



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE NO 343 OF 2016**

MASHA BIRYA.....1<sup>ST</sup> PLAINTIFF/RESPONDENT

DANSON MWAGAMBO MWADZOYA.....2<sup>ND</sup> PLAINTIFF/RESPONDENT

MBURA EDWARD.....3<sup>RD</sup> PLAINTIFF/RESPONDENT

LEONARD MUBMO.....4<sup>TH</sup> PLAINTIFF/RESPONDENT

JOHNSTONE MADZENI MBIGO.....5<sup>TH</sup> PLAINTIFF/RESPONDENT

ALICE ANTHONY CHIKO & OTHERS.....6<sup>TH</sup> PLAINTIFF/RESPONDENT

**VERSUS**

VIPINGO ESTATE LIMITED.....1<sup>ST</sup> DEFENDANT/APPLICANT

REA VIPINGO PLANTATION LIMITED.....2<sup>ND</sup> DEFENDANT/APPLICANT

VIPINGO PROPERTIES.....3<sup>RD</sup> DEFENDANT/APPLICANT

CENTUM INVESTMENT

COMPANY LIMITED.....4<sup>TH</sup> DEFENDANT/APPLICANT

THE NATINAL LAND COMMISSION.....5<sup>TH</sup> DEFENDANT/APPLICANT

COUNTY GOVERNMENT OF KILIFI.....6<sup>TH</sup> DEFENDANT/APPLICANT

MINISRY OF LANDS.....7<sup>TH</sup> DEFENDANT/APPLICANT

THE ATTORNEY GENERAL.....8<sup>TH</sup> DEFENDANT/APPLICANT

MINISRY OF ROADS.....9<sup>TH</sup> DEFENDANT/APPLICANT

VIPINGO RIDGE LIMITED.....10<sup>TH</sup> DEFENDANT/APPLICANT

SUNSAIL TRADING LIMITED.....11<sup>TH</sup> DEFENDANT/APPLICANT

MOMBASA CEMETRY FACTORY.....12<sup>TH</sup> DEFENDANT/APPLICANT

HUSSEIN DAIRY.....13<sup>TH</sup> DEFENDANT/APPLICANT

KENYA RURAL

ROADS AUTHORITY.....14<sup>TH</sup> DEFENDANT/APPLICANT

NATIONAL ENVIRONMENTAL

MANAGEMENT AUTHORITY.....15<sup>TH</sup> DEFENDANT/APPLICANT

MJUMA COMMUNITY

DEVELOPMENT GROUP.....16<sup>TH</sup> DEFENDANT/APPLICANT

BAMBANI KILIO COMMUNITY

BASED ORGANISATION.....17<sup>TH</sup> DEFENDANT/APPLICANT

VIPINGO DEVELOPMENT LIMITED.....18<sup>TH</sup> DEFENDANT/APPLICANT

### RULING

1. By an Amended Complaint dated 14<sup>th</sup> September 2017, the 551 Plaintiffs pray for Judgment against the 18 Defendants jointly and severally as follows:-

- 1. A mandatory order compelling the Defendants to ensure compliance with all land rules, procedures and regulations and ensure proper settlement plans for settlement of the natives.**
- 2. An order directed towards the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup> and 18<sup>th</sup> Defendants to present their titles for investigation and if any irregularity be noticeable, the title be nullified, revoked and or cancelled outright.**
- 3. An order directed towards the Defendants, compelling them to install mechanisms and or exercise protective measures while conducting their day to day operations to such an extent as to ensure that their operations do not cause damage, pollution, contamination and or effect the health standards and conditions of the natives, their crops and livestock from the excessive gas produced emanating from chemicals.**
- 4. A prohibitory order directed towards the Defendants, prohibiting them from carrying out activities that interfere with public amenities such as schools, hospitals, children playgrounds, mosques, churches, access roads, dams, rivers and natural resources for utilization and the interest of the natives within the Settlement Scheme.**
- 5. Costs of this suit.**
- 6. Any other or further relief as this Honourable Court may deem just.**

2. Upon being served with the Suit Papers earlier on, the 10<sup>th</sup> and 11<sup>th</sup> Defendants had filed a Notice of Motion Application dated 11<sup>th</sup> March 2017 seeking orders that the Complaint filed herein be struck out against them for being unintelligible, incomprehensible, scandalous, frivolous and vexatious.

3. By a similar application dated 11<sup>th</sup> May 2017, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants similarly asked that the Suit be struck out for being ambiguous and unintelligible and for being prolix, contradictory and confusing. The 3<sup>rd</sup> Defendant has also filed a Replying Affidavit sworn on 8<sup>th</sup> May 2017 in support of the Application dated 11<sup>th</sup> March 2017.

4. It was contended by the Applicants that the two applications remained relevant as the Amended Complaint had not addressed the matters of concern raised in the two applications. On 14<sup>th</sup> November 2017, the Plaintiff on the orders of this Court filed Grounds of Opposition to the two Applications in similar fashion stating as follows:-

- 1. That the applications (are) mischievous, untenable and not brought in good faith as (they) seek to defeat the entire justice system.**
- 2. That the Applications (are) vexatious and only calculated at prejudicing, embarrassing delaying and/or otherwise denying a fair trial as provided under Article 50 of the Constitution of Kenya. The Plaintiffs/Respondents are entitled to an efficacious and comprehensive determination of the claim.**
- 3. That the Applications (are) a sham, lack merit and are unsuitable in the obtaining circumstances as Court records show that this Court itself granted leave to the Plaintiffs/Respondents to amend their pleadings, (only) for the Defendants to take the Court hostage and basically cripple the justice system.**

4. *That the suit raises issues for determination clearly evincing the fact that the suit herein raises issues worthy of consideration and the same cannot be washed away as being frivolous or vexatious or indeed (being) an abuse of the Court Process.*

5. *That the applications (are) a waste of judicial time as the Defendants intend to drag the matter further. Justice delayed is justice denied and if the Court is to entertain the application(s), it will amount to disregard of the rule of law as the application(s) only seeks to entrench the illegality and which is not within the purview of this Honourable Court.*

6. *That the applications (are) a mockery as (they) aim to occasion a travesty of justice.*

5. I have considered the two applications on the one hand and the Grounds of Opposition filed in response thereto. I have equally considered the submissions and the authorities placed before me by the Learned Counsels for the Parties herein.

6. Order 15 Rule 1 of the Civil Procedure Rules provides:-

*“At any stage of the proceedings a Court may order to be struck out or amended any pleading on the ground that-*

*a) It discloses no reasonable cause of action; or*

*b) It is scandalous, frivolous, or vexatious; or*

*c) It may prejudice, embarrass or delay the fair trial of the action; or*

*d) It is otherwise an abuse of the process of Court, and may order the suit to be stayed or dismissed or Judgment to be entered accordingly, as the case may be.*

7. What was frivolous and vexatious was defined by Ringera J in the case of *Trust Bank Limited –vs Amin Company Ltd & Another(2000) KLR 164* as follows:-

*“A pleading or an action is frivolous when it is without substance or groundless or fanciful and is vexatious when it lacks bona fides and is hopeless or offensive and tends to cause the opposite party unnecessary anxiety, trouble or expense. A pleading which tends to embarrass or delay fair trial is a pleading which is ambiguous or unintelligible or which states immaterial matters and raises irrelevant issues which may involve expenses which will prejudice fair trial of the action.”*

8. In support of the Prayers for Judgment to be issued against the Defendants as stated at paragraph 1 hereinabove, the Plaintiffs have filed a 54 paragraph Plaint in which they make all manner of allegations but with very little nexus if any, to the Defendants sued herein. After describing the Defendants in the first 19 paragraphs of the Plaint, they proceed as follows at paragraphs 20 to 23 of the Plaint:-

*“20. The all their material lives, the Plaintiff lived within Vipingo area whereby they used their local, long term names such as Jeuri, Mashogoni and Somanga villages due to the introduction of several visitors such as Chuba Moses Mohamed, Arab Settlers and Germany Settler who might happened to be the first person to register the Kuruwito Sisal Estate Company back in or at around 1910 who came and introduced himself and his intention for the sisal plantations he informed our elders that he had been on that farming for more than 10 years since he was moving out where he had his plantation at Nyali areas situated within Mombasa County.*

*21. As from that era we have received several challenges in which we even received some other visitors but they happened to be slaves from other parts of Africa such as the Makonde and the other tribes within the country are the Luhya and Luo who really faced a hard time working on the suit premises and at that moment the Africans whom were turned to be Muslims were treated differently from the others.*

*22. Since of high resistance from our communities the mentioned visitors became friends with or Chief offices where they get protected as serious investors and so that become the foundation over the construction of Kijipwa Police Station in order to protect their properties just as such as it happened in Kisauni their Kisauni Police Station which was situated at the currently around the junction which enters Kanisa Maitha road opposite Kisauni Member of Parliament office was moved to Nyali Police Station for the purposes of protecting the investors interest in Nyali area and as from that end many of us relaxed to be taken to Mtangani (former Malindi Law Court) after so many processes and their aims were to protect the 1<sup>st</sup> Defendant and his properties before he sold them to his friends.*

*23. The first person who took our community land were the investors during the colonial era since the colonial government never wanted the prosperity of the other citizens and so the Chiefs Offices were too strong to make sure that each and everything they plan on behalf of their master has accord to their plans and interest, and then the second grabber came during the independence and transition period where by the Black in power tried to ensure that they have robed the investors land(any land belonged to an Indian or Asian) for themselves we had the former Cabinet Minister, friends to the government leaders, some were transformed to be their political battlefield and birthday presents to their friends and relatives without considering the indigenous people whom were diverted their names or identification as squatters.”*

9. I note that the above generalized and obviously unintelligible statements characterize the rest of the Plaint. In *D.T Dobie & Company (Kenya) Ltd –vs- Joseph Mbawa Muchina (1980) eKLR* the Court of Appeal observed that:-

***“....The Court should aim at sustaining rather than terminating a suit. A suit should only be struck out if it is so weak that it is beyond redemption and incurable by amendment. As long as a suit can be injected with life by amendment, it should not be struck out.”***

10. On 11<sup>th</sup> May 2017, this Court granted the Plaintiffs leave to amend the Plaintiff and as it were inject it with life. The result was the Amended Plaintiff filed herein on 14<sup>th</sup> September 2017. I have looked at this suit as amended from all possible angles. Unfortunately even with the amendments, it remains completely ambiguous, vague and unintelligible. It is impossible to see the nexus between the Defendants and the orders sought. Neither is it easy to discern any relationship between the property claimed, and the Defendants property. As the Honourable Justice GV Odunga put it in *Peter Mulwa Wanjiku –vs Michael Owuor (2012)eKLR*

***“Courts when faced with an application for striking out pleadings, deal with pleadings as they are on record and not as they might appear when particulars are furnished. A party who fails to furnish, sufficient particulars in his pleadings runs the risk of having the same struck out as not constituting a serious pleading. Such situation is worsened when the same party does not particularise the allegations even when confronted with a threat to have his pleading struck out.***

11. In the circumstances of this case, I am compelled to strike it out as the same does not make sense even after amendments. The two applications dated 11<sup>th</sup> March 2017 and 11<sup>th</sup> May 2017 are accordingly allowed with costs.

**Dated, signed and delivered at Malindi this 28<sup>th</sup> day of June, 2018.**

**J.O. OLOLA**

**JUDGE**