



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MALINDI  
Miscellaneous Civil Application 3 of 2010**

**IN THE MATTER OF: THE REGISTRATION OF LAND TITLES ACT CAP 285 OF THE  
LAWS OF KENYA**

**AND**

**IN THE MATTER OF: PARCEL OF LAND KNOWN AS PLOT NO. 120 MGURURENI –  
MALINDI**

**AND**

**IN THE MATTER OF: THE LIMITATIONS OF ACTIONS ACT CAP 22 LAWS OF  
KENYA**

**AND**

**IN THE MATTER OF: THE CIVIL PROCEDURE ACT CAP 21 LAWS OF KENYA AND THE  
RULES ENACTED THEREUNDER**

**BETWEEN**

**RAMADHAN IDDI RAMADHAN & 22 OTHERS ....PLAINTIFFS**

**VERSUS**

**ESTATE OF SEIF HEMED ELBUSAYDY – (DECEASED)  
SALIM ABDALLA BAKSHWEIN .....DEFENDANTS**

**R U L I N G**

The originating summons dated 15-2-10 is made under Order XXVI Rule 3C(1) of the Civil Procedure Rules and section 3A of the Civil Procedure Act and seek that applicants be granted leave to file suit out of time.

It is premised on ground that:

- (a) Applicants are legal heirs and trustees of the late Liwali Sheikh Salim Bin Khalfar, the original registered owner of parcel No. 120 of Mgurureni, Malindi as per succession cause No. 107 of 2007 before the Kadhi's court at Malindi.
- (b) After the demise of the late Liwali Sheikh Salim Bin Khalfa Said Bin Seif (now deceased) was appointed administrator of the estate.
- (c) After the demise of Sid Bin Seif, Fatuma Seif Hemed Elbusaidy became administrator.
- (d) Fatuma (now deceased) sold and transferred the entire plot to Salim Abdalla Bakshwein instead of transferring 1/3 undivided share which rightfully belonged to her as her share.
- (e) Recently the applicants learnt of the transfer to Bakshwein after the Bakshwein family attempted to evict the applicants from the suit property, yet applicants have been in physical occupation for over 40 years and have developed the same.

- (f) It is their contention that respondent is only entitled to 1/3 undivided share. The entire property measures approximately 359.91 acres and respondent has no good reasons to evict the applicants.
- (g) The property, alongside two others i.e No. M39 and 446, belonged to the late Liwali and transmitted from one generation to another through the administration of deceased's estates.
- (h) Applicants state that they have a good case against the respondent and it would only be just and fair that they be granted leave to file suit out of time.
- (i) In the affidavit in support of the appellant, sworn by Ramadhani Iddi Ramadhani, it is deponed that late Liwali made a declaration making the applicants the legal heirs (the same is annexed as RIR -2) further that applicants were brought up and have lived on the said plot. They do not deny that Fatuma had a right to sell but insist it was only limited to her 1/3 undivided share and so they challenge her selling the entire property.

It is apparent that since the Estate's administrator changing, the applicants were totally oblivious of what had transpired between the last administrator and the respondent. Incidentally they remained in occupation even as the entire property was being despised of without their knowledge. The appellants have demonstrates that they have an arguable case.

Secondly they have explained why they could not have filed the suit earlier – they were unaware of the sale and transfer and only got to realize what had happened when there was a threat to evict them.

I find merit in the application and grant the applicants leave to file suit. They must file suit within 30 (thirty) days from today.

Costs shall be borne by applicants.

Delivered and dated this 16<sup>th</sup> day of **June 2010** at Malindi.

**H. A. Omondi**  
**JUDGE**