



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 105 OF 2018 (OS)

DUCI ANNALISA.....	1 ST APPLICANT
GRIMAUDDO GIUSEPPINA.....	2 ND APPLICANT
NERINO VAVASSORI.....	3 RD APPLICANT
GIFFUNI MARIA.....	4 TH APPLICANT
RIZZI LEOPOLDO.....	5 TH APPLICANT
RIZZI GIOVANNI.....	6 TH APPLICANT
QUADRI ELIZABETTA.....	7 TH APPLICANT
QUADRI ANTONIETTA.....	8 TH APPLICANT
RONGAGALLO FRANCA.....	9 TH APPLICANT
VANOTTI ELENA.....	10 TH APPLICANT
ANGELA NJERI MWAI.....	11 TH APPLICANT
PAULINE WANGUI MWAI.....	12 TH APPLICANT
CHIORAZZO FRANCESCO.....	13 TH APPLICANT
CAPOZZOLO ELENA.....	14 TH APPLICANT
GALESSI FERRUCIO.....	15 TH APPLICANT
BELLANI TERESA.....	16 TH APPLICANT
GALESSI LAURA.....	17 TH APPLICANT
GALESSI CRISTIANO.....	18 TH APPLICANT
PAGANO ANNAMARIA.....	19 TH APPLICANT
DESANTIS TONINO.....	20 TH APPLICANT
TADDEUCCI NORA.....	21 ST APPLICANT

RENZO FALCONE.....22ND APPLICANT
COCUZZA CARMELINA.....23RD APPLICANT
DAVIDE CRISTIANO.....24TH APPLICANT
D'ARCANGELO CARLO.....25TH APPLICANT
MBUKABU LIMITED.....26TH APPLICANT
COLOSIO GIUSEPPE.....27TH APPLICANT
COLOSIO ORNELLA.....28TH APPLICANT
DE BIAGGI MARA.....29TH APPLICANT
NESTI MARIA RAFFAELA.....30TH APPLICANT
CAFFO ANTONIO.....31ST APPLICANT
CONSIGLIO CONCETTA.....32ND APPLICANT
HARBOR KEY COTTAGE MANAGEMENT LIMITED.....33RD APPLICANT

VERSUS

ZUBEDI BEACH PROPERTIES LIMITED.....RESPONDENTS

JUDGMENT

1. By this Originating Summons dated and filed herein on 10th May, 2018, and brought under Section 64 of the Land Act, 2012, the 33 Applicants herein pray for the following orders: -

1. That the Respondent herein do execute a transfer of the reversionary leasehold interest in Land Reference No. Portion No. 9699 (Original No. 1863/1) measuring 1.223 Ha which said property is delineated on land survey Plan No. 193175 CR No. 28254 in favour of the 33rd Applicant and to register and/or cause the said transfer to be registered in the name of the 33rd Applicant within 14 days thereof.

2. That in default of execution of the said documents by the Respondent, the Honourable Court be pleased to direct the Deputy Registrar of the Environment and Land Court of Kenya to effect the transfer of reversionary interest aforesaid to the 33rd applicant.

3. That the Respondent and/or its Advocates do surrender the original indentures to the Applicants and the Original Certificate of Title in default the Registrar be ordered to issue a provisional title.

4. That the Registrar of Lands be and is hereby directed to register the said reversionary interest in the name of the 33rd Applicant without the production of the Original indenture and to effect such other entries in the Register of titles to land as would give effect to the Court's Orders herein and issue provisional certificate.

5. That this Honourable Court be pleased to make such other and/or further orders as it may deem expedient herein.

6. That the costs of this application be borne by the Respondent.

2. The Originating Summons is supported by an affidavit sworn by Duci Annalisa, the 1st Applicant herein and is premised on the grounds: -

i) That the Respondent is the registered proprietor as Lessee for a term of 99 years from 1st December, 1982 of the said parcel of land,

ii) That the Applicants are registered proprietors as sub-leases of villas and apartments from the Respondent;

iii) That pursuant to 33 valid sub-leases, the 1st to 19th Applicants are registered as proprietors as sub-lessees of villas/cottages from the Respondent;

iv) That the 33rd Applicant is the management company in charge of managing the cottages/villas where each villa owner has shares over the said company;

v) That the provisions and conditions of all the sub-leases referred to above are similar save for the terms or durations granted thereby;

vi) That the Respondent has no interest on the reversionary interest as all the 33 villas and the common areas have all been sold to the Applicants;

vii) That the Respondent has lost interest on the suit property;

viii) That one of the directors of the Respondent passed on in 2014 and the whereabouts of the 2nd Director is unknown;

ix) That the Respondent has refused to transfer the reversionary interest in favour of the Applicant;

x) That the Respondent has refused to and/or neglected to render available the original certificate of title indentures CR 28254 to the Applicants to enable them register the reversionary interest in the suit property in favour of the 33rd Applicant; and

xi) That it is only fair and in the interest of justice that the prayers sought be granted.

3. Despite services of the summons, the Respondent Zubedi Beach Properties Ltd has neither entered appearance nor a reply to the same. Directions were thereafter given that the Summons proceeds by way of Affidavit evidence.

4. I have accordingly perused and considered the Originating Summons and the Affidavit of Duci Annalisa in support thereof.

5. The dispute herein relates to land Portion No. 9699 (original No. 1863/1) Malindi measuring approximately 1.223 Ha. Erected thereon are some 33 villas and/or cottages. The Respondent Zubedi Beach Properties Ltd was the developer of the estate and apparently still holds the reversionary interest in the suit property, although all the villas and/or cottages have since been sold to the Applicants herein as sub-leases.

6. It is the Applicants' case that the provisions and conditions of all the sub-leases are similar save for the terms and durations granted thereby. It is further their case that the Respondent whom they accused of having lost interest in the suit property, has no interest in the reversionary interest as all the 33 villas and/or cottages as well as the common areas have all been sold to the Applicants.

7. From the material presented before me the set-up of the Applicants' villas is what is now commonly referred to in Kenya as a gated community estate. Where the housing unit in a gated community such as this one are developed by a single developer on a title held on leasehold basis, often the practice has been that the reversionary interest in the mother title is transferred to the management company upon sale of all the units. The Management Company ultimately becomes the lessor and manages the gated estate.

8. From the supporting Affidavit of Duci Annalisa the Applicants herein being the owners of the villas/cottages have now formed a management company by the name Harbour Key Cottage Management Ltd (the 33rd Applicant) in which each villa owner has shares. It is their case that the Respondent has lost interest in the suit property and/or refused to grant them the original certificate to enable them to register the reversionary interest in the suit property.

9. Despite service the Respondent neither entered appearance nor filed any response to the Applicants' accusations.

10. I think in the circumstances herein it is desirable that the Applicants be granted an opportunity to manage the affairs of their gated community in the manner in which they desire. Having formed a management company in tandem with modern practice, I am satisfied that there is merit in the Originating Summons.

11. Accordingly I allow the summons in terms of Prayers 1 to 4 thereof.

12. I make no order as to costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 22ND DAY OF NOVEMBER, 2019.

J.O. OLOLA

JUDGE