTION IV/294, CR. NO.29346-MN/SECTION IV 293, CR. NO. 29347-  
MN/SECTION IV/296, CR. NO.29348-MN/SECTION IV 295, CR. NO. 29349-  
MN/SECTION IV/298, CR. NO.29350-MN/SECTION IV 297, CR. NO. 29351-  
MN/SECTION IV/300, CR.NO.29352-MN/SECTION IV 299, CR. NO. 29353-  
MN/SECTION IV/302, CR. NO.29354-MN/SECTION IV 301, CR. NO. 29355-  
MN/SECTION IV/304, CR. NO.29356-MN/SECTION IV 303, CR. NO. 29357-  
MN/SECTION IV/305, CR. NO.29358-MN/SECTION IV 306, CR. NO. 29359-  
MN/SECTION IV/307, CR. NO.29360-MN/SECTION IV 308, CR. NO. 29361  
MN/SECTION IV/309, the subject matter of this suit.

d. **THAT pending the hearing of this suit the Honourable court issue an injunction restraining the 6<sup>th</sup>-536<sup>th</sup> Defendants from selling, offering for sale and/or trespassing on the suit property in any manner whatsoever.**

(e) **THAT pending the hearing of this suit, the Honourable Court be pleased to stay and/or set aside the decree by consent dated the 15<sup>th</sup> of July 2013 and issued on the 15<sup>th</sup> July 2013 in Land Petition No. 9 of 2013 as the same was obtained through fraud, misrepresentation, forgery and is tainted with illegalities.**

(f) **THAT the Honourable court do order that pending the hearing and determination of this suit, the trespassers who have already entered the suit premises do vacate forthwith and in case of resistance be forcefully evicted by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Respondents and the OCS Mtwapa police station do assist in the eviction.**

2. The Application, together with the Summons to Enter Appearance, the Complaint and the order of this court of 1<sup>st</sup> October 2013 were served on all the Defendants by way of advertisement in the *Standard* newspaper of 7<sup>th</sup> October, 2013 pursuant to the order of this court. An Affidavit of Service showing the service on all the Defendants by way of advertisement by Mr. George Nyaora was filed in this court on 11<sup>th</sup> October 2013. There is also another Affidavit of Service by Henry Muli showing that the Summons to Enter Appearance for the 6<sup>th</sup> to 526<sup>th</sup> Defendants were left at the Environment and Land Court Registry for collection by the Defendants. The same affidavit shows that Henry Muli, the Process Server, served the Attorney General on behalf of the 1<sup>st</sup> to 5<sup>th</sup> Defendants on 14<sup>th</sup> October 2013 with the Summons to Enter Appearance and the current Application.
3. When the Application came up for hearing inter partes on 11<sup>th</sup> October 2013, this court was not sitting and the matter was placed before the Deputy Registrar pursuant to the provisions of Order 47 Rule 7 of Civil Procedure Code 2010.
4. On the said date, Mr. Buti appeared for the 9<sup>th</sup> Defendant and Mr. William Mogaka advocate, who had been named in the advertisement as the 527<sup>th</sup> Defendant. The other Defendants were not represented. The Application was stood over to 31<sup>st</sup> October 2013.
5. On 31<sup>st</sup> October 2013, I directed that all the Defendants who were not represented to collect the Summons and the pleadings from the court registry. Ms Lutta appeared for the 1<sup>st</sup> to 5<sup>th</sup> Defendants while Mr. Buti appeared for the 9<sup>th</sup> Defendant. The two Plaintiffs were represented by

Mr. Omwanza and Mr. Musyoki respectively. I fixed the Application for hearing inter partes on 4<sup>th</sup> December 2013.

6. When the Application dated 30<sup>th</sup> September 2013 came up for hearing on 4<sup>th</sup> December 2013, it is Mr. Eredi for the 1<sup>st</sup> to 5<sup>th</sup> Defendants and Mr. Buti for the 9<sup>th</sup> Defendant who appeared before me. Mr. Eredi, the learned state counsel informed the court that he was not opposed to the prayers that the Plaintiffs had opted to pursue. Mr. Buti, counsel for the 9<sup>th</sup> Defendant informed the court that he would rely on the Grounds of Opposition which were filed on 29<sup>th</sup> November 2013 and on the 9<sup>th</sup> Defendant's Replying Affidavit in Petition number 9 of 2013 in opposing the Application.

### **Background**

7. The genesis of this suit and the Application is the consent that was recorded in this court in Petition Number 9 of 2013 on 15<sup>th</sup> July 2013.
8. The 509 Petitioners in Petition number 9 of 2013 are Defendants numbers 9 to 497 in this suit. The 1<sup>st</sup> Defendant in Petition number 9 of 2013, the Chief Land Registrar, is the 1<sup>st</sup> Defendant in this suit. The 2<sup>nd</sup> Defendant in Petition No. 9 of 2013, **Vros Produce Limited**, has the same name as the 1<sup>st</sup> Plaintiff in this suit. However, the directors of **Vros Produce Limited** in Petition number 1 of 2013, who are Defendants numbers 8 and 9 herein, are different from the directors of **Vros Produce Limited** herein (the 1<sup>st</sup> Plaintiff).
9. The 509 Petitioners in Petition No.9 of 2013 filed a Petition on 22<sup>nd</sup> May 2013 alleging that the title that was obtained by the 2<sup>nd</sup> Defendant, Vros Produce Limited, was obtained through fraud, misrepresentation, illegality undue regard to procedure or through a corrupt scheme.
10. The Petitioners further alleged that the process of acquisition of the suit property was in full breach of the law because at the time of registration of the suit property, the Petitioners had occupied and lived on the suit property for many years. The Petitioners particularized the alleged illegality and fraud on the part of the two Respondents, the **Chief Land Registrar** and **Vros Produce Limited**. Vros Produce Limited, the 2<sup>nd</sup> Respondent was said to be the registered owner of the suit property
11. The Petitioners prayed for several declaratory orders which included a declaration that the title deed issued to the 2<sup>nd</sup> Respondent, Vros Produce Limited, by the 1<sup>st</sup> Respondent, the Chief Land Registrar, is null and void; an order for cancellation of the title deed issued to Vros Produce Limited and in the alternative, an order for compensation in favour of the Petitioners by the Respondents at the prevailing market rates.
12. The Petition was drawn by the firm of Mogaka Omwenga & Mabeya advocates on 22<sup>nd</sup> May, 2013 for all the 509 Petitioners and filed in this court on the same day. The firm of Nabwana Nabwana & Company Advocates entered appearance for the 2<sup>nd</sup> Respondent, Vros Produce Limited on 5<sup>th</sup> July, 2013. On 5<sup>th</sup> July 2013, a consent order, drafted on the letter head of the Petitioners' advocate was filed in this court. The said consent was signed on the same day in Mombasa by Mogaka Omwenga & Mabeya Advocates for the Petitioners, Nabwana Nabwana & Co. Advocates for Vros Produce Limited, the 2<sup>nd</sup> Respondent, and Richard Ngari, the state counsel for the 1<sup>st</sup> Respondent. I have not come across the Notice of Appointment of Richard Ngari, the state counsel, in Petition number 9 of 2013.
13. The consent order that was signed by the parties was adopted by the Deputy Registrar of this court on 15<sup>th</sup> July 2013 and it was in the following terms:
  - a. **A declaration order do and is hereby issued that the acquisition of plot number 150 Section IV Mainland North CR13080 by the 2<sup>nd</sup> Respondent (Vros Produce Limited) was null and void.**
  - b. **A declaration do and is hereby issued that the process of acquisition of plot no. 150 section IV Mainland North CR 13080 by the 2<sup>nd</sup> Respondent (Vros Produce Limited) was unconstitutional.**

- c. **A declaration do issue that the Title Deed issued to the 2<sup>nd</sup> Respondent (Vros Produce Limited) by the 1<sup>st</sup> Respondent (the Chief Land Registrar) is null and void.**
- d. **That an order do issue to cancel the title issued to the 2<sup>nd</sup> Respondent (Vros Produce Limited) by the 1<sup>st</sup> Respondent.**
- e. **An order do issue directed at the 1<sup>st</sup> Respondent of rectification in respect to CR Nos 29323 to 29361 (39 parcels) and an order to cancel the name of the 2<sup>nd</sup> Respondent (Vros Produce Limited) and replace it with that of Joseph Mzungu Nyoka (1<sup>st</sup> Petitioner) on his own behalf and on behalf of 508 other Petitioners.**
- f. **That the Land Registrar Mombasa do issue Provisional Title Deeds forthwith for the above mentioned parcel of land.**

14. A decree was subsequently issued by the Deputy Registrar on 15<sup>th</sup> July 2013 and registered against the 39 subdivisions of the suit property, that is, CR Nos. 29323 to 29361 as the second entry. The third entry that was registered against the 39 sub-divisions was the issuance of provisional certificates in respect to the 39 sub-divisions in the name of Joseph Mzungu Nyoka on behalf of himself and other 508 petitioners. The said Joseph Mzungu Nyoka was the 1<sup>st</sup> Petitioner in Petition Number 9 of 2013. In the current suit, Joseph Mzungu Nyoka is the 9<sup>th</sup> Defendant and is represented by Mr. Buti.

15. On 4<sup>th</sup> September, 2013, Mr. Lucas Owiti, one of the directors of Vros Produce Limited in the Petition, and who is the 7<sup>th</sup> Defendant herein, filed an Application through the firm of Stephen Macharia Kimani advocate seeking to set aside the consent judgement on account of fraud and misrepresentation.

16. Joseph Mzungu Nyoka, the first Petitioner, filed a Replying Affidavit in Petition number 9 of 2013 opposing the Application of Lucas Owiti. Lewis Gogo Mtepe, the other director of Vros Produce Limited also filed a Replying Affidavit in opposition to the Application by his co-director. That Application is still pending.

17. In the meantime, the Plaintiffs in this suit became aware of the consent judgment and filed the current claim on 30<sup>th</sup> September, 2013. They are seeking to stay or set aside the consent order that was obtained in Petition 1 of 2013, the consolidation of the two suits and for injunctive orders.

#### **The Plaintiffs'/Applicants' case**

18. According to the Supporting Affidavit of John Harun Mwau, a director of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, the suit property measuring 200 acres was initially owned by Francis Nguru Mutura.

19. The Applicants' director has deponed that before he purchased the property, he confirmed that the same was free of any encumbrance; that the Kilifi Land Control Board gave Mr. Francis Nguru Mutura the consent to purchase the property which he subsequently charged to Barclays Bank and that in Mombasa HCCC No. 331 of 1984, an attachment order for the sale of the property was issued against Francis Nguru Mutura as a Judgment Debtor on 22<sup>nd</sup> April, 1986.

20. The Plaintiffs' director deponed that having inspected the property, the 2<sup>nd</sup> Plaintiff, Dew Reality Limited, agreed to purchase the suit property from Francis Nguru Mutura whereupon they applied and obtained the consent of the Bahari Land Control Board on 27<sup>th</sup> September, 1990.

21. The Plaintiffs' director deponed that before the 2<sup>nd</sup> Plaintiff purchased the property, the suit had previously been charged to Kenya Commercial Bank in 1983, and Development Finance Company of Kenya in 1985; that all the charges were registered after the banks had inspected the property and the consents of the Board given and that the only person who lived on the property was one Margaret Gathoni Ngugi Mutura who was managing the land on behalf of Francis Mutura since 1976.

22. The 2<sup>nd</sup> Plaintiff, it was deponed, transferred the suit property to the 1<sup>st</sup> Defendant Vros Produce Limited), a sister company, in 1993 having been incorporated in 1984 under a certificate of incorporation number C. 27992; that the 7<sup>th</sup> and 8<sup>th</sup> Defendants have continued to deceptively engage the court by falsely stating that they are directors of a company by the name Vros Produce Limited registered in 1996 under a certificate of incorporation number C.64998 while in fact there

- is no company registered as Vros Produce Limited under a certificate of incorporation number C 64998 and that that certificate of incorporation number belongs to a company known as Leisure Wash Limited.
23. It is the Plaintiffs case that they have never offered the suit property for sale save for implementing the sub-divisions scheme into 39 plots of approximately 5 acres each which are under the name of the 1<sup>st</sup> Plaintiff and that even if the 7<sup>th</sup> and 8<sup>th</sup> Defendants registered a company by the name Vros Produce Limited, it cannot own land which was transferred to the 1<sup>st</sup> Plaintiff by the 2<sup>nd</sup> Plaintiff in 1993.
24. The Plaintiffs' director finally deponed that the 7<sup>th</sup> to 9<sup>th</sup> Defendants have been purporting to sale the suit property to unsuspecting individuals; that the 6<sup>th</sup> to 526<sup>th</sup> Defendants have been involved in forgeries and misrepresentations with the intention to defraud the Plaintiffs and that the consent order ordering the transfer of the Plaintiffs' property to the 9<sup>th</sup> Defendant was fraudulently obtained through deceit and abuse of the court process. Consequently, the said order ought to be set aside as the court has a duty of protecting the integrity of its process.
25. John Nganga, a director of the 1<sup>st</sup> Plaintiff swore his affidavit in support of the Application on 26<sup>th</sup> September 2013. The said director deponed that the 1<sup>st</sup> Plaintiff, Vros Produce Limited, was incorporated in 1984 under certificate of registration Number C.27992 and its directors as of 1985 to date are John Harun, Harun International Limited, himself, Mark Ng'ang'a and Dew Reality Limited, the 2<sup>nd</sup> Plaintiff.
26. According to the said director, the 7<sup>th</sup> and 8<sup>th</sup> Defendants, through identity theft, fraud, forgery, and misrepresentation, in the High Court at Mombasa in Civil Suit No. 131 of 2010 masqueraded as directors of Vros Produce Limited claiming to be the owners of the suit property. In the suit, the judge ordered the Registrar of companies to issue a report confirming the legality of both companies.
27. On 25<sup>th</sup> October 2012, it was deponed, the Registrar of companies filed a report in court and confirmed that the 1<sup>st</sup> Plaintiff was incorporated in 1984 and further confirmed that the certificate of incorporation no. C 64998 purported to be of Vros Produce Limited owned by the 7<sup>th</sup> and 8<sup>th</sup> Defendants did not belong to them but it was a certificate for a different company known as Leisure Wash Limited; that the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendants were parties to Mombasa HCCC No. 131 of 2010 and were aware that the purported Vros Produce Limited registered under certificate of incorporation no. 64998 was not a genuine entity and could not possibly have instituted Petition No. 9 of 2013 in this court.
28. The 1<sup>st</sup> Plaintiffs' director is also surprised that the purported owners of Vros Produce Limited, in addition to Petition No. 9 of 2013 filed another suit being Malindi HCCC NO. 12 of 2013 and fraudulently obtained further orders.
29. A Further Affidavit was sworn by the 1<sup>st</sup> Plaintiff's director on 4<sup>th</sup> October 2013 in which he deponed that immediately after getting the decree in Petition No. 9 of 2013, the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and the other Defendants started trespassing on the suit property armed dangerously and violently started to fence the suit property.
30. According to the deponent, the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and other Defendants have now forcefully brought in land surveyors who are subdividing the suit property and installing new beacons and that there is real danger that the Plaintiff shall suffer serious loss and damages.

### **The 1<sup>st</sup> to 5<sup>th</sup> Defendants' case**

31. Mr. Eredi, the state counsel, appeared on behalf of the 1<sup>st</sup> to 5<sup>th</sup> Defendants. The state counsel informed the court that he was not opposed to the granting of prayer numbers 2, 4, 11, 17, 19 and 21 which the Applicants had opted to pursue.

### **The 9<sup>th</sup> Defendant's case**

32. The 9<sup>th</sup> Defendant, Joseph Mzungu Nyoka filed his Grounds of Opposition through his advocate on 29<sup>th</sup> November 2013. The 9<sup>th</sup> Defendant averred in his Grounds of Opposition that the 2<sup>nd</sup>

- Plaintiff has no *locus standi* in bringing the present suit and the present Application against him or any other Defendants; that the 2<sup>nd</sup> Plaintiff has no proprietary interest in the property which it allegedly sold in the year 1993. Consequently, it was averred, the 2<sup>nd</sup> Plaintiff's suit as against the 9<sup>th</sup> Defendant is misplaced and a non-starter and should be struck out.
33. The 9<sup>th</sup> Defendant averred further that the Applicants have not demonstrated the circumstances and principles that ought to be proved first as a matter of law before consolidation of suits can be ordered.
34. It is the 9<sup>th</sup> Defendant's case that any Application to stay or set aside the orders in Petition number 9 of 2013 should and ought to be made in that suit for proper and effectual deliberation and not through an Application in a separate suit, in a matter which has been concluded and that as a matter of pristine law, there can be no consolidation of the present suit with Petition Number 9 of 2013 which has already been concluded and execution thereon completed.
35. In the alternative, it was urged, the order for consolidation now being sought is premature and ought to be a request to be made for consideration in accordance with the provisions of Order 11(3)(1)(h) of the Civil Procedure Rules.
36. It is the 9<sup>th</sup> Defendant's averments that he cannot be declared a trespasser on his own sub-division of land duly registered in his name; that this is not a simple and straight forward matter that can be summarily determined and that the prayer for a mandatory injunction sought by the Plaintiff as prayer number 21 cannot be granted at this stage.
37. The 9<sup>th</sup> Defendant finally averred that he shall wholly rely on the affidavit he filed in Petition Number 9 of 2013 in response to the Application. I have looked at the affidavit that was sworn on 24<sup>th</sup> September 2013 by the 9<sup>th</sup> Defendant in Malindi Petition Number 9 of 2013. The 9<sup>th</sup> Defendant herein is the 1<sup>st</sup> Petitioner in Petition number 9 of 2013.
38. In the said Affidavit, the 9<sup>th</sup> Defendant herein while opposing the Application by Lucas Owiti, one of the directors Vros Produce Limited, (the 2<sup>nd</sup> Respondent in the Petition) deponed that Mr. Owiti, or any other party, could not challenge the consent judgment, which, according to him was correctly entered by the Registrar of this court.
39. The 9<sup>th</sup> Defendant finally deponed in his said Affidavit that Mr. Owiti, who is the 7<sup>th</sup> Defendant in the instant suit, did not have the *locus standi* to file the Notice of Motion dated 3<sup>rd</sup> September 2013 seeking to set aside the consent order in Petition NO. 9 of 2013. As I stated above, the said Application is still pending.
40. The counsels for the Plaintiffs, the Attorney General's representative and the 9<sup>th</sup> Defendant's counsel appeared before me on 4<sup>th</sup> December 2013 and made oral submissions which I have considered. I have also considered the authorities that were cited to me by the learned counsels.

## **Analysis and findings**

### **1. Locus standi**

41. It would be appropriate for me to firstly decide whether the 2<sup>nd</sup> Plaintiff has *locus standi* to bring this suit and the Application as against the 9<sup>th</sup> Defendant or at all.
42. *Locus standi*, as defined by the **Blacks' Law Dictionary, 9<sup>th</sup> Edition**, is the right of a party to bring an action or to be heard in a given forum.
43. The 9<sup>th</sup> Defendant's counsel submitted that even if the 2<sup>nd</sup> Plaintiff were to be a 99.9% shareholder in the 1<sup>st</sup> Plaintiff's company, such shareholding *per se* does not entitle a shareholder to institute proceedings on behalf of the company, as the 2<sup>nd</sup> Plaintiff now purports to.
44. The Plaintiffs at paragraph 12 of the Plaint have averred that the 2<sup>nd</sup> Plaintiff is a director and the majority shareholder of the 1<sup>st</sup> Plaintiff and was the original purchaser of the suit property from its previous owner, Mr. Francis Nguru Mutura.
45. According to the averments at paragraph 13 of the Plaint and the depositions at paragraph 30 of the Plaintiffs' director's Supporting Affidavit, the 2<sup>nd</sup> Plaintiff transferred the suit property to the 1<sup>st</sup> Plaintiff in 1993.

46. I entirely agree with the 9<sup>th</sup> Defendant's advocate submissions that a shareholder of a company has no proprietary interest, whether legal or equitable in the assets of the company. In the case of **"Maritime Trader" (1981) 2 Lloyds Report 153**, it is held as follows:

**"The starting point is the fundamental principle of company law that a shareholder has no property, legal or equitable in the assets of the company."**

47. This proposition of company law has been followed and upheld by the Court of Appeal and the High Court.

48. In view of the fact that the 2<sup>nd</sup> Plaintiff's director has stated in the Complaint and the Affidavit that the 2<sup>nd</sup> Plaintiff transferred the suit property to the 1<sup>st</sup> Plaintiff, Vros Produce Limited, it is the 1<sup>st</sup> Plaintiff, which is a juristic person, which can claim to own the suit property and not any of its shareholders.

49. The present suit and the Application were instituted by the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. I have already held that according to the averments in the Complaint, the 2<sup>nd</sup> Plaintiff does not have any proprietary interests in the suit property having transferred it to the 1<sup>st</sup> Plaintiff in 1993. However, the inclusion of the 2<sup>nd</sup> Plaintiff as a party to the suit, in my view, does not invalidate the suit nor does it make the said Plaintiff an unnecessary party.

50. I say so because, firstly, the 1<sup>st</sup> Plaintiff alleges to have been the registered owner of the suit property before the consent order of 15<sup>th</sup> July 2013. The 2<sup>nd</sup> Plaintiff has averred that it transferred the suit property to the 1<sup>st</sup> Plaintiff. In view of the fact that the 2<sup>nd</sup> Plaintiff alleges it owned the suit property prior to transferring the same to the 1<sup>st</sup> Plaintiff, I do not find it wrong to include the said Plaintiff in the suit as a party, not to show that it is the owner of the suit property, but to show the chronology of events leading to the transfer of the suit property from the 2<sup>nd</sup> to the 1<sup>st</sup> Plaintiff.

51. Indeed, looking at the prayers in the Complaint, the Plaintiffs are seeking several declaratory orders, one of them being a declaration that the suit property was purchased by the 2<sup>nd</sup> Plaintiff from Mr. Mutura and that the 2<sup>nd</sup> Plaintiff legally transferred the suit property to the 1<sup>st</sup> Plaintiff without encumbrances.

52. In view of the way the prayers in the Complaint have been framed, I find and hold that the 2<sup>nd</sup> Plaintiff is a necessary party in the proceedings. In any event, even if I was wrong on that aspect, **Order 1 Rule 9 of the Civil Procedure Rules, 2010** provides that a suit cannot be defeated by reason of the mis joinder or non-joinder of persons. In the case of **Nita Ganatra suing as the Receiver Manager of Dawat Restaurant Ltd Vs Shimmers Plaza Limited & Another; H.C.C.C No. 1001 of 2001**, Visram J, as he was then, held as follows:

**"The proper Plaintiff would, therefore, be the company under receivership and the Receiver Manager is merely an agent. However, in order to do justice to the parties herein, this court will decline to strike out the Complaint and instead invoke its powers under O VIA Rule 5 and direct that the Complaint and the Chamber Summons application dated 20<sup>th</sup> June, 2001, be amended by the removal of "Nita Ganatra" and in her place be put the name of the Company under receivership. I believe that the non-joinder of the company was a bona fide mistake deserving to be corrected under Order 1 Rule 10."**

53. I agree with the sentiments of the Judge in the above case. In the circumstances of this case, the suit before me cannot be defeated merely because the 2<sup>nd</sup> Plaintiff does not have any proprietary interests in the suit property. At worst, the Complaint may be amended by deleting the name of the 2<sup>nd</sup> Plaintiff and the suit will proceed in the name of the 1<sup>st</sup> Plaintiff, the alleged proprietor of the suit property. But as I have already stated, that may not be necessary in the circumstances of this case.

## **2. Consolidation of suits:**

54. The Plaintiffs are seeking for an order of the court to consolidate this matter and Malindi Petition

Number 9 of 2013.

55. The law pertaining to consolidation of suits is set out in Order 11 Rule 3(1) (h) of the Civil Procedures Rules, 2010. The said order provides as follows:

**“With a view to furthering expeditious disposal of cases and case management, the court shall within thirty days after the close of pleadings convene a case conference in which it shall.....consider consolidation of suits.”**

56. According to the 9<sup>th</sup> Defendant's counsel, the consolidation of suits can only be done for suits which have not been concluded. Considering that Petition No. 9 of 2013 was concluded, it was submitted, the suit cannot be consolidated with this particular one.

57. The main purpose of consolidation of suits is to save on costs and judicial time by avoiding a multiplicity of proceedings covering largely the same issues of law and facts. In the case of **Stumberg and Another Vs Potgieter (1970) EA 323**, the court stated as follows:

**“Where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered.”**

58. Where it appears to the court that there are common questions of law or facts and that the right to relief is in respect to the same transaction or series of transactions or that for some other reason, it is desirable to make an order for consolidation of one or more cases, then the court should do. (See **David Ojwang Okobe & Others Vs South Nyanza Sugar Co. Limited & Others; Civil Appeal NO. 139 of 2008 (Kisumu)**).

59. The inherent jurisdiction of the court under section 3A of the Civil Procedure Act to consolidate suits when it is desirable to do so, and in the interest of justice, is not limited by the provisions of Order 11 Rule 3 of the Civil Procedure Rules.

60. The inherent jurisdiction of the court has been defined to mean the natural or essential power conferred upon the court irrespective of any conferment of discretion (See **Equity Bank Limited Vs West Link Mbo Limited (2013) e KLR** ). The said power is usually invoked by the courts to avoid injustice, to maintain the integrity and character of the court and to ensure that the orders of the court, where appropriate, are not issued in vain. However, it is a residual jurisdiction which ought to be used in special circumstances in order to put right that which would otherwise be clear injustice. (See **Kibuthe Vs Kibuthe (1984) KLR 243**.)

61. The deletion of Order XI of the repealed Civil Procedure Rules which allowed parties to file Applications for consolidation of suits should not be construed to mean that the principle stated in the **Stumberg** (Supra) case is no longer good law in so far as consolidation of suits is concerned.

62. The inherent powers of the court was summarised poignantly in the case **Madara Evans Okenga Dundo Vs Housing Finance Company of Kenya Nakuru; HCCC No. 262 of 2005** as follows:

**“The court will always invoke its inherent jurisdiction to prevent the abuse of the due process of the court. The jurisdiction of the court, which is compressed within the term “inherent”, is that which enables it to fulfill itself properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of the substantive law; it is exercisable by summary process, without plenary trial, it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of the court. The inherent jurisdiction of the court enables the court to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process. In sum, it may be said that the inherent jurisdiction of the court is virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of power, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial**

**between them.”**

63. This court therefore has the inherent power to consolidate suits at any stage of the proceedings if it is satisfied that the applicable principles set out in the Stumberg case (supra) have been met.
64. Indeed the court can consolidate suits even in circumstances where one of the matters has been concluded and a decree issued. However, that can only happen if the impugned decree is set aside or stayed pending the hearing of the common issues of fact and law arising in such suits. In the case of **Skyview Properties Ltd Vs The Principal Registrar of Titles & Another Nairobi HCCC No. 1622 of 2001**, Justice J. B. Ojwang, as he was then, set aside a decree in a concluded matter and went ahead to consolidate the matter with another suit. In the said suit, the Judge observed as follows;

**“From the state of the evidence on record, highly irregular transactions did take place in relation to the suit land. This is to be strongly deprecated, recognising as one must do, that the whole range of the fundamental rights of the individual set out in the Constitution of Kenya stands to be greatly compromised, if the individual's rights to private property cannot be securely defined and presumed in a truthful and sacrosanct official record. I am moved to protect such a crucial public interest by putting on hold all present claims touching on the two titles No. 63216 and 63744, until all questions of rights have been fully canvassed, in an orderly, inter partes trial of the Plaintiff's suit in HCCC No. 387 of 1998”.**

65. The judge in the above case proceeded to set aside the Judgment in HCCC No. 1622 of 2001 and consolidated it with HCCC No. 387 of 1998 which was still pending. I entirely agree with the learned Judge's findings in the above matter.

**Are the issues of fact and law in Petition No. 9 of 2013 and HCCC NO. 171 of 2013 the same?**

66. As I indicated at the beginning of this Ruling, the 509 Petitioners in Petition number 9 of 2013 alleged in the Petition that the title that was obtained by the 2<sup>nd</sup> Defendant, Vros Produce Limited, was obtained through fraud, misrepresentation, illegality, undue regard to procedure or through a corrupt scheme.
67. The Petitioners further alleged that the process of acquisition of the suit property was in full breach of the law because at the time of registration of the suit property, the Petitioners had occupied and lived on the suit property for many years. The Petitioners particularized the alleged illegality and fraud on the part of the two Respondents, the **Chief Land Registrar** and **Vros Produce Limited**. Vros Produce Limited, the 2<sup>nd</sup> Respondent was said to be the registered owner of the suit property.
68. The Petitioners prayed for several declaratory orders which included a declaration that the title deed issued to the 2<sup>nd</sup> Respondent, Vros Produce Limited, by the 1<sup>st</sup> Respondent, the Chief Land Registrar, is null and void; an order for cancellation of the title deed issued to Vros Produce Limited and in the alternative, an order for compensation in favour of the Petitioners by the Respondents at the prevailing market rates.
69. The consent that was recorded by the parties in the Petition on 15<sup>th</sup> July 2013 compromised the whole petition. Indeed, the consent order which was adopted by the Registrar of this court declared the allocation of the suit property (the 39 sub-divisions) to Vros Produce Limited, the 2<sup>nd</sup> Respondent, as unconstitutional, null and void. The said consent further provided that all the 39 sub-divisions be registered in the name of the 9<sup>th</sup> Defendant herein (who is the 1<sup>st</sup> Petitioner in Petition No. 9 of 2013) on his behalf and on behalf of the other 508 Petitioners.
70. In a nutshell, the Vros Produce Limited and the Chief Land Registrar in the Petition admitted to the allegations of having been involved in illegalities and fraud in the allocation and registration of the suit property to Vros Produce Limited.
71. In the present suit, the 1<sup>st</sup> Plaintiffs, Vros Produce Limited, has a similar name as the 1<sup>st</sup>

- Respondent in Petition number 9 of 2013.
72. The Directors of Vros Produce Limited in the current suit have averred in their Plaint that the 7<sup>th</sup> and 8<sup>th</sup> Defendants purported to be directors and owners of the company known as “Vros Produce Limited” using a certificate of incorporation number C.64998 and proceeded to enter into a consent in respect to the suit property in Petition Number 9 of 2013.
73. The directors of Vros Produce Limited in this suit have set out the particulars of fraud in the Plaint and the Supporting Affidavits as against the directors of Vros Produce Ltd in Petition number 9 of 2013 which includes forging documents to purport that the 7<sup>th</sup> and 8<sup>th</sup> Defendants herein registered a company known as Vros Produce Ltd in 1996 knowing that it is false; the 9<sup>th</sup> Defendant herein with other 508 Petitioners instituted proceedings in Petition Number 9 of 2013 against the Chief Land Registrar and Vros Produce Ltd knowing that their intention was to defraud the Plaintiffs and that the Vros Produce Limited in the present suit registered under the certificate of incorporation number C. 27992 is the proprietor of the 39 sub divisions.
74. The Plaint in the current suit seeks for several declaratory orders which includes a declaration that the 7<sup>th</sup> and 8<sup>th</sup> Defendants are not directors of a company incorporated in the name of Vros Produce Limited and a declaration that the consent dated 15<sup>th</sup> July 2013 in Petition Number 9 of 2013 is a forgery.
75. It is obvious from the averments of the Plaintiffs in the current suit that the prayers in the Plaint and the Application are principally hinged on the consent that was recorded in Petition number 9 of 2013.
76. The issue that the court will determine at trial is whether the suit property belongs to Vros Produce Limited, the 2<sup>nd</sup> Respondent in the Petition and whose directors are the 7<sup>th</sup> and 8<sup>th</sup> Defendants herein or it belongs to Vros Produce Limited, the 1<sup>st</sup> Plaintiff herein.
77. In the circumstances, the two suits are intertwined and they raise common questions of fact and law.
78. The directors of Vros Produce Limited in the Petition have not filed an Affidavit to explain why they were of the view that the registration of the suit property in their favour, if at all it belonged to them, was unconstitutional, fraudulent, null and void. Indeed, it is on record that one of the directors of Vros Produce Limited in the Petition is disputing the consent that was entered into.
79. The Chief Land Registrar or the state Counsel who is purported to have signed the consent has also not filed an Affidavit to explain why he thought that the allocation and registration of the suit property to Vros Produce Limited was unconstitutional, fraudulent, null and void. In fact, the state Counsel on record in this matter is not opposed to the setting aside of the consent order.
80. The Plaintiffs in this suit have shown in detail in their affidavits, as I shall show later, that the suit property was registered in the name of the 1<sup>st</sup> Plaintiff before it was transferred to the 9<sup>th</sup> Defendant by way of a consent order in Petition number 9 of 2013.
81. Considering that the Petitioners and the Respondents in Petition number 9 of 2013 were aware that the identity of the legitimate Vros Produce Limited was being investigated by the court in Mombasa HCCC No. 131 of 2010, which suit was withdrawn by some of the Petitioners herein before the court could make a determination, and in the absence of the Affidavits by the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendants in response to the allegations of fraud by the Plaintiffs’ herein, I can only arrive at one conclusion, that the consent that was recorded in Petition no. 9 of 2013 was irregular and was obtained by misrepresentation. In the circumstances, the consent order and the subsequent decree that was obtained in Petition number 9 of 2013 should be set aside and the two suits be consolidated.
82. It is only after the evidence has been called in the two suits at trial that the court shall be able to determine the true identity of the registered owner of the suit property.

### **3. Injunction**

83. The Plaintiffs are praying for prohibitory and mandatory orders of injunction. The law relating to a prohibitory and mandatory injunction is well settled. A prohibitory injunction can only issue once a claimant proves that he has a prima facie case with chances of success and that unless the injunctive order is issued, he is likely to suffer irreparable loss that cannot be compensated in damages. If the court is in doubt, then it is supposed to decide the case on a balance of

probabilities.

84. The director of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs swore an affidavit on 26<sup>th</sup> September 2013 and gave a chronology of how the 1<sup>st</sup> Plaintiff, Vros Produce Limited, acquired the suit property.
85. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' director deposed on how the 2<sup>nd</sup> Plaintiff acquired the suit property from one Francis Nguru Mutura who had previously charged the property to three different banks.
86. According to the Affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' director, Francis Nguru Mutura bought the suit property from Vithalbhai Javerbhai Patel in 1975 after he obtained the consent from the Kilifi Land Control Board. The consent of the Board was annexed on the affidavit.
87. Before Vithalbhai Javerbhai Patel sold the suit land to Francis Nguru Mutura, the Government had, by way of a management order dated 18<sup>th</sup> February 1960 repossessed the land from Mr. Patel. However the said management order was revoked vide Gazette Notice Number 1614 of 25<sup>th</sup> April 1966.
88. The Plaintiffs have annexed on their affidavit the consent of Bahari Land Control Board dated 27<sup>th</sup> September 1990 approving the transfer of the suit property by Francis Nguru Mutura to the 2<sup>nd</sup> Plaintiff. The 2<sup>nd</sup> Plaintiff subsequently transferred the suit property to the 1<sup>st</sup> Plaintiff in 1993.
89. The chronology of the acquisition of the suit property by the 1<sup>st</sup> Plaintiff was not controverted by the Defendants herein. Indeed, Vros Produce Limited in Petition Number 9 of 2013 together with its directors who were sued herein as the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Defendants respectively did not file any response.
90. The 7<sup>th</sup> and 8<sup>th</sup> Defendants did not also rebut the deposition by the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs' director that they have continued to deceptively engage the court by falsely stating that they are directors of a company known as Vros Produce Limited registered in 1996 under certificate of incorporation number C.64998 while the Registrar of Companies filed a report showing that the said incorporation number belongs to a company known as Leisure Wash Limited.
91. The 1<sup>st</sup> Plaintiff's director annexed on his supporting affidavit a letter by the Registrar of Companies as annexure JN2 which shows that certificate number 64998 belongs to a company by the name of Leisure Wash Limited and registered on 19<sup>th</sup> May 1995.
92. The report by the Registrar of Companies in respect to Vros Produce Limited was availed in Mombasa HCCC No. 131 of 2010 in which the issue of the identity of Vros Produce Limited arose viz a viz the ownership of the suit property. The 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendants were parties to that suit and were aware that the court was to determine the issue of the identity of Vros Produce Limited. However, that suit was withdrawn before the court in Mombasa could determine the issue whereafter the Petitioners instituted Petition Number 9 of 2013 in this court and proceeded to record a consent dispossessing Vros Produce Limited the property. The Petitioners and the Respondents in Petition number 9 of 2013 did not disclose in their Petition that Mombasa HCCC No. 131 of 2010 had been filed by some of the parties in the Petition involving the same suit property and claiming for the same reliefs.
93. In the absence of an Affidavit by the Defendants in this matter to disapprove the depositions by the Plaintiffs, I find and hold that the Plaintiffs have established a prima facie case with chances of success, that is, that the suit property was registered in the name of Vros Produce Limited, the 1<sup>st</sup> Plaintiff, whose directors are John Harun, Harun International Limited and John Ng'ang'a and whose certificate of incorporation number is C.27992 as shown in annexures JN1.
94. In view of the fact that the 39 sub-divisions have been registered in the name of the 9<sup>th</sup> Defendant on his behalf and on behalf of the other 508 Petitioners pursuant to the consent order of 15<sup>th</sup> July 2013, and considering that provisional certificates have been issued to the said 9<sup>th</sup> Defendant, the 1<sup>st</sup> Plaintiff is likely to suffer irreparable loss that cannot be compensated by way of damages in the event that the 9<sup>th</sup> Defendant and the other Petitioners deal with the land in a manner to suggest that the property belongs to them.
95. In the circumstances, a prohibitory injunction should issue to prohibit the Defendants from dealing with the 39 sub-divisions in any manner whatsoever pending the hearing of the suit.
96. The Plaintiffs are also seeking for a mandatory injunction. In **Locaball International Finance Ltd Vs Agro Export & Others (1986) 1ALL ER 901**, the court reinstated the principles that

should be considered before a mandatory injunction can be issued. In the said case, it was held as follows:

**“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and only in clear case where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which can easily be remedied or where the Defendant had attempted to steal a match on the Plaintiff.....”**

97. The 1<sup>st</sup> Plaintiff's director deponed in his further affidavit sworn on 4<sup>th</sup> October 2013 that immediately after obtaining the decree in Petition number 9 of 2013, the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and other Defendants started trespassing on the suit property armed dangerously and started fencing. It was further deponed that the Defendants are wasting the suit property and have brought into the suit property surveyors who are sub-dividing the same.
98. I have already found and held that the Plaintiffs have a prima facie case with chances of success. I have also found and held that any further dealings with the properties by the Defendants will cause the Plaintiffs irreparable loss in the event that the suit property is dealt with in any manner by the Defendants on the basis of the consent order of 15<sup>th</sup> July 2013.
99. In view of the events that led to the filing of Petition number 9 of 2013 and the subsequent consent order, which I have found above should be set aside and considering the serious allegations of fraud raised by the Plaintiff's in the current suit against the Directors of Vros Produce Limited in Petition Number 9 of 2013 and the 9<sup>th</sup> Defendant herein, which allegations have not been responded to, the interests of justice demand that status quo ante the consent order of 15<sup>th</sup> July, 2013 should be maintained pending the hearing and determination of the suit.
100. In the case of **Mucuha Vs Ripples Ltd (1990-1994) EA 388**, the Court of Appeal held that maintenance of status quo does not include the circumstances existing after an intruder's illegal acts, but which existed before hand.
101. In **intimate Beauty Care Ltd Vs Kundan Singh Construction Ltd: Mombasa HCCC No. 227 of 2001, Justice Onyancha** held as follows:

**“I wish to add that if the relief of the mandatory injunction should issue, its purpose will be to force the Respondent to restore the Applicant to the status quo ante; that is to say, to the position which the Applicant occupied before the Respondent misconducted himself against the Applicant. In this regard it has been held and I support the position held, that it will not matter whether or not the Respondents had taken further steps to make it difficult to revert to the status quo ante.....”**

102. I associate myself with the statements of the court in the **Mucuna** and the **Intimate and Beauty Care Ltd** cases (supra).
103. The 9<sup>th</sup> Defendant has averred in his Grounds of Opposition that he cannot be declared a trespasser on his own sub-division of land, owned and registered in his name.
104. The registration of the suit property in the name of the 9<sup>th</sup> Defendant has been challenged in this suit. I have ordered for the setting aside of the consent order in Petition No. 9 of 2013 and consolidation of the two suits.
105. The 9<sup>th</sup> Defendant, together with the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Defendants knew that the 1<sup>st</sup> Plaintiff was claiming to be the owner of the suit property during the subsistence of Mombasa HCCC No. 131 of 2010. Before the issue of the ownership of the suit property could be established in that case by the court, the suit was withdrawn by the 9<sup>th</sup> Defendant and others.
106. The same people who were parties in Mombasa H.C.C.C No. 131 of 2010 then rushed to this court and without disclosing to the court that the 1<sup>st</sup> Plaintiff was an interested party in the suit property proceeded to record a consent transferring the suit property to the 9<sup>th</sup> Defendant on his own behalf and on behalf of the other 508 Petitioners. These, in my view, are actions of parties

who were out to steal a match on the 1<sup>st</sup> Plaintiff and a mandatory injunction should issue to restore the *status quo ante* the decree in Petition Number 9 of 2013. That is the only way a fair trial can be secured in this matter.

107. For the reasons I have given above, I allow the Plaintiffs' Application dated 30<sup>th</sup> September 2013 in the following terms.

- a. **Malindi High Court Petition No. 9 of 2013 be and is hereby consolidated with this instant suit.**
- b. **Pending the hearing and determination of this suit, an order of injunction be and is hereby issued restraining the 1<sup>st</sup> Defendant from registering any new titles and/or effecting, alienating, subdividing or transferring:**

**CR. NO. 29323-**

**MN/SECTION IV/274, CR. NO. 29324-MN/SECTION IV/272, CR NO. 29325  
MN/SECTION IV/271, CR NO. 29326-MN/SECTION IV/275, CR.  
NO.29327-MN/SECTION IV/276, CR NO. 29328-MN/SECTION IV/273, CR NO.  
29329-**

**MN/SECTION IV/278, CR.NO. 29330-MN/SECTION IV/277, CR. NO. 29331-**

**MN/SECTION IV/280, CR. NO.29332-MN/SECTION IV/279, CR. NO. 29333-**

**MN/SECTION IV/282, CR.NO. 29334-MN/SECTION IV/281, CR. NO. 29335-**

**MN/SECTION IV/284,CR. NO. 29336-MN/SECTION IV/283, CR. NO. 29337-**

**MN/SECTION IV/286, CR NO. 29338-MN/SECTION IV/285, CR. NO. 29339-**

**MN/SECTION IV/288, CR. NO.29340-MN/SECTION IV 282, CR. NO. 29341-**

**MN/SECTION IV/290, CR. NO.29342-MN/SECTION IV/289, CR. NO.29343-**

**MN/SECTION IV/286, CR. NO.29344-MN/SECTION IV 291, CR. NO. 29345-**

**MN/SECTION IV/294, CR. NO.29346-MN/SECTION IV 293, CR. NO. 29347-**

**MN/SECTION IV/296, CR. NO.29348-MN/SECTION IV 295, CR. NO. 29349-**

**MN/SECTION IV/298, CR. NO.29350-MN/SECTION IV 297, CR. NO. 29351-**

**MN/SECTION IV/300, CR.NO.29352-MN/SECTION IV 299, CR. NO. 29353-**

**MN/SECTION IV/302, CR. NO.29354-MN/SECTION IV 301, CR. NO. 29355-**

**MN/SECTION IV/304, CR. NO.29356-MN/SECTION IV 303, CR. NO. 29357-**

**MN/SECTION IV/305, CR. NO.29358-MN/SECTION IV 306, CR. NO. 29359-**

**MN/SECTION IV/307, CR. NO.29360-MN/SECTION IV 308, CR. NO. 29361**

**MN/SECTION IV/309, the subject matter of this suit.**

- (c) **Pending the hearing of this suit an injunction be and is hereby issued restraining the 6<sup>th</sup> to 526<sup>th</sup> Defendants from selling, offering for sale and/or trespassing on the**

**suit property in any manner whatsoever.**

**(d) Pending the hearing of this suit, the decree by consent dated the 15<sup>th</sup> day of July 2013 and issued on the 15<sup>th</sup> July 2013 in Land Petition No. 9 of 2013 be and is hereby set aside.**

**(e) Pending the hearing and determination of this suit, the trespassers who have already entered the suit premises do vacate forthwith and in case of resistance be forcefully evicted by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Respondents and the OCS Mtwapa police station do assist in the eviction.**

**(f) The costs of this Application to be paid by the Defendants.**

Dated and delivered in Malindi this 20<sup>th</sup> Day of December, 2013

**O. A. Angote**

**Judge**