



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 38 OF 2011**

**PANINI BRUNELLA & 62 OTHERS.....PLAINTIFFS**

**VERSUS**

**1. POLICINO OASIS MANAGEMENT LIMITED**

**2. POLICINO OASIS LIMITED**

**3. GIOVANNI DE CARO**

**4. POLICINO COSIMO**

**5. THOMAS HINZANO NGONYO.....DEFENDANTS**

**AND**

**1. CLAUDIA ZANONI**

**2. BELLUOMINI GIULIANA**

**3. MARIA PETRINO**

**4. GIANNA ELISA RECCOSTA**

**5. ALLESSANDRO CAZZANTI**

**6. MARIELA PALAZZI**

**7. CLAUDIO BONE**

**8. VIGNAROLI VITTORINO**

**9. LUIGI ARCARI**

**10. CORAL PROPERTIES LTD.....INTERESTED PARTIES**

**RULING**

1. I have before me for determination two applications both brought by way of Notice of Motion. The First application dated 17<sup>th</sup> February 2019 is brought by some seven individuals seeking orders as follows: -

***2. That the Court hereby does issue an order for the enjoinder of the Applicants as Interested Parties into this suit purely for the limited purpose of prosecuting and defending the application for appointment and or removal of the proposed receiver manager Geeska Enterprises Ltd.***

**3. That this Honourable Court be pleased to appoint Geeska Enterprise Solutions Ltd as the receiver Manager of Polcino Oasis Village, the development erected on all that piece of land known as LR No. 1862 situated along Silver Sands Road in Malindi until such a time that the concern is capable of running and or managing its own affairs.**

**4. That the said Geeska Enterprises Solutions Ltd be appointed and authorized to manage, protect, preserve and improve the assets of Polcino Oasis Village, and in connection thereof, collect all the service charges, rent and profits thereof, apply and dispose of the said Service Charges, rent and profits solely for the benefit of Polcino Oasis Village, and to have authority to employ and terminate the employed workers, agents and independent contractors and third parties retained for provision of goods and services relating to Polcino Oasis Village;**

**5. That for the better management of the Polcino Oasis Ltd, the said Geesker Enterprise Solutions Ltd do open a bank account to be operated in an open and transparent manner and they present to this Honourable Court duly audited management accounts on or before the expiry of Twelve (12) months from the date of their appointment at the first instance and thereafter after every twelve months; and**

**6. That this Honourable Court be pleased to remove any other self-styled/self-imposed manager from the possession and/or custody of Polcino Oasis Village and for that matter bar them, whether by themselves, their agents, employees, attorneys and or personal representatives from interfering with the management of the Polcino Oasis Village including but not limited to keys, rubber stamps and the company seal of Polcino Oasis Ltd.**

2. The application which is supported by some five (5) affidavits is premised on the grounds:

**i) That the applicants are the owners of apartments on the suit property that require common management in order to meet and satisfy the needs of the residents;**

**ii) That the suit property was until November 2018 managed by Coral Properties Consultants Ltd who have since been discharged from such duties;**

**iii) That the village is in dire need of a manager who would preserve it and protect it from the looming waste bone of depreciation, natural wear and tear and other external and internal factors;**

**iv) That the Proposed Manager is willing and capable of executing and undertaking the faithful management of the affairs of Polcino Oasis Ltd.**

3. The Second application is dated 16<sup>th</sup> April 2019 and filed herein by Giovanni De Caro (the 3<sup>rd</sup> Defendant) praying for orders that he be appointed as the Manager of the said Polcino Oasis Village and that upon the said appointment he be allowed to open and operate a Bank account and to present to the Court the audited management accounts at given intervals.

4. The 3<sup>rd</sup> Defendant further urges this Court to bar any other self-imposed party from the management of the property and to direct any such party to release all keys, rubber stamps and company seal of the said Polcino Oasis Ltd to himself.

5. The Second application which is supported by an affidavit sworn by the 3<sup>rd</sup> Defendant himself is premised inter alia on the ground that:

**i) The 3<sup>rd</sup> Defendant is the owner of the Land Portion No. 1862 Malindi whereon the said Village is erected;**

**ii) The property needs a responsible and accountable manager to preserve it and protect it. The 3<sup>rd</sup> Defendant is able and willing to undertake such management;**

**iii) The 3<sup>rd</sup> Defendant is the current head-lessor of all the lessees of the said property and is the only person with the legal and contractual right to manage the same; and**

**iv) The 3<sup>rd</sup> Defendant also owns apartment within the property and resides therein and hence has a vested interest in the better management and preservation, improvement and protection of the property.**

6. In addition to his application, the 3<sup>rd</sup> Defendant has also sworn and filed a Replying Affidavit herein on 11<sup>th</sup> June 2019 in opposition to the application by the Interested Parties dated 7<sup>th</sup> January 2019 wherein he repeats the averments made in his own application.

7. The 3<sup>rd</sup> Defendant's Second application is also opposed by one Alexander Kingoro Wanjiku who describes himself as one of the Plaintiffs herein. In a Replying Affidavit filed herein on 16<sup>th</sup> September 2019, the said Alexander avers that the 3<sup>rd</sup> Defendant is not the owner of the property as purported and only owns four apartments thereon. He further accuses the 3<sup>rd</sup> Defendant of failing, refusing and neglecting to pay Service Charge and avers that the 3<sup>rd</sup> Defendant is a key author of the problems currently facing the Village and he cannot therefore be entrusted with the running of the same.

8. I have carefully perused and considered the two applications and the responses thereto. In the first application, dated 7<sup>th</sup> February 2019, the nine Interested Parties are listed therein as Claudia Zanoni, Belhomini Giuliana, Maria Patrino, Gianna Elisa Reccosta, Alessandro Cazzanti, Mariella Palazi, Vignarolli Vittorino and Luigi Arcari. They bring the application in their capacity as owners of apartments on the

suit property.

9. The nine applicants urge the Court to enjoin them in this suit for the limited purpose of prosecuting and defending this very application wherein they also seek an order to have an entity known as Geeska Enterprises Solutions Ltd appointed as the Receiver Manager of the premises known as Polcino Oasis Village.

10. Rule 10(2) of Order 1 of the Civil Procedure Rules provides that:

***“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been enjoined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”***

11. Arising from the foregoing provisions, joinder of parties is permitted by law and it can be allowed at any stage of the proceedings. But, it is trite law that joinder of parties may be refused where such joinder will lead into practical problems of handling the existing cause of action together with the one of the party being joined, or where it is unnecessary or will just occasion unnecessary delay or costs on the parties in the suit.

12. The suit before me was filed way back in 2011. The intended Interested Parties have not been parties and they bring the application before me not because they are likely to be affected by the outcome of the suit but because they are interested solely in the appointment of a Manager to run the Polcino Oasis Village. In my mind, this is one of those applications that is totally unnecessary as the same does not relate in any way to the cause of action before me.

13. Indeed, a perusal of all the Supporting Affidavits to the application for joinder would confirm that position. Those affidavits are sworn by people named therein as Lola Valeri, Giorgio Stabhini, Alex Kingoro, James Maina Nderitu and Irene Kithunga. Those are not the interested parties listed in the application before me and other than explaining that they own apartments in the Village, they do not explain any relationship with the Applicants.

14. Accordingly, I did not find any merit in the application for joinder and I waste no time in dismissing the same.

15. In respect of the Second application filed herein by the 3<sup>rd</sup> Defendant, he is seeking to be appointed as the Receiver Manager of the suit property on account that he is the Head Lessor. The 3<sup>rd</sup> Defendant equally does not explain why he brings the application so late in the day. He has been sued herein by the Plaintiffs and he certainly cannot be acceptable to be allowed to run and manage the same premises for which he has been sued. That is tantamount to helping him to steal a match upon the Plaintiffs.

16. At any rate, the 3<sup>rd</sup> Defendant was a party in these proceedings when the Court delivered its Ruling on 28<sup>th</sup> June 2018. That Ruling inter alia required the parties to file and exchange the evidence they intended to rely on and to proceed to fix this old suit for hearing to enable the Court to determine the issues arising from this suit. His application is nothing but a backdoor attempt to evade compliance with those orders. It will not be allowed.

17. In the premises, I did not find any merit in the two applications and both are hereby dismissed with costs.

**Dated, signed and delivered at Malindi this 24<sup>th</sup> day of July, 2020.**

**J.O. OLOLA**

**JUDGE**