

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CIVIL SUIT 103 OF 2009

SHARIFF ALI SALIM suing as the holder of power of attorney
donated by MARIAM BINTI ALI SALIM.....PLAINTIFF

VERSUS

JAMES NZARO B. KALAMA.....DEFENDANT

RULING

1. Before me is the Defendants\' application filed on 17.10.11 and expressed to be brought under Order 24 rule 7 Civil Procedure Rule seeking the dismissal of the Plaintiff\'s suit.

In summary, the chief ground relied on by the Defendant\'s is that a previous similar suit HCC No. 44 of 2005 brought by the Plaintiff against the Defendant\'s father one NGUMBAO CHAI abated after his death. That the Plaintiff should have "revived" that suit rather than file this fresh suit against the sons of the deceased, the subject matter being a parcel of land to which the Defendants lay claim.

3. The application is opposed by the Plaintiff. Although no replying affidavit was filed the Respondent\'s counsel filed written submission as did counsel for the applicants.

4. Having carefully considered the amended Plaintiff filed on 26/8/11, and the submissions by the respective counsel I am persuaded that the application has no merit and must be dismissed because;-
a. The amended plaintiff clearly shows the cause of action against the Defendant, as clearly separate from then late father. The Defendants in their affidavit affirm their continued occupation of the suit property, in the own capacity, the action which the plaintiff pleads to be trespass.

b. This is a dispute involving land and in a very real sense, livelihoods are at stake. The dispute itself has a long history and no useful purpose can be served by delaying it further through the filing of one interlocutory application after another.

Let the parties take steps to prepare and draw the suit for hearing so that the substantive issues can be determined once and for all. Costs will be in the cause.

Delivered and signed at Malindi this 30th day of July, 2012 in the presence of Mr Otara for 3-9th Defendant, Mr Mouko for the Plaintiff, 1st Defendant in person, c/c-Evans/Leah.

C.W.MEOLI
JUDGE