



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO.224 OF 2017**

**IN THE MATTER OF: THE REGISTRATION OF TITLES ACT (CAP 281(NOW REPEALED).**

**IN THE MATTER OF: THE LAND ACT 2012 NO. 6 OF 2012**

**IN THE MATTER OF: THE LAND REGISTRATION ACT NO. 3 OF 2012**

**IN THE MATTER OF: THE LIMITATION OF ACTIONS ACT (CAP 22 LAWS OF KENYA).**

**IN THE MATTER OF: THE CIVIL PROCEDURE RULES 2010**

**AND**

**IN THE MATTER OF: LAND REFERENCE PLOT SUBDIVISION NUMBER 470 (ORIGINAL NO. 5/3) SECTION III/MN (CR. 5770/19)**

**BETWEEN**

**1. MWALUNGO MWAMBUI MWALINGO**

**2. JULIUS JALO MWANDEGE**

**3. GABRIEL KARISA KENGA**

**4. MARY TUNJE MAKUPE**

**5. CHIKO MWALUNGO**

**6. DONALD DZOMBO as (Representatives of 538 Others.....PLAINTIFFS**

**VERSUS**

**HEDGE FARM LIMITED.....DEFENDANT**

**RULING**

1. By an Amended Summons dated 26<sup>th</sup> June 2018, the six Applicants herein suing as representatives of 538 others pray for an order that they be registered as absolute proprietors of all that parcel of land known as Subdivision No. 470 (Original No. 5/3 Section III/MN (CR 5770/19) instead of Hedge Farm Ltd for reasons that they have since become entitled to the ownership thereof by virtue of adverse possession.

2. Subsequently on 9<sup>th</sup> October 2018, the Applicants filed the Notice of Motion before me dated 1<sup>st</sup> October 2018 in which they pray for Orders:-

**1. That this Honourable Court be pleased to order that the Plaintiff named herein bring this suit against the Defendant in their own capacity and also as representing 538 Others.**

**2. That this Honourable Court be pleased to make any other or such other Orders as the Court may deem fit and just to grant.**

3. The application which is supported by an affidavit jointly sworn by the six Applicants is premised on the grounds:-

**a. That the suit is for adverse possession in respect of the suit property;**

**b. That the Plaintiffs named herein and 538 others are all occupants of the said parcel of land; and**

**c. That the Plaintiff have brought the suit on their own behalf and as representatives of 538 others as per the schedule annexed to the application and it is imperative and in the interest of justice that the Orders prayed for herein be granted.**

4. The Application is opposed. By Grounds of Opposition dated 3<sup>rd</sup> December 2018, Hedge Farm Ltd(the Defendant) opposes the Application on the grounds:-

**1. That the application is misconceived, bad in law and (an) abuse of the Court process.**

**2. That the application is incompetent and incurably defective as it does not meet the requirements for the grant of the orders sought.**

**3. That the Orders sought in the Plaintiff's application are contrary to the provisions of Order 1 Rule 8 of the Civil Procedure Rules.**

**4. That the Plaintiffs have no locus standi to institute the present suit on behalf of any other person or persons.**

**5. That the grounds set out in the application do not disclose any permission granted to the Plaintiffs to sue on behalf of any other person or persons.**

**6. That the application is a sham, prejudicial, frivolous and only intended to waste this Honourable Court's time; and**

**7. That it is in the interest of justice that the Plaintiff's application be dismissed with costs to the Respondent.**

5. I have perused and considered the application and the Grounds of Opposition. I have equally considered the Written Submissions filed herein by the Learned Advocates for the parties as well as the authorities to which I was referred.

6. The Application before me is expressed to be brought under the provisions of Order 1 Rule 8 of the Civil Procedure Rules. That Rule provides as follows:-

**"8 Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as representing all except one or more of them.**

**(2) The parties shall in such case give notice of the suit to all such persons either by personal service or , where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.**

**(3) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub rule (1) may apply to be made a party to such suit.**

7. In the Supporting Affidavit filed before me, the Applicants aver that they bring this suit as representatives of 538 other persons. While they have annexed a list of some 538 persons to the Affidavit, there is no evidence placed before me to demonstrate that they have issued any notice to any of the listed persons either individually or collectively.

8. As it were, the Applicants allege that they occupy the suit property together with the 538 listed persons. There is however no evidence that those persons are aware of these proceedings and/or have authorized the Applicants herein to file any suit on their behalf.

9. In the circumstances I did not find any merit in the application. The same is dismissed with costs to the Defendant/Respondent.

**Dated, signed and delivered at Malindi this 5<sup>th</sup> day of December, 2019.**

**J.O. OLOLA**

**JUDGE**