



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Miscellaneous Civil Application 154 of 2012**

**IN THE MATTER OF: THE LAND ACT, 2012 OF THE LAWS OF KENYA AND THE  
CONSTITUTION OF KENYA BOTH THE REPEALED CONSTITUTION AND THE  
CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF: APPLICATION FOR DECLARATION THAT THE  
PLAINTIFFS/APPLICANTS HAVE OBTAINED OWNERSHIP OF 376 HECTARES OF THE  
PARCEL OF LAND NUMBER C.R. 32564 BEING SUBDIVISION TITLE NO. 1948/V/MN**

**IN THE MATTER OF: LIMITATION OF ACTIONS ACT CAP NO. 22, OF THE LAWS OF  
KENYA**

**BIMBITA MGALA DZUMBA & 47 OTHERS ..... PLAINTIFFS**

*(Suing on their own behalf and on behalf of the squatters/residents/family*

*members residing upon the suit property/Plot NO. 1948/V/MN)*

**AND**

**FREEDOM LIMITED & 14 OTHERS ..... DEFENDANTS**

**RULING**

- 1) The parties are unable to agree as to what should be heard first between the Preliminary Objection dated 14<sup>th</sup> September 2012 filed by the firm of A. B. Patel & Patel Advocates on behalf of the 1<sup>st</sup> Defendant and the Plaintiffs application of 21<sup>st</sup> September 2012 seeking to bar the firm of A. B. Patel & Patel Advocates from acting for the 1<sup>st</sup> Defendant.
- 2) I have heard rival submissions by Counsel. The Preliminary Objection questions the Jurisdiction of this Court to entertain these proceedings. It is a well settled practice that questions touching on the jurisdiction of Court must be dealt with at the earliest opportunity and as soon as they are raised.
- 3) The Preliminary Objection here has been raised by the firm of A. B. Patel & Patel on behalf of their client. That the Preliminary Objection should be heard first would ordinarily not be contentious but an issue has arisen as to whether that firm should continue to participate as Counsel in these proceedings.
- 4) It is inevitable that I look at the reasons raised in the Plaintiffs application so as to decide whether that firm would be entitled to prosecute the Preliminary Objection. As I understand the application it is founded on the reason that members of the firm and in particular Mr. Sanjeet Kumar Khagram are

potential witnesses and their continued participation herein offends Rule 9 of The Advocates (Practice) Rules. The prosecution of the Preliminary Objection would not require the taking of evidence. It would be only on questions of law. If contested facts and evidence were to form part of the Preliminary Objection then it would cease to be one. I am not told how, on my own cannot find, any prejudice that the Plaintiffs could possibly suffer by the firm arguing the Preliminary Objection and involving themselves in proceedings that do not require evidence.

5) Should that Preliminary Objection fail, then the Plaintiffs application must necessarily be heard and determined as the next order of business.

6) For these reasons the Preliminary Objection dated 14<sup>th</sup> September 2012 shall be heard first. Costs in cause.

*Dated and delivered at Mombasa this 23<sup>rd</sup> day of October, 2012.*

**F. TUIYOTT**  
**JUDGE**

**Dated and delivered in open court in the presence of:-**

**Tindi & Mwaniki for the Plaintiff**  
**Khagram for the 1<sup>st</sup> Defendant**  
**Mabeya for the 13 – 15<sup>th</sup> Defendant**  
**Court clerk - Moriasi**

**F. TUIYOTT**  
**JUDGE**