REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

Civil Case 29 of 2011

IN THE MATTER OF: LAND TITLES NO. CHEMBE/KIBAMBAMSHE/363 AND 364

AND

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

BETWEEN

ROYAL TULIA ESTATE LTD .....PLAINTIFF

AND

1. DAVIDSON MATANO

2.REUBEN KIRANGA

3.THE DISTRICT LAND REGISTRAR- KILIFI

4.THE HON. ATTORNEY GENERAL .....RESPONDENTS

R U L I N G

1. I have before me a preliminary objection raised to the plaintiff`s application and indeed entire suit, by the 1st and 2nd defendants. The same is dated 12th September, 2011 and filed on the same date. The objection is two pronged;-

2. THAT this suit and/or proceedings have been commenced without a resolution and/authority of the company and that no authority has been conferred to CLAUDID BANAGLIA the purported director to sue on in the name of the company.

3. THAT for the aforesaid reasons, the plaintiff`s entire suit should be struck out with costs to the 1st and 2nd defendants for being a non-starter and fatally or incurably defective.

2. Through written submissions by which it was agreed to dispose of the Preliminary objection, the objectors cited the two now famous authorities in regard to the matters raised;-

1. HCCC No.116 of 2004(Mombasa Kabundu Holdings Limited Vs Ali Ahmed t/a Sky club restaurant).

2. **Bugerere Coffee Growers Ltd Vs SSebaduka & Another(1970) EA 147**.

3. It appears from the plaintiff`s submissions that they perceived the objection as a mere technicality. Hence they relied on articles 23 (3) (20 of the Constitution, article 159(20 of the Constitution, Order 51 rule 10(2) Civil Procedure Rules and the overriding objective in the Civil Procedure Act. They also cited an authority, **CHRISTOPHER KEPROTICH VS DANIEL GATHUA and others** whose citation and decision was not supplied to the court. In short the plaintiffs asked the court to overlook the "technical" objection of the defendants and proceed to deal with the substance of the suit.

4. In my considered view, the objections raised are not mere technicalities but matters of substance that go to the root of the case as they challenge the authority to bring the suit and hence its validity. It was held in the **Bugerere case** that "when companies authorise the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or Board of Directors` meeting and recorded in the minutes".

5. It is not enough that CLAUDIO BANAGLIA who swore the verifying affidavit as a director of the plaintiff to cite the authority by his co-director to represent Royal Tula Estates Limited "in any matter filed in court" (See annexture CB1 to supporting affidavit sworn on 14th April 2011 by the said CLAUDIO BANAGLIA. Indeed, in the circumstances of this case there is no evidence that CLAUDIO BANAGLIA is duly authorised to swear any affidavit on the company`s behalf as he purports in the affidavits on record.

6. Accordingly, I find that these proceedings are a nullity as they were brought without the plaintiff`s consent and authority. The entire suit is therefore struck out with costs.

7. I have noted that a supposed default judgement had been entered by the Deputy Registrar upon a request made by the plaintiff, on 3/6/11 and brought under order 10 rule 6 Civil Procedure Rule. That was a day after appearance had been filed on behalf of the 1st and 2nd defendants. Although the entry memorandum is not dated, the said entry is irregular and could not be the basis of proceeding to "formal proof" as urged by the plaintiff`s counsel.

Delivered and signed at Malindi this **11th** day of **May, 2012** in the presence of:

C. W. Meoli
JUDGE