



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MALINDI**

**HCCC NO.138 OF 2012**

- 1. JEREMIAH NGONYO**
- 2. DOUGLAS MTAWALI CHARO**
- 3. LOICE NGARI KOMBO**
- 4. SAMUEL M. BIRYA**
- 5. MOSES DIDA KHAMISI**
- 6. AYA SAFARI HARRISON**

**7. RICHARD KAZUNGU.....PLAINTIFFS/RESPONDENTS**

**=VRS=**

- 1. CONSTITUENCY DEVELOPMENT FUND BOARD**
- 2. AMASON JEFFA KINGI (MAGARINI MEMBER OF PARLIAMENT 2008-2012**
- 3. CHAIRMAN MAGARINI CDF COMMITTEE.....DEFENDANT/APPLICANT**

### **R U L I N G**

The Application dated 1<sup>st</sup> April 2015 seeks to have the suit against the second defendant struck out with costs. It is brought under Order 2 of the Civil Procedure Rules and section 52 of the CDF Act No. 10 of 2003. The Plaintiff filed a replying affidavit sworn by Jeremiah Ngonyo on 15/6/15. Parties agreed to determine the application by way of written submissions.

The Applicant's main contention is that the Plaintiffs did not exhaust dispute resolution mechanism before they filed the suit. The CDF Act establishes a Constituency Development fund Board and all complaints have to be sent to that Board before a suit is filed. The Board can appoint an arbitration panel to deal with the dispute. The applicant further contends that the defendants are not properly sued as they are not juridical bodies. All the documents the plaintiffs require are available at the CDF offices.

Counsel for the plaintiffs maintain that no suit should be dismissed for misjoinder or non-joinder of

parties. The court has jurisdiction to entertain the dispute. The suit was filed way back in 2012 and no such application was filed all this time.

I have perused the pleadings herein, the plaintiffs were allowed to amend the plaint. I believe the 2<sup>nd</sup> defendant was enjoined as he was the area member of parliament for Magarini Constituency for the period 2008 to 2012. The plaintiffs filed this suit expecting to have their complaint heard and determined by the court. The CDF Act provides for a Constituency Development Committee under Section 23. The elected area member of parliament is a member of the 15 members Development Committee. He is also the chairperson of that Committee.

Since the plaintiffs filed this suit expecting that it will be heard and the required explanation will be provided, I do find that it is not prudent to grant the application. The best way forward is for parties to exchange the documents they shall rely upon and have the suit determined on merit. The 2<sup>nd</sup> Defendant can opt not to tender any evidence and the required information is part of the CDF's documents.

In the end, I do find that the suit should proceed to full hearing. Parties should exchange documents within 45 days hereof. The application dated 1<sup>st</sup> April 2015 is dismissed. Costs shall follow the outcome of the main suit.

Dated, delivered and signed at Malindi this. **1<sup>st</sup>** day of **December**, 2015.

**SAID J. CHITEMBWE**

**JUDGE**