



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI**

CIVIL SUIT 123 OF 2001

NORTH REEF LIMITED PLAINTIFF

- VERSUS

ATTORNEY GENERAL &

**FRED KAZUNGU DIWANI
.....DEFENDANTS**

J U D G M E N T

The plaint in this case was amended to include a second plaintiff “**Chanoni Estates Ltd**” the claim is the recovery of a plot no. 430/R which the Commissioner of Lands fraudulently dealt with which land is now registered in the name of the second defendant. According to evidence the first plaintiff has a large piece of land measuring about 100 acres and small portion at the sea front plot no. 430R. There is an agreement between first and second plaintiff for a long lease of 999 years. Any purchaser would acquire both pieces of land. Then there was a government project to malign the road and land in the are was compulsorily acquired for the purpose. Pacolo Roca, Managing Director of the first plaintiff gave evidence. The company is owner of plot no. 1960 described in Deed Plan no. 87353. The two plots are shown no. 426R and No. 430. He said plot no. 430 is owned by the second defendant and is shown in deed plain 6517. The first plaintiff purchased its land in 1991. There is agreement dated 30/1/1967. The agreement concerns the granting a lease of **ALL THAT** piece or parcel of land forming portion of plot no. 430R lying between the eastern boundary of Land Reference 169/3 and the high mark of the Indian Ocean for 999 years. The second plaintiff is the owner of that plot. Plots 1692 & 1693 are both consolidated and numbered 1690. PW1 testified that this plot did not stretch to the sea. And he purchased some plots in front. Exhibit no. 4 is a transfer to the first plaintiff of plot no. 1690 Also attached to exhibits an assignment to the plaintiff of all that portion of all that land. 430R between eastern boundary of Plot no. 1693 and the High water mark of Indian Ocean. It was in 1994 that the witness was informed by workers that there were some people who had come to see the land. He commenced investigations (see exhibit 6). He came to know that the land was registered in the name of Frederick Kazungu. The witness testified that the land had new different Numbers without his knowledge. He has still the original title deed and no one has taken occupation of the land. There was no cross-examination on this witness by state or 2nd defendant. Next witness for plaintiff was a Surveyor. He is the one who surveyed the property No 430. He confirmed that land for access road was surrendered to the government. He explained that 430/R was remainder of head title. He examined exhibit number 26 and remarked that the plot does not stretch to reach the new road. He confirmed that he surveyed the land to be surrendered by the company to the government or the road which he did and no other survey has been carried on. He explained that the road was at a distance of 1 ½ Kms away from plot no. 430R. No cross-examination of this witness by State Counsel at this point being Mr. Okello. Also no evidence was led by any of the two defendants. However State Counsel urged the court to consider affidavits filed by the defendant.

I have considered the pleadings, the evidence and submission of Counsel. It is my view that the Commissioner of Lands had no right to grant any title to the land 430/R to the second defendant or any other person. I find the land was private land covered by documents of title. The land was not part of the area subjected to compulsory acquisition. The Commissioner of Land has not exercised such power of compulsory acquiring the land. The road to benefit from such acquisition has not been built on the land in question but according to surveyor it was built in a different location. I find these facts uncontroverted. I am therefore inclined to and I enter judgment in favour of the plaintiff as prayed in the plaint namely

prayer (a) (i) and (ii)

prayer (b) (i)

Prayer (c)

No damages have been proved and the court is not in a position to assess any damages. It is in evidence that nothing has been done to the disputed land to date and no one has settled on it. In such circumstances no damages are awarded under prayer (d). Costs of this suit are awarded to the plaintiff.

Dated this 10th day of November, 2004.

J. KHAMINWA

JUDGE

10.11.04

Khaminwa - Judge

Cege – Court clerk

Ms. Gudka for the plaintiffs

Mr. Mutugi – State Counsel

Judgment read in open court.

J. KHAMINWA

JUDGE