



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO. 265 OF 2016(O.S)**

**MBETSA SADI MUNGA**

**BENSON LEWA TSUMA**

**CHRISTOPHER EMMANUEL**

**KALU KITHI & 87 OTHERS.....APPLICANTS**

**AND**

**PETER KAHI**

**ANTHONY MUTHUSI**

**KEMU-SALT PACKERS PRODUCTIONS LTD IN RECEIVERSHIP**

**CHIEF LAND REGISTRAR,**

**COAST REGISTRY.....DEFENDANTS/RESPONDENTS**

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 172 OF 2014(O.S)**

**(FORMERLY MOMBASA HCCC NO. 264 OF 2001(O.S)**

**MBETSA SADI MUNGA**

**BENSON LEWA TSUMA**

**CHRISTOPHER EMMANUEL**

**KALU KITHI & 87 OTHERS.....APPLICANTS**

**AND**

**COMMISSIONER OF LANDS**

**SULEIMAN ENTERPRISES LIMITED**

**KEMU-SALT PACKERS PRODUCTION**

**JUDGMENT**

**BACKGROUND**

1. This suit was originally filed at the High Court in Mombasa on 31<sup>st</sup> October 2001. By an Originating Summons dated the same day, Mbetsa Sadi Munga, Benson Lewa Tsuma, Christopher Emmanuel Kalu Kithi and 87 Others (the Plaintiffs) urged the Court to determine a total of 17 questions framed as follows: -

*1. Are the Applicants properties located in Kanagoni, Garithe, Bundasaga and Mutoroni areas of Kurawa Sub-Location, Garsen Division, Tana River District and also located in Marereni Sub-Location, Magarini Division Malindi District(the suit premises) which premises currently comprise part of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' interests in land registered in the Coast Registry of Titles as CR Nos. 28301, 28443 and 2885(part of Government Land and have they ever been lawfully described as Government Land within the meaning as defined in the Government Lands Act Cap 280, Laws of Kenya)?*

*2. Are the Applicants entitled to a declaration that the WaGiriama, Wachoonyi, Wasaani and Wakauma peoples are entitled as against the whole world to possession, occupation, use and enjoyment of the suit premises?*

*3. Are the suit premises Trust Land and have they ever been lawfully described as Trust Land as that term is defined in the Constitution of Kenya?*

*4. If the answer to question 3 is yes, have the suit premises as part and parcel of Trust land been vested in the Kilifi County Council or the Malindi County Council or the Tana River County Council?*

*5. Should the grants registered at the Coast Registry of Titles under:*

*(i) CR No. 28301 dated 8<sup>th</sup> May 1996 having a land area of 1440 Ha, LR No. 21918, Land Survey Plan No. 204514 and issued in the name of the 2<sup>nd</sup> Defendant;*

*(ii) CR No. 28443 dated 1<sup>st</sup> May 1996 having a land area of 8197 Ha, LR No. 21983, Land Survey Plan No. 205654 and issued in the name of the 2<sup>nd</sup> Defendant; and*

*(iii) CR No. 28851 dated 1<sup>st</sup> May 1996 having a land area of 1575 Ha, LR No. 22138, Land Survey Plan No. 207077 and issued in the name of the 3<sup>rd</sup> Defendant be called and expunged from the Coast Registry of Titles?*

*6. Has the suit premises constitutionally vested in the Malindi and/or Kilifi and/or Tana River County Councils in accordance with the provisions of Section 114 (1) (C) of the Kenya Constitution on trust and to the use "of the persons ordinarily resident on that land"?*

*7. Were the suit premises lawfully and constitutionally transferred by the Kilifi and/or Malindi and/or Tana River County Councils to the 1<sup>st</sup> Defendants pursuant to the provisions of Section 118(1) of the Kenya Constitution?*

*8. Were the suit premises lawfully and constitutionally transferred by the 1<sup>st</sup> Defendants pursuant to the express provisions of Sections 118(4) (b) of the Kenya Constitution?*

*9. Was there any consultation by the President of the Republic of Kenya with the Malindi and/or Kilifi and/or Tana River County Councils?*

*10. If the answer to 9 is yes, was such consultation lawfully and regularly carried out with proper records?*

*11. If the answer to (10) is yes, do these proper records show that there were constitutionally lawful and valid reasons for the compulsory setting apart of the suit premises by the 1<sup>st</sup> Defendant?*

*12. Do the facts and law in this case demonstrate that the agriculturally productive portion of the suit premises (containing agriculturally productive land and is situate well away from the Indian Ocean) should be reasonably utilized for the purposes designated in the Certificate of Titles allegedly issued by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.*

*13. Do the facts in the case show that great environmental degradation will be caused by the activities of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to extract salt in inland areas (some approximately 6.5 km from the Coastline)?*

*14. If the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are permitted to pump sea water into the suit premises, will permanent and irreversible damage be caused to the suit premises?*

*15. If the answer to 14 is yes, will there be a loss of inter-generational equity by the Applicants and their families?*

**16. If the answers to 12, 13, 14 and 15 are yes, should Section 119 of the Constitution of Kenya be applied by the 1<sup>st</sup> Defendant to effect substantial justice and equity between the parties? And**

**17. Do the actions of the 1<sup>st</sup> Defendant show proportionality given that the Applicant and the persons they represent number about 6,500 persons while the 1<sup>st</sup> Defendants action have unlawfully granted the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants three title deeds that dispossess 6500 persons in favour of two legal persons who now own 11,212 Ha of land?**

2. The Originating Summons is supported by an affidavit sworn by the 3<sup>rd</sup> Plaintiff Christopher Emmanuel Kalu Kithi to which is annexed the names, identity card Numbers and the signatures of the 87 other Plaintiffs said to be part of the suit. Also annexed are copies of the survey map of the suit premises, copies of the mentioned grants and the official searches relating to the said grants. It names the Commissioners of Land, M/s Suleiman Enterprises Ltd and M/s Kemu Salt Packers Production Ltd as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively.

3. The Plaintiffs are described as farmers and hunters/gatherers from the WaGiriama, WaSanya, Wachonyi and Wakauma "Nations" which nations are said to have lived in the suit premises from time immemorial. The Plaintiffs aver that they have all along grown coconut, mkoma, mango, cashew nuts, maize, cow peas and other seasonal legumes for human consumption within the suit premises. They have also constructed houses, some with corrugated iron sheet roofs at various locations within the suit premises.

4. It is the Plaintiffs' case that in or about 1998, they found that the 1<sup>st</sup> Respondent had issued the cited grants to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants over the suit premises. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants thereafter began utilizing the legal process to obtain vacant possession of the premises by causing various arms of the Kenya Government to arrest, intimidate, evict and harass the Plaintiffs and other persons who are members of the subject "nations" residing within the premises.

5. The Plaintiffs aver that even during the colonial times, they were recognised as the owners of the premises and no procedures were ever instituted by the Government to compulsorily acquire the premises. It is therefore their case that as a result of the actions of the Defendants herein they have suffered false imprisonment, damage to property, loss, destruction of property, family displacements and have been rendered homeless and subjected to poverty within their own ancestral lands.

6. The Plaintiffs assert that they are the rightful proprietors of the suit premises by virtue of customary law rights and possession of the same prior to 14<sup>th</sup> December 1895. They aver that the Government of Kenya has no title to the suit premises as the same have not been Government Land and the 1<sup>st</sup> Respondent has therefore acted illegally in granting titles to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

7. In the alternative the Plaintiffs assert that if the suit premises is Trust Land, then the same is yet to constitutionally vest in the Kilifi/Malindi/Tana River County Councils in accordance with the provisions of Section 114(1) (C) of the Constitution. They accuse the said Councils of unlawfully and unconstitutionally transferring the suit premises to the 1<sup>st</sup> Defendant contrary to Section 118(1) of the Constitution.

8. The Defendants are however opposed to the orders sought by the Plaintiffs. By a Replying Affidavit sworn and filed on 4<sup>th</sup> March 2005 on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, by their Director Hassan Zubeidi Nur, they assert that the 2<sup>nd</sup> Defendant is the registered proprietor of all that piece of land known as LR No. 21918 measuring 1440 Ha situated in Tana River District as well as LR No. 21983 measuring 819.7 Ha situated North of Malindi in Kilifi District. They further assert that the 3<sup>rd</sup> Defendant is the registered proprietor of LR No. 22138 measuring 1575 Ha situated North of Malindi within Kilifi District.

9. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants assert that the Plaintiffs claim that they have been in possession of the suit premises from time immemorial cannot be true on account of their own annexures which show that they emigrated to the area from around the year 1970.

10. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants further assert that customary law has no application in the instant suit as any claim based thereon will be inconsistent with Section 75 of (repealed) the Constitution and the Registration of Titles Act Cap 281 Laws of Kenya which bestow upon the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants the sanctity of title. It is further the Defendants' case that even if the Plaintiffs had rights to the suit properties under customary law, those rights were extinguished when the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants became the registered proprietors of the suit properties.

11. The Defendants aver that all the squatters who were genuinely resident on the suit properties prior to their arrival voluntarily agreed to vacate the land and did in fact vacate the same and as a gesture of good will, they were all compensated for their crops and houses.

12. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants further aver that being the registered proprietors of the suit properties, they have every right in law to deal with the said properties in any manner they deem appropriate and assert that the Originating Summons herein is incompetent and contravenes the express provisions of Sections 75 and 84 of the (repealed) Constitution and hence ought to be dismissed with costs.

13. It is further their case that they have made substantial developments on the suit premises in excess of Kshs 2 Billion and have secured financing which is secured by registered charges over the properties. Those developments include a salt manufacturing plant, salt works and machinery, salt refinery and several buildings. It is therefore the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' case that if the Orders sought in the Originating Summons were to be granted, they stand to suffer substantial loss and hardship.

14. The 1<sup>st</sup> Defendant-The Commissioner of Lands did not file a response to the summons although the Honourable the Attorney General entered appearance on their behalf and the Court later allowed the Land Registrar to testify in these proceedings.

15. On 30<sup>th</sup> September 2014, the matter was transferred from Mombasa by the Honourable Justice S. Mukunya to the Malindi ELC for hearing and disposal and the trial subsequently commenced before the Honourable Justice Angote on 16<sup>th</sup> July 2015.

### **THE PLAINTIFFS' CASE**

16. In addition to their Affidavit and Statements filed herein, the Plaintiffs called two witnesses who gave viva voce evidence in support of their case.

17. PW1-Christopher Emmanuel Kalu Kithi is the 3<sup>rd</sup> Plaintiff herein and the deponent of the Affidavit in Support of the Originating Summons. He told the Court that the 2<sup>nd</sup> Defendant was allocated a portion of land in Magarini where he used to live in Fundise Location with his father, brothers and sisters in a cultural homestead built as per the traditions of the Giriama. His father Karisa who died in 2004 was also a Plaintiff in this case.

18. PW1 told the Court that sometime in 2001, the Area Chief, some Police Officers and the representatives of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants went to his homestead and told him that the land had been sold to the Defendants. PW1 was surprised and refused to vacate as he had occupied the land from time immemorial. There were however more than 25 Police Officers and they proceeded to destroy PW1's houses and coconut trees with bulldozers. PW1 was also arrested and was arraigned in court charged with trespass. When they filed this case, the Criminal Cases were stayed and PW1 went back to the land where he lives to-date.

19. PW2- Mbedza Sadi Munga is the 1<sup>st</sup> Plaintiff herein. She told the Court that they had a meeting with the Area Chief in 2000. The Chief told them that the land they live in in Kanagoni belongs to the Salt Companies. Later in 2001, the Chief came with an agent of the Defendants' and gave them two weeks to vacate the land. After the two weeks, their houses were demolished and the crops were destroyed. PW2 and her colleagues then came to Court and obtained a stay order. She still lives on the land.

### **THE DEFENCE CASE**

20. On their part the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants called one witness in support of their case.

21. DW1- Hassan Ahmed Zubeidi is a Director of both the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. He told the Court that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are the registered owners of the three properties in dispute. When they took over the running of the Companies, they had already been registered as the owners of the parcels of land and had charged them to various banks. He told the Court that the Banks involved must have done due diligence on the parcels of land measuring 9000 acres before they charged the three properties.

22. DW1 told the Court that the land in question is dry and salty and that the same can only be used for salt extraction. When they took over the land, the few people who were residing thereon had been compensated and DW1 did not understand the basis of the Plaintiffs' complaint as this was Government land before and it was that same Government that had allocated the land to them.

23. The 1<sup>st</sup> Defendant called two witnesses after the Court issued summons on the request of the Attorney General.

24. DW2-Dick Msafari is the Registrar of Titles, Coast Region Registry. He told the Court that the registered owner of CR No. 28851 is the 3<sup>rd</sup> Defendant who were registered as owners of the land on 10<sup>th</sup> September 1996. CR No. 28443 is registered in the name of the 2<sup>nd</sup> Defendant.

25. DW3-Silas Kiogora Mburugu is the Principal Land Officer at the National Land Commission(NLC). He told the Court that the National Land Commission is the Successor in title to the 1<sup>st</sup> Defendant herein.

26. DW3 testified that LR Nos. 21918, 21983 and 22138 are situated within Ngomeni and Kulawa areas that fall at the boundary of Kilifi and Tana River Counties. The suit properties fall within the ten-mile Coastal Strip that was under the Sultan of Zanzibar and were ceded to the Kenyan Government upon attainment of independence.

27. DW3 further told the Court that prior to the promulgation of the Constitution of Kenya 2010, all Government Land was administered by the Commissioner of Lands under delegated powers of the President. In that regard, the Commissioner allocated the suit properties to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for salt mining.

### **ANALYSIS AND DETERMINATION**

28. I have perused and considered the pleadings, the Affidavits and the Statement filed by various witnesses herein. I have equally considered the oral testimonies of the witnesses who testified in this matter, the evidence adduced and the submissions and authorities to which I was referred by the Learned Counsels for the respective parties.

29. The Plaintiffs claim is anchored under Sections 75 and 84 of the repealed Constitution. The 90 or so Claimants base their claim on what they assert to be customary and traditional land rights of WaGiriama, Wasanya, WaChonyi and WaKauma peoples who live on the three disputed parcels of land now registered in the names of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

30. The basis of the Plaintiffs case is that they have lived on the suit premises since time immemorial, that they exploited the land for cultivation and rearing livestock and that they had always developed and taken care of the land knowing it to be their only home. The suit

premises comprise vast pieces of land situated within Ngomeni and Kulawa areas that fall on the boundary of what is now Kilifi and Tana River Counties.

31. According to the Plaintiffs, sometime in the year 1998 they came to learn that the 1<sup>st</sup> Respondent had issued the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents with Grants for the suit premises after the Defendants started harassing them to leave the suit premises. It is their case that those premises belong to them by virtue of customary law rights and possession of the same prior to 14<sup>th</sup> December 1895 and that the Government of the Republic of Kenya had no title to the suit premises which it could grant to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the manner it purported to do.

32. The suit premises are listed in the Originating Summons as LR Nos 21918, 21983 and 22138. According to the material placed before me by the Defendants, LR No. 21918 measures 1440 Ha and is registered in the name of the 2<sup>nd</sup> Defendant; LR No. 21983 measures 819.7 Ha and is also registered in the name of the 2<sup>nd</sup> Defendant while LR No. 22138 measures a total of 1575 Ha and is registered in the name of the 3<sup>rd</sup> Defendant. The total area registered in the name of the two Defendants is therefore 3,834.7 Ha.

33. The Plaintiffs have urged this Court to determine whether indeed the land belonged to the Government or to the tribes or nations mentioned in their application. They also urge the Court to determine whether the same were or are Trust Land as defined in the repealed Constitution and if so whether the said lands had been properly vested in the predecessors of the Kilifi and Tana River Counties. They also want this Court to determine if the land concerned has been vested in accordance with Section 114(1) (C) of the repealed Constitution, in the interest and to the use of the persons ordinarily resident on that land.

34. In regard to how the grants for the suit premises came to be issued to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, DW3-Silas Kiogora Mburugu was a key witness. He told the Court that the National Land Commission(NLC) wherein he works as the Principal Land Officer, was the Successor of the Commissioner of Lands sued herein as the 1<sup>st</sup> Defendant.

35. DW3 conceded that the suit properties fell within the ten-mile Coastal Strip that was initially administered by the Sultan of Zanzibar as stated by the Plaintiffs. It was however his case that contrary to the Plaintiffs' claim the land within that strip was ceded to the Government of the Republic of Kenya at independence and hence became part and parcel of Government land.

36. As it were Government land as was defined under the Government Land Act, Cap 280, Laws of Kenya (now repealed) defined Government Land at Section 2 thereof as follows: -

***“Government land” means land for the time being vested in the Government by virtue of Section 204 and 205 of the Constitution (as contained in Schedule 2 to the Kenya Independence Order in Council 1963), and Sections 21, 22, 25 and 26 of the Constitution of Kenya(Amendment) Act, 1964.”***

37. I have perused Schedule 2 of the said Kenya Independence Order in Council, 1963. Section 204 of part 2 thereof dealing with land tenure system provides as follows: -

***“Subject to the provisions of Sections 205 and 208 of this Constitution, all estates, interests and rights in or over land situated in a Region that on 31<sup>st</sup> May 1963, were vested in Her Majesty, or in the Governor of the former Colony and Protectorate of Kenya on behalf of Her Majesty, in right of the Government of the former Colony and Protectorate shall be deemed to have vested in the Region on 1<sup>st</sup> June 1963 and, except in so far as they were lawfully granted or disposed of to some other person or authority before 12<sup>th</sup> December 1963 or were otherwise lawfully acquired by some other person or authority before 12<sup>th</sup> December 1963, shall be deemed to have re-vested in the Region on 12<sup>th</sup> December 1963.”***

38. On the other hand, Section 205 of the Order in Council provides that: -

***(1) All estates, interests and rights in or over land situated in the Nairobi Area that on 31<sup>st</sup> May 1963 (a) were vested in Her Majesty, or in the Governor of the former Colony and Protectorate of Kenya on behalf of Her Majesty, in right of the Government of the former Colony and Protectorate; or (b) were registered in the name of the Trust Land Board under the Land Registration (Special Areas) Ordinance(s).***

***Shall be deemed to have on 1<sup>st</sup> June 1963 or, as the case may be, to have re-vested on 1<sup>st</sup> June 1963 in the Governor of the former Colony and Protectorate on behalf of Her Majesty in right of the Government of the former Colony and Protectorate.***

***(2) There shall also be deemed to have vested in the Governor of the former Colony and Protectorate of Kenya on behalf of Her Majesty in right of the Government of the former Colony and Protectorate on 1<sup>st</sup> June, 1963, such estates, interests or rights in or over land situated within a Region as the Governor may have designated in that behalf in exercise of powers conferred on him by or under the Kenya Order in Council 1963.***

***(3) All estates, interests or rights in or over land that, on 11<sup>th</sup> December 1963, were in the Governor of the former Colony and Protectorate of Kenya on behalf of Her Majesty in right of the Governor of the former Colony and Protectorate shall be deemed to have vested on 12<sup>th</sup> December 1963 in the Governor General on behalf of Her Majesty in right of the Government of Kenya.”***

39. In this regard, I am in agreement with the submissions of Ms Munyony Learned State Counsel appearing for the 1<sup>st</sup> Defendant that following agreements between Kenya and the Sultan of Zanzibar, the 10 mile Coastal Strip was incorporated as part of Kenya and by dint of Sections 204 and 205 of the Kenya Order in Council 1963 aforesaid, became part of government land at independence in 1963.

40. Dealing with a similar issue *in Rodgers Mwamboje –vs- Douglas Mwambonje (2014) eKLR*, Angote J observed and I concur as follows:

*“79. The Kenya Protectorate strip before independence, otherwise known as the ten-mile Coastal strip, is a strip of land between the sea and an imaginary line ten miles inland from the (Indian Ocean) high water mark.*

*80. The British Government, by virtue of the 1895 Agreement with the Sultan of Zanzibar administered the Coastal strip and it included parts of Lamu, Tana River, Malindi, Kilifi, Mombasa and Kwale Counties. The British administration controlled only the Crown(Government) land but without prejudice to the sovereignty of the Sultan over the strip. For convenience, the Coastal Strip was administered by (the) British with the rest of the colony as an administrative unit.*

*84. Before independence, the government land in the Coastal strip, as documented in Sessional Paper No. 9 of 1961 was occupied by Africans, otherwise known as squatters. The land however remained government land at independence and the Government started giving to the occupants(squatters) title deeds after declaring such areas settlement schemes.”*

41. Referring to that same Policy, DW3 told to this Court that the Government could allocate first and second row beach plots for various uses including but not limited to residential purposes, commercial and/or industrial use. It is in line with that policy, that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were allocated the suit premises for purposes of salt mining.

42. Having found that the suit premises constituted Government Land within the provisions of the Government Land Act, the Plaintiffs claim that those premises belonged to them by virtue of customary law rights and possession of the land from 1895 cannot be sustained.

43. First and foremost, from the material placed before me, there was nothing to suggest that the Plaintiffs and/or their predecessors had been on the land prior to the 1970s. In all their statutory Declarations as filed herein, each and everyone of them claim to have settled in the areas they claim in the 1970s and not on 14<sup>th</sup> December 1895 as pleaded in their Originating Summons.

44. As it were the Trust Land Act came into force in 1939 to make provision for special areas and communal reserves as described under Section 114 of the repealed Constitution. The Coastal ten mile strip as I have found was placed under the Sovereignty of the Sultan as per the 1895 Agreement and that land was not subject to the Trust Land Act.

45. In their testimonies before the Court, PW1 and PW2 on behalf of the other Plaintiffs told the Court that they reside on the land on the basis of the customary law of their nations. On cross examination PW1 told the Court that he was not aware that the land in dispute was Government land. I did not however think that the Plaintiffs were at liberty to decide on their own land tenure system and to refuse to recognize that which had been decreed under various Government Policies and legislation.

46. As the Court observed in *Federation of Women Lawyers (FIDA Kenya) & 4 Others –vs- Attorney General & 2 Others (2016) Eklr: -*

*“65. From the day of the Proclamation of the Protectorate in 1895 until when the Land Title Ordinance of 1908 was enacted, there was no formal set of land laws at the Coast.*

*68. The Land Titles Ordinance required all persons who claimed interest in land along the Coastal strip to lodge their claims with the Recorder of Titles. Any dispute that arose from those claims was dealt with by the Land Registration Court (see Section 15 of the LTA).*

*69. Where the Recorder of Titles was satisfied that the claim was valid, a Certificate of Ownership would issue to the Claimant.*

*70. Section 17 of the Land Titles Act (repealed) provides that all land situated in an area to which the Act applies(in) which no claim for a Certificate of Ownership has been made shall be deemed to be Government land. That provision explains why land which is not private land in the Coastal region is government land as opposed to Trust Land.”*

47. As it were, despite their verbal claim that they have been on the land since 1895, the Plaintiffs have not shown that they or their ancestors or predecessors in title presented any claim to the Recorder of Title as required under Section 15 of the Land Titles Act (now repealed).

48. While Section 75 of the repealed Constitution in line with Article 40 of the current Constitution guarantees the right to own property, the Plaintiffs have neither persuaded me that they acquired the property and/or that it was unlawfully acquired from them before it was granted to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

49. Similarly while the Plaintiffs submitted that the allocation of the land and salt mining activities of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are in breach of the principles set out in the Environment Management and Coordination Act No. 8 of 1999, the Plaintiffs did not lay any basis or provide any expert report to support the assertion that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants activities are deleterious to the environment. Indeed from a perusal of the record, the Plaintiffs were called upon by the Court a number of times to enjoin the National Environment Management Authority(NEMA) to these proceedings but they did not do so. This Court is therefore unable to act on the Plaintiffs assertions which as it were appear to me to be merely anchored on their own speculation and prejudice against the Defendants.

50. Accordingly, I did not find any merit in the Plaintiffs suit. The same is dismissed.

51. Given the Constitutional nature of the issues that were raised, herein each party shall bear their own costs.

Dated, signed and delivered at Malindi this 20<sup>th</sup> day of September, 2019.

J.O. OLOLA

JUDGE