

REPUBLIC OF KENYA

High Court at Malindi

Civil Suit 41 of 2012

HASSAN HASHI SHIRWA

OMAR ALI HAMED.....PLAINTIFFS

VERSUS

SWALEH MOHAMED SALEH MOHAMED

BAKARI ALI MZEE

OMARI WAZIRI

ABDALLA WAZIRI

AYUBU SHEKUE

ABDILLAHI MOHAMED

ABDALLA SHEE.....DEFENDANTS

RULING

Upon a careful consideration of all the affidavits sworn in support of and opposition to the plaintiffs' application filed on 15th March 2012, I am not satisfied that the plaintiffs have established a *prima facie* case as defined in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 others [2003] KLR 125.**

The Respondents have raised a serious challenge to the plaintiff's title which puts paid the question of damages. Besides the balance of convenience tilts in favour of the respondents who on the face of it are in possession of the suit property. The application is dismissed with costs.

In view of the impending vacation and pressure of work, full reason for the decision will be given on 22nd February, 2013 at 2.30pm.

Delivered and signed at Malindi this 13th day of December, 2012 in the presence of Mr. Mbogo holding brief for Mr. Sitonik for the plaintiffs, Mr. Omwancha for the defendants.

C. W. Meoli

JUDGE