



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MALINDI**

**CIVIL CASE 155 OF 2010**

**JAMBO BEACH RESORT LTD .....PLAINTIFF**

**VERSUS**

**MUNICIPAL COUNCIL OF MALINDI &**

**LORENZI MODESTO .....DEFENDANT**

**RULING**

1. I must start by apologizing for the delay in delivering this ruling. It appears that the file somehow fell through the cracks, and only came to the attention of the court at the end of the last term.
2. I have now considered the submissions made on behalf of the LORENZI MODESTO and the Plaintiff, with regard to MR. MODESTO`s application to be enjoined as Defendant herein. As well, I have perused the pleadings in this case and in CMCC 90 of 2011, the latter which MR MODESTO seeks to have stayed. These two suits obviously arose from the same transaction and it is apparent that the applicant would be interested in the outcome of the present suit as it would certainly have a bearing on the Lower Court case.
3. While the applicant`s plea to be enjoined in this matter under order 1 rule 3 and 10 Civil Procedure Rules may raise some procedural difficulties, I am of the view that he is patently a necessary party, in light of his pleaded involvement in the transactions giving rise to this cause (see plaint in HCC 155/2010). His joinder to the suit appears is “necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions in the suit” (order 1 rule 10 (2) Civil Procedure Rule.
4. There is in addition a more compelling reason; the overriding objective, in section 1A & B Civil Procedure Act. It is not clear why the plaintiff filed two separate suits arising from the same transaction; perhaps, they feared misjoinder of causes. But I cannot see anything in order 3 rule 5 and 6 Civil Procedure Rules barring the Plaintiff, in the circumstances of this case from uniting the two causes of action. Be that as it may, a duty is imposed on the court under section 1 B (1) as follows:-

***“For the purpose of furthering the overriding objection in section 1A, the court shall handle all***

*matters presented before it for the purpose of attaining the following aims-*

- a. the just determination of the proceedings*
- b. the efficient disposal of the business of the court*
- c. the efficient use of the available judicial and administrative resources*
- d. the timely disposal of the proceedings .....at a cost affordable by the respective parties”*

5. These elements echo the overriding objective of the Civil Procedure Act in section 1A which is “to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes.....” In my considered view the aims in section 1B(1) of the Civil Procedure Act would be best achieved through the participation of the applicant in this suit and the CMCC 90 of 2011. I do therefore order that CMCC 90 of 2011 be transferred to this court and consolidated with HCC 155/2010 for purposes of hearing and determination.

Costs will be in the cause.

Read and delivered at Malindi this **11<sup>th</sup>** day of **May, 2012** in the presence of:

**C. W. MEOLI**  
**JUDGE**