



REPUBLIC OF KENYA
HIGH COURT OF KENYA AT MALINDI
IN THE ENVIRONMENT AND LAND COURT
CIVIL CASE NO. 38 OF 2011

BRUNELLA PANINI & 66 OTHERS.....PLAINTIFFS/APPLICANTS
BELLUOMINI GIULIANA.....67TH PLAINTIFF/RESPONDENT
MARIA PETRINO.....68TH PLAINTIFF/RESPONDENT
GIANNA ELISA RECCOSTA.....69TH PLAINTIFF/RESPONDENT

=VERSUS=

1. POLICINO OASIS MANAGEMENT LIMITED
2. POLICINO OASIS LIMITED
3. GIOVANNI DE CARO
4. POLICINO COSIMO
5. THOMAS HINZANO NGONYO.....DEFENDANTS/RESPONDENT

R U L I N G

1. What is before me is the 1st to 66th Plaintiffs' Application dated 29th May 2013. The Application is brought under Section 63(d) of the Civil Procedure Act and Order 41 of the Civil Procedure, Rules 2010.
2. The Application is seeking for the following reliefs:-
 - a. *THAT, this Honourable Court be pleased to appoint Brunella Panini, Maurizio Turato and Paola Ippolito as the Receiver Managers of Polcino Oasis Village, the development erected on all that piece of land known as L.R. NO.1862 situated along Silver-sands Road, in Malindi within Kilifi*

- District, within the Republic of Kenya, for an interim period of six (6) Months.*
- b. *THAT, the said Brunella Panini, Maurizio Turato and Paola Ippolito be authorised to jointly 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 the said service charges, rent and profits solely for the benefit of Polcino Oasis Village, and to employ and terminate the employ of workers, agents and independent contractors and third parties retained for provision of goods and services relating to Polcino Oasis Village.*
 - c. *THAT the for the better management of the Polcino Oasis Limited, the said Brunella Panini, Maurizio Turato and Paola Ippolito do open a bank account to be operated jointly and they present to this Honourable Court duly audited management accounts on or before the expiry of six (6) months from the date of their appointment.*
 - d. *THAT, this Honourable Court be pleased to remove Cosimo Polcino and Thomas Hinzano Ngonyo 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 Limited to Brunella Panini, Maurizio Turato and Paola Ippolito.*
 - e. *That this Honourable Court be pleased to make any other and/or further Orders as it deems fit and just under the circumstances of this suit.*
 - f. *That, costs of this application be borne by Polcino Oasis Limited.*
3. The Application is supported by nineteen grounds and the Affidavit of Brunella Panini, the 1st Plaintiff. The said Brunella Panini swore the affidavit on behalf of the other sixty six Applicants.

The Applicants' case

4. The 1st Applicant has deponed that the *de facto* managers of Polcino Oasis Village, are Cosimo Polcino, the 4th Defendant and Thomas Hinzano Ngonyo, the 5th Defendant despite the order of this court made on 10th February 2012 in Malindi HCCC No. 14 of 2004 which has since been withdrawn.
5. According to the 1st Applicant, the Ruling of this court of 10th February 2012 expressly removed Thomas Hinzano Ngonyo as a manager and held that the 4th Defendant was a busy body who should not be involved in the management of Polcino Oasis Village.
6. It is the 1st Applicant's deposition that the said Cosimo Polcino and Thomas Hinzano Ngonyo have forcefully continued managing Polcino Oasis Village after fraudulently appointing themselves as directors of Polcino Oasis Limited on the strength of a fraudulent resealed Grant, which grant was set aside on 22nd February 2013 by Justice Muriithi.
7. According to the 1st Applicant, Engineer A. O. Kennedy prepared a report for Oasis village and concluded that the structure is in a very hazardous condition and that it poses a great danger to the occupants of the building. He concluded in his report that the occupants of the building will have to vacate the premises for their own safety;
8. The Applicant has further deponed that on 5th March 2010, the Municipal Council of Malindi issued a Statutory Notice to Thomas Hinzano Ngonyo to effect repairs and remove nuisances from Polcino Oasis Village which he has failed to do. A further notice by the Public Health Officer was issued on 25th November 2010 advising the occupants of the structure within Oasis Village to vacate the building for their own safety.
9. After refusing to comply with the notice from the Municipal Council of Malindi, the 1st Applicant has deponed that the 4th and 5th Respondents were charged in Criminal Case Number 151 of 2012; that the three proposed managers are willing and capable of executing an undertaking for the faithful management of the affairs of Polcino Oasis Limited and that they are willing to indemnify the beneficiaries of the Estate of the late Nicola Polcino for any loss that may occur.
10. The 1st Applicant filed a further affidavit and annexed evidence to show the costs that the Applicants have incurred in trying to make the premises more habitable totaling to Kshs.3,679,218.

Respondents' case

11. In reply to the Application, the 5th Defendant filed his Replying Affidavit and Further Affidavit on 26th June 2013. An affidavit of Julius Esmoli Isiaho, a qualified electrician was also filed on the same day.
12. The 5th Respondent, Thomas Hinzano Ngunyo, deponed that he is a director of Polcino Oasis Limited, the 2nd Defendant, and that he was authorised by the first, second and fourth Defendants to swear the affidavit.
13. The 5th Respondent deponed that having withdrawn Malindi HCCC No.14 of 2004 and Malindi HCCC No.73 of 2004, any interim orders made therein lapsed and the Applicant, who was not a party to those suits, cannot seek to take advantage of any interim orders made in the suits.
14. The 5th Respondent further deponed that according to the Ruling by Lady Justice Meoli dated 11th May 2012, the Judge alluded to the fact that the Applicant made an application seeking to restrain the managers of the Village from collecting or increasing service charges and sought for his appointment as a manager of the Village; that the judge ordered a stay of those proceedings pending determination of the succession cause in the High Court in Mombasa and that the Applicant has repeatedly made various applications seeking similar orders.
15. The 5th Respondent deponed that there is a pending application filed by the Applicant on 29th February 2012 seeking orders similar to the orders in the current Application and that the Succession Cause before the High Court, Mombasa, has been stayed and that the Applicant and Mr. Maurizio Turato are seeking to take advantage of the dispute between the late Nicola Polcino's children to take over the ownership and control of the Polcino Oasis Village.
16. According to the 5th Respondent, the Applicant, Maurizio Turato or Paola Stella Ippolito cannot properly be said to represent the interests of all the residents of the Polcino Oasis Village and that serious questions relating to their honesty and accountability have been raised in the succession cause.
17. Because of the divisions within the residents, the 5th Respondent has deponed that the residents have declined to pay to the company, as the lawful owner of the Village, any service charges because of the various disputes pending before the courts and that the company is unable to provide proper services when it is unable to collect service charges from the residents.
18. It was the 5th Respondents deposition that the report annexed on the Applicant's Supporting Affidavit by "Engineer" A.O. Kennedy was not prepared by a qualified engineer or architect.
19. The 5th Respondent further deponed that the Criminal Proceedings against him were instigated by the Applicant and Mr. Turato and the proceedings have been pending since April 2012; that by reason of its inability to collect service charges from residents, the company was unable to pay electricity bills relating to the lighting of the common parts of the said Village.
20. On the issue of security, it was the 5th Respondent's deposition that the security firm referred to by the Applicant was retained by her without the authority of the company or the court to take over security duties at the Village; that this court has consistently refused to authorize the Applicant or her colleagues to have anything to do with the management of the Village.
21. The 5th Respondent disputed the issue of the Applicant's incurring expenses in his further affidavit. According to the 5th Respondent, the professional fees for a "structural assessment" of the Village was improperly and irresponsibly incurred because the person who prepared the report is neither an Architect nor a Civil Engineer as claimed; that the electrical repairs were undertaken by the apartment owners to rectify the defects identified by Kenya Power and company and that the costs are not recoverable as they relate to individual meters belonging to each apartment owner as explained in the affidavit of Julius Emoli Isiaho, a qualified electrician.
22. I have looked at the Affidavit of Julius Emoli Isiaho filed on 26th June, 2013 in which he has deponed that there has never been any threat of fire in the Village because of electrical defaults and that the "defective installation notices" issued by Kenya Power, following an inspection was directed to every single apartment owner and not the company alone.
23. According to Mr. Isiaho, the company is not, and has never been, responsible for individual meters installed by the apartment owners.
24. I have also read the affidavit of Harish Bhatt, an architect of 33 years standing who has deponed

- that it is true that the building has certain cracks in the columns and beams and that reinforcements have been exposed in certain areas, which is not a reason enough to conclude that the building is either dangerous or uninhabitable.
25. The 3rd Respondent did not file any papers in response to the Application. I was informed that the 3rd Respondent had been deported to Italy.
 26. Mr. Macharia, counsel for the Applicants, and Mr. Inamdar, counsel for the 1st, 2nd, 4th and 5th Defendants appeared before me on 27th June 2013 and submitted orally. The submissions by counsels were a reinstatement of what their respective clients had deponed in the affidavits which I have summarized above.
 27. The first issue which I have to deal with, and which was raised in the Respondents' Replying Affidavit is whether the orders which were made by the court in respect to the suit property in Malindi HCCC No.14 of 2004 and Malindi HCCC No.73 of 2004 which were consolidated and then withdrawn lapsed.
 28. It is the Respondents' position that the Applicants cannot rely on the orders which were made in the two suits because, firstly the Applicants were not parties to those suits and secondly the suits have since been discontinued.
 29. I do not agree with that position. The orders of the court are never made in vain. A party cannot file a suit and then withdraw it after a Ruling or Judgment has been made and then expect to run away from the Ruling or Judgment.
 30. Once the court makes an order in a suit, unless such an order is stayed or set aside, the order must be complied with. It does not matter that the suit has since been withdrawn or discontinued by the Plaintiff or by the consent of the parties.
 31. If that was the position, what would happen is that a party would file a suit and upon a Ruling which is not favourable to him issued, he would withdraw the suit to avoid the consequences of the Ruling or the Judgment. Such a scenario will expose the court's dignity to ridicule and cannot be allowed. A court order, once issued cannot be withdrawn or discontinued. Such orders cannot lapse, unless the order itself specifically states so.
 32. I shall revert to the Rulings of the two judges shortly.
 33. The second issue which I should deal with and which was raised by the Respondents is whether the orders which were prayed for in the Applicants' Application dated 28th February, 2012 which is pending are similar to the orders being prayed for in the current application.
 34. I have perused the Application dated 28th February 2012 in which the Applicants have asked the court to appoint Paola Stella Ippolito, Nicholas Jack Polcino, Brunella Panini and Maurizio Turato as the receiver managers of Polcino Oasis Limited/Polcino Oasis Village. The Application also sought the orders of the court discharging Giovanni De Caro, the 3rd Respondent from being a manager at Polcino Oasis Limited/Village and to bar Polcino Cosimo the 4th Defendant from interfering with the management of the Village.
 35. The only significant difference between the two Applications is that the former application sought for the appointment of four receiver managers while the latter application is seeking for the appointment of three receivers/managers to run the affairs of Oasis Village. The only person whose name does not appear in the two Applications is Nicholas Jack Polcino.
 36. I have perused the proceedings and it would appear that the Application dated 28th February 2012 and filed under a certificate of urgency on 29th February 2012 was never argued. Indeed, the proceedings of 29th February 2012 in HCCC No. 73 of 2004, which has since been withdrawn shows that the parties sought to have HCCC 73 of 2004 and HCCC No.14 of 2004 consolidated with this suit.
 37. On that particular day, Honorable lady Justice Meoli, exasperated with the numerous Applications that the parties were making, ordered that the report of the elections held in HCCC No. 38 of 2011 be filed and served on all the parties so that any party who has any objections can raise them. She fixed the matter for mention for 23rd March, 2012.
 38. Instead of filing the results for the election in HCCC No. 38 of 2011 as ordered by the court, the parties in HCCC No.73 of 2004 and HCCC No. 14 of 2004 filed a consent letter to discontinue the two suits. The Plaintiffs Advocates in HCCC No. 38 of 2011 were not impressed with the consent as drawn and the advocates in the three suits engaged each other in long protracted oral submissions which culminated in a Ruling by Justice Meoli dated 11th May 2012.

39. In her Ruling dated 11th May 2012, Honourable Justice Meoli ordered that the proceedings in HCCC No. 38 of 2011 (the current suit) be stayed pending the determination of the Succession Cause before the High Court in Mombasa. She marked HCCC No. 73 and 14 of 2004 as discontinued.
40. With Justice Meoli's order in place, this suit went into a lull until 29th May 2013 when the present application was filed on the basis that the succession cause in Mombasa had now been decided and the structural integrity of the Oasis Village was getting worse.
41. It would appear that the present application was filed principally on the same grounds as the Application dated 28th February 2012 which was never argued, save for the Ruling by Justice Muriithi in the Mombasa Succession Cause number 31 of 2006.
42. I would have dismissed the present application on the ground that it is raising the same issues as the Application dated 28th February 2012 were it not that the Applicants have incorporated in the current Application the Ruling by Justice Muriithi in the succession cause, which could have a bearing on the decision of this court. The said decision is also important considering that Justice Meoli had stayed this suit pending the outcome of the Succession Cause.
43. I will now address the issues that were dealt with in the Rulings by my sisters Honourable Justice Omondi and Honourable Justice Meoli.
44. The Ruling of 8th December 2011 by Honourable Justice Omondi was in respect to the Applicants' amended Notice of Motion dated 16th May 2010. The Application sought for the following orders;
- a. *That this Honourable Court be pleased to temporarily restrain the Defendants and their agents from collecting service charges from the Plaintiffs until the suit is heard and determined.*
 - b. *That this Honourable court temporarily restrains the Defendants from increasing the service charge or implementing the proposed service charge until the suit is heard and determined.*
 - c. *That pending the inter-partes hearing of the Notice of Motion dated 20th April 2011 PANINI BRUNELLA be hereby appointed to manage, preserve and protect and collect all service charge at Oasis Village in Malindi.*
45. The Prayers quoted above were rather confusing. On one part, the Applicants did not want to pay the service charges at all and on the other part they wanted the respondents to be restrained from increasing the service charges until the determination of the suit.
46. It would appear that the Honourable Judge did not notice the contradiction in the prayers. However, looking at her analysis at page 15 of her Ruling, the Judge was under the impression that the Applicants were only opposed to the increment of the service charges. This is what the learned judge observed.

***“The plaintiffs have indicated why they are contesting the increase of the service charge-because they have not been consulted. They have been given notice of the intended increase, yet they are dissatisfied with the services being given. Attempts to have a meeting with the Respondents have failed- the poor state of the premises is confirmed by the letter from the Municipal Council of Malindi's Public Health Department and the letter requesting for a meeting. I find that the Applicants have established a prima facie case with probable chances of success... Even if one were to look at the balance of convenience, surely the scales tilt in favour of the Applicants. It is certainly more convenient and just to have the Applicants remain within the premises and pay service charge at the earlier rates, than evict them for such failure.*”**

The application has met the conditions set out in Giella -vs- Cossman Brown and I grant orders of injunction as prayed”.

47. It is obvious from the analysis of the Ruling of the court that the Defendants were only restrained from increasing the service charges. The Applicants were under an obligation to continue paying the service charges under the old rates. Any other interpretation of the Ruling will lead to an absurdity which was never intended by the Court.

48. Consequently, until the Ruling of the court is set aside, all the lessees within the Oasis Village will and should continue paying the old service charges until this suit is heard and determined.
49. The Ruling of Honourable Justice Omondi dated 24th January 2012 and delivered by Honourable Justice Meoli on 10th February 2012 in Malindi HCCC No.78 of 2012 is pertinent to the current Application, though the Plaintiffs herein were not parties.
50. This is what the court stated in the Ruling:

***“Quite honestly, I do not understand where to place Cosimo Polcino [the 4th Defendant herein]. His name did not feature in the order issued on 17th January 2005 and would appear to me to be a busy body who came in courtesy of Polcino Oasis Management.*”**

51. The court further held;

***“Thomas Hinzano Ngonyo do submit in court within 14 days all the accounts for the condominium fees collected with Cosimo Polcino from May 2010 until April 2011.*”**

I decline to replace the Co-Managers with the suggested names (i.e Pepe Teresa, Alessandro and Cazzant). I think that is something that the apartment owners should resolve by holding a meeting and passing appropriate resolutions. I note that on 28/12/04 when Hinzano Ngonyo was appointed Receiver Manager for the premises it was not on the basis of his being the owner, but because he was said to be an accountant..... The same people who had sought for Hinzano's appointment are the same ones who now wish to off-load him and I think that the Applicants should not be saddled with someone whose services they question.”

52. From the Ruling, the court directed the apartment owners to appoint somebody whose services they will not question. It is not clear from the proceedings before me if Thomas Hinzano submitted to the court all the accounts for the condominium as ordered.
53. What is clear from the said Ruling is that as at the time the Ruling was being delivered, it was Thomas Hinzano, the 5th Defendant and Giovanni De Caro, the 3rd Defendant who were running the Oasis Village. Giovanni De Caro had claimed that Hinzano had left him out of the affairs of the Village and he was running the show through Polcino Oasis Management Limited. The other co-manager, Ann Wausi had already left the scene. As I have stated above, Giovanni De Caro has since been deported to Italy.
54. On 11th May 2012, Justice Meoli observed in her Ruling that no election or appointment of Managers had taken place after the Ruling of Honourable Justice Omondi.
55. It would appear the parties in HCCC nos. 14 and 73 of 2004 attempted to go around the order of Honourable Justice Omondi who had ordered for an election of the people who will run the affairs of the Village when they appeared before Justice Meoli with the following consent:

“Polcino Oasis Limited shall hence forth exclusively manage Polcino Oasis Village through Polcino Management Limited”.

56. The Judge rejected the consent “in light of the express orders made in the Ruling of Omondi-J delivered on 10th February 2012.” Justice Meoli went further to stay the proceedings pending the determination of the succession cause in the High Court, Mombasa.
57. The Applicants have annexed the Ruling by Justice Muriithi in Mombasa Succession Cause no. 35 of 2009.
58. The Succession cause was in respect of the Estate of Nicola Polcino who was the majority shareholder in Polcino Oasis Limited, which owned the suit property, Polcino Oasis Village.
59. It is the raging succession wars of the Estate of the late Nicola Polcino that has brought the operations and running of the Oasis Village to a near standstill.

60. In the succession cause no. 35 of 2009, the Applicant Tony Kent, who is the son of the deceased by one mother challenged the resealing by the High Court at Malindi of an alleged Italian Grant by which his two brothers by another mother obtained transfer to themselves of the majority shares of Polcino Oasis Limited, which owns the suit property.
61. After hearing the Application, Honourable Justice Muriithi delivered his Ruling on 22nd February 2013 in which he revoked the resealed Grant. The Judge further ordered that the Respondent should not intermeddle with the Estate of Nicola Polcino, and by extension Polcino Oasis Limited. I was informed that the said Ruling has since been stayed and an appeal has been filed.
62. Even if the Ruling by Justice Muriithi in succession cause no. 35 of 2009 has been stayed, and that the same is pending appeal, I am of the view that the matter having been concluded, the order of Justice Meoli staying this suit pending the hearing of the succession cause has lapsed.
63. It will not be in the interest of justice that the issues in this suit should be left in abeyance until the appeal which has been preferred in the succession cause is finalised. That was never the intention of Justice Meoli when she made her orders on 11th May 2012.
64. However, until the issue of the beneficiaries of the Estate of the late Nicola Polcino is determined by the Court of Appeal, and considering the chronology of events which I have reproduced above, the 1st, 2nd, and 4th Defendants will continue being by - standers in the running of Oasis Village. The 3rd Defendant has since been deported and consequently has no role in the affairs of Oasis Village. In any event Justice Omondi had already found that Polcino Cosimo, the 4th Defendant, is a busy body in the affairs of the village and I need not revisit the issue.
65. In respect to the position of Thomas Hinzano Ngonyo, the 5th Defendant herein, Honourable Justice Omondi, in the Ruling delivered on 10th February, 2012 in HCCC No.73 of 2004 held as follows.

***“I have no doubt in my mind that the said Hinzano has acted contrary to the orders that were given by the court and he should not be allowed to continue with the Management of the premises.*”**

I think the situation here merits reviewing of those orders with a view to setting aside the same. This would in turn mean that Thomas Hinzano Ngonyo and his servants and or agents be restrained from renting or leasing the apartments at the village, increasing and collecting condominium fees using the company known as Polcino Oasis Management Limited. And I so direct”.

66. The court proceeded to direct the apartment owners to appoint or elect somebody acceptable to them.
67. The Applicant has deponed in her Affidavit that Cosimo Polcino, the 4th Defendant and Thomas Hinzano Ngonyo, the 5th Defendant have forcibly continued managing Polcino Oasis village having appointed themselves directors of Polcino Oasis Limited.
68. In response, Thomas Hinzano Ngonyo has admitted that he is a director of Polcino Oasis Limited. The deponent has further admitted that Cosimo Polcino, the 4th Defendant, and himself have been acting as the “de facto Managers” and that it is not true that they were removed by the order of the court dated 10th February 2012. The deponent then attempts to go around the order of 10th February 2012 by stating that that order lapsed with the discontinuance of HCCC No. 73 of 2004.
69. I have already stated in this Ruling that the orders of Omondi-J in HCCC No.73 of 2004 are subsisting until now notwithstanding the discontinuance of the suit by the Plaintiffs. Even if the Plaintiffs herein were not parties to HCCC No.73 of 2008, the orders of Omondi J were clear, Thomas Hinzano Ngonyo was restrained from renting or leasing the apartments at the village; increasing and collecting condominium fees using the company known as Polcino Oasis Management Limited or managing the premises. Court orders are never issued in vain and it is contemptuous for Thomas Hinzano Ngonyo to depone that the orders of Omondi J delivered on 10th February, 2012 lapsed.
70. In view of the Ruling of Omondi-J in HCCC No. 73 of 2004 delivered on 10th February, 2012, I have found as a fact that all the Defendants herein, and especially the 4th and 5th Defendants, who

- are the directors in the 2nd Defendant's company, have been barred from running the affairs of the Oasis Village for one reason or the other. The ultimate decision of Omondi J was for the appointment or election of managers by the apartment owners which it would appear never happened.
71. The only issue that I should deal with now is whether this court should appoint Brunella Panini, Maurizio Turato and Paola Ippolito to manage, protect and preserve the assets of Polcino Oasis Village on an interim basis.
 72. I have gone through the photographs annexed on the Supporting Affidavits of the 1st Applicant. The photographs clearly show that the structural integrity of Polcino Oasis Village needs urgent repairs and maintenance.
 73. It may be true that the person who prepared the report on the renovation and maintenance status of the Oasis Village is not a qualified Architect or Engineer as argued by the Respondents. However, the report has photographs, of which the Respondents have not denied as representing the status of the building.
 74. The Applicant has also annexed on his supporting affidavit a "Sanitation Inspection Report" by the Public Health Officer in which the said officer has concluded that the building was in a poor state during the inspection and it posed a danger to the occupants.
 75. The poor state of the Oasis Village was confirmed by "Thomas Hinzano Ngunyo, the 5th Defendant in his Replying Affidavit sworn on 25th June 2013.
 76. At paragraph 12 of the Replying Affidavit, the 5th Respondent deponed that the company (Polcino Oasis Management Limited) is unable to provide services when it is unable to collect service charges from the residents in the face of the undermining activities of the Applicant. The 5th Respondent further states that "it is wholly dishonest for the Applicant to suggest that we have allowed the situation to decline when it is she and her colleagues who have actively provoked and contributed to the situation".
 77. According to the Affidavit of Harish Bahatt, an architect and a member of the Architectural Association of Kenya, the building has certain cracks in the columns and beams and that reinforcements have been exposed in certain areas.
 78. It is therefore obvious that the building needs urgent attention in terms of fixing the lighting in the common areas and for the undertaking of repairs of the building for the safety and comfort of the lessees.
 79. According to the provisions of Order 41 of the Civil Procedure Rules, where it appears to the court to be just and convenient, the court may by order appoint a receiver of any property, whether before or after decree.
 80. The court may also remove any person from the possession or custody of the property and commit the property to the possession, custody or management of the receiver. The law further provides that such a receiver must account for what he receives from the property. The law also provides that such a manager/receiver must submit the accounts at such periods and in such form as the court directs. The court may also fix the amount to be paid as remuneration for the services of the receiver.
 81. Where a receiver fails to submit his accounts at such periods and in such form as the court directs; or fails to pay the amount due from him as the court directs; or occasions loss to the property by his willful default or gross negligence, the court may direct that his property be sold.
 82. The duties and responsibilities that are expected of a manager of a property, include the general maintenance of the property, its realisation, management, protection, preservation and improvement, the collection of rents and profits, and their disposal, in addition to the execution of documents and the power to bring and defend suits involving the property.
 83. The concept of receivership was developed in the English Chancery Courts as an equitable remedy, where receivers were appointed to protect real property, in circumstances when its actual owners were unable or unwilling to do so.
 84. The power of appointment of managers and receivers by the courts is a statutory power bestowed to the courts as part of their inherent jurisdiction.
 85. Order 41 of the Civil procedure Rules has borrowed heavily from the England's Landlords and Tenants Act, 1987.
 86. Under this Act, the Leasehold Valuation Tribunals (LVTs), subject to an application from tenants of leased flats, may appoint managers to assume responsibility for the management of premises

- where landlords have failed to discharge their obligations under the terms of the leases.
87. There used to be a distinction between receivers and managers: Receivers, historically, would be charged with simply receiving rents and other income and paying ascertained outgoings but not managing the property, strictly speaking; Managers were generally given a wider range of duties and responsibilities; The England's Landlords and Tenants Act, 1987 refers to management as including the repair, maintenance or insurance of the premises, but is not limited to these functions. That distinction is however blurred under our legal regime.
 88. In most cases, the court's appointees will fulfill the role of both manager and receiver (being receiver-managers), depending on what is appropriate in the circumstances.
 89. Given the equitable nature of this remedy, it would appear that the circumstances that require the appointment of a receiver are largely up to the discretion of the court in cases where the owner of a property is unwilling or unable to exercise his duties as the owner, putting the property, and the rights of others with regards to the property, at risk.
 90. While the remedy of appointing a receiver by the court is intended to benefit all the parties, this remedy is understood, more often than not, as being extraordinary and somewhat harsh.
 91. The objective of receivership, when it comes to property, is to preserve it for the duration of the lawsuit, if the court has reason to believe that the property will be dissipated or removed from the jurisdiction of the court if such action is not taken. For example, if the property in dispute has deteriorated to the extent that emergency repairs are necessary, or if there is good reason to believe that the property will be sold, misused, wasted taken out of state or destroyed.
 92. The appointment of a receiver-manager may also be appropriate if it would seem that there is no one with a legal right to manage the property, as in this case, or if no mentally competent adult is entitled to hold it, as would be the case if a trustee of the property, being held for the benefit of a minor, were removed.
 93. The ultimate solution to this long standing dispute would be to register the sectional plan of the property pursuant to the provision of the Sectional Properties Act, 1987 and thereafter incorporate a corporation in which every apartment owner shall be a shareholder.
 94. Section 20 (2) of the Sectional Properties Act, 1987 provides the duties of such a corporation which includes; maintaining of a fund for administrative expenses sufficient for the control, management and administration of the common property and keeping in a state of good and serviceable repair and properly maintain the immovable property of the corporation.
 95. The Act provides that such a corporation shall have a board of management that shall be constituted as provided for by the by-laws of the corporation. The board shall in turn appoint an Institutional Manager who must be either an accountant, a person registered as an agent or an advocate.
 96. Other than the sixty six Plaintiffs, this court was not told the position of the remaining tenants viz- a- viz the running of Oasis Village. The apartment owners did not carry out elections to elect whoever they were comfortable with to run the affairs of the Oasis Village as ordered by the court, and if they did, such a report was never submitted to the court.
 97. In the absence of a report of the election of the persons to run the affairs of the Village, in the interim as ordered by the court and due to the continued silence from the remaining apartment owners, I can only arrive at one conclusion, that the Applicants, namely Brunella Panini, Maurizio Turato and Paola Ippolito are the representatives of the apartment owners of Oasis Village, and I hereby so order.
 98. In the circumstances, I allow the Plaintiff's Application dated 29th May, 2013 in the following terms:
 - a. **The Honourable Court hereby appoints Brunella Panini, Maurizio Turato and Paola Ippolito as the Receiver-Managers of Polcino Oasis Village, the development erected on all that piece of land known as L.R. NO.1862 situated along Silver-sands Road, in Malindi within Kilifi District, within the Republic of Kenya, for an interim period of six (6) Months.**
 - b. **The said Brunella Panini, Maurizio Turato and Paola Ippolito be and are hereby authorised to jointly 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 the said service charges, rent and profits solely for the benefit of Polcino Oasis Village, and to employ and terminate the employ of workers, agents and independent**

- contractors and third parties retained for provision of goods and services relating to Polcino Oasis Village.
- c. For the better management of the Polcino Oasis Village, the said Brunella Panini, Maurizio Turato and Paola Ippolito do open a bank account to be operated jointly and present to this Honourable Court duly audited management accounts on or before the expiry of six (6) months from the date of their appointment.
 - d. This Honourable Court hereby removes Cosimo Polcino and Thomas Hinzano Ngonyo 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 Limited and Polcino Oasis Village including but not limited to keys, rubber stamps and the Company Seal of Polcino Oasis Limited to Brunella Panini, Maurizio Turato and Paola Ippolito.
 - e. The three receiver-managers do execute and file an undertaking in this court for the faithful management of the affairs of Polcino Oasis Limited and the Polcino Oasis Village and signify their willingness to indemnify the beneficiaries of the Estate of the late Nicola Polcino for any loss that may occur.
 - f. That the costs of this application be borne by Polcino Oasis Limited

Dated and delivered in Malindi this 9th day of July, 2013.

O. A. ANGOTE

JUDGE