



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

Civil Suit 8 of 2012

KUTA KIRIGINZA LUNGANZI ..... 1<sup>ST</sup> PLAINTIFF

DERI KIRINGI LUNGANZI .....2<sup>ND</sup> PLAINTIFF

-VS-

PANDE MKAUMA PANDE .....1<sup>ST</sup> DEFENDANT

KANTI JETTA RAMJI .....2<sup>ND</sup> DEFENDANT

**RULING**

1. I have now carefully read the written submissions of the 2<sup>nd</sup> defendant and those of the plaintiff with regard to the preliminary objection filed on 16<sup>th</sup> March, 2012 on behalf of the 2<sup>nd</sup> defendant. I have also perused the pleadings on record.
2. Because of the decision I have arrived at, I do not consider it prudent at this stage of the proceedings to restate the submissions of the parties or make any findings with respect to the question whether the decision of the Minister of Lands made pursuant to Section 29 of the Land Adjudication Act can be challenged by way of an ordinary suit. Suffice to say that counsel for the Plaintiff has raised a counter argument to the effect that there is some ambiguity in the matter because section 29 appears to conflict with section 30 of the Land Adjudication Act.
3. Secondly, there appears to be a dispute on the question whether the 1<sup>st</sup> defendant sold off only his portion of the land awarded to him through the Minister's decision, or the entire piece which included the plaintiff's portion. Thus, applying the ratio decidendi in the celebrated case of **MUKHISA BISCUITS CO. V WESTEND DISTRIBUTORS CO. [1969] EA 469**, I am of the considered view that the suit ought to be sustained to go for trial, in the interest of doing justice in this long-running dispute.
4. The 2<sup>nd</sup> defendant will be at liberty to raise the same legal objections, either during the trial, after relevant evidence has been taken or at the close of trial.

I make no orders as to costs.

Delivered and signed at Malindi this 2<sup>nd</sup> day of **July, 2012** in the presence of Mr. Oloo for defendant and Mr. Obaga holding brief for Mr. Mutugi for the plaintiff. Court clerk - Evans/Leah.

**C. W. MEOLI**  
**JUDGE**