



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO. 255 OF 2016 (OS)**

**IN THE MATTER OF ENFORCEMENT OF ARTICLE 11 OF THE ARTICLES OF  
ASSOCIATION OF BLUE KEY MANAGEMENT LIMITED; AND CLAUSE 5.1 THE LEASES  
FOR SHOPS NOS 1&2, STORE NOS 1, 2, 3, 4, & 5, AND THE BEACH BAR ON PLOT NO. 644  
(ORIGINAL NO.426) MALINDI**

**BETWEEN**

**BLUE KEY MANAGEMENT LIMITED.....APPLICANT**

**=VERSUS=**

**THE PUBLIC TRUSTEE.....RESPONDENT**

**J U D G M E N T**

1. In the Originating Summons dated 22<sup>nd</sup> September, 2016, the Applicant is seeking for the following orders:-

**(a) THAT this Honourable court be pleased to grant orders that the Applicant re-enters shop Nos 1 & 2, stores Nos 1, 2, 3, 4 & 5 and the Beach Bar situate on Plot No.644 (Original No.426/7) Malindi and absolutely determine the Leases for shops Nos. 1 & 2, Store Nos 1, 2, 3, 4 & 5 and the Beach Bar situate on Plot No.644 (original No. 426/7) and cancel the membership of Marco Vancini (deceased) in the Applicant.**

**(b) THAT this Honourable Court be pleased to make such further or other orders as are just and fair in the circumstances of the case.**

2. The Originating Summons is premised on the grounds that Marco Vancini (deceased) died on 24<sup>th</sup> February, 2015; that the deceased was pursuant to a lease dated 22<sup>nd</sup> November, 2014 registered as the proprietor of shop Nos 1 and 2 situate on Plot No. 644 and that the deceased was also registered as the proprietor of stores Nos 1, 2, 3 and 4 together with a Beach Bar.

3. It is the Applicant's case that on 5<sup>th</sup> August, 2013, the Applicant was incorporated to carry out the business of management and in that regard to undertake the management of apartments built over plot no.644 Malindi; to acquire the reversionary interest and to hold the same for the benefit of the Lessees of the Houses erected on the suit property and to do other things that are calculated to enhance the value and beneficial advantage of Blue Key Residence.

4. It is the Applicant's case that each house owner erected on Plot No.644 is entitled to be a member of the Applicant; that the public trustee was authorised by the court to obtain letters of administration for the estate of Marco Vancini and that all the members of the Applicant are obligated to settle the management expenses payable in three instalments a year on fixed dates and months.
5. According to the Applicant, the deceased has been in arrears for a period of over one year since 30<sup>th</sup> November, 2014 when he made the last payment and that the deceased has an outstanding balance of Kshs.796,060 in Management fees.
6. The Respondent filed a Replying Affidavit on 7<sup>th</sup> November, 2016 and deponed that he is the intended administrator of the Estate of Marco Vacini (deceased) by dint of a court order dated 23<sup>rd</sup> March.
7. According to the Respondent, the deceased had interests through membership in the Applicant company in shop Nos.1 and 2 store Nos.1,2,3,4 and 5 and the Beach Bar situate on plot no.644, which interests are still subsisting.
8. It is the Respondents' deposition that since taking up the deceased estate for administration, several creditors have emerged and lodged their claims with him and that in the circumstances, the court should put on hold determination of the deceased interests in the Leases of shop Nos 1 and, stores Nos 1, 2, 3, 4 and 5 and the Beach Bar situate on plot no. 644 until the interests for the creditors are determined.
9. In his submissions, the Applicants' advocate relied on the grounds on the face of the Originating Summons and the Affidavit.
10. Counsel submitted that the Applicant is seeking to enforce the terms of clause 5 (1) of the Lease document by making a re-entry in the suit premises.
11. The Respondent's counsel on the other hand submitted that the Respondent needs to determine the interests of the deceased first and that the orders that are being sought for should be held in abeyance.
12. It is not in dispute that the late Marco Vancini was the registered proprietor of shop numbers 1 and 2, stores Nos. 1, 2, 3 and 4 and a Beach Bar all situate on Plot No. 644 (original No. 426/7) Malindi vide a Lease dated 22<sup>nd</sup> November, 2014 and registered on 28<sup>th</sup> November, 2014.
13. It is also not in dispute that the Applicant was incorporated to inter alia carry out the business of a management company to direct the Management of the Apartments built on plot No. 644 Malindi.
14. According to clause 5.1 of the Lease in respect to the suit property, if any money and payments owing remain unpaid for ninety (90 days) after becoming payable, the Lessor may with the consent of the court re-enter the said shops whereupon the Lease shall absolutely determine.
15. Before such re-entry, the Lessor is required to give to the Lessee a notice of 30 days in writing specifying such non-payments.
16. The Respondent has not denied that the deceased owes the Plaintiff Kshs.796,060 in Management fees and that the said amount has remained due for over a period of one year.
17. All the Applicant is seeking for, is an order to enforce the Lease, and in particular clause 5.1.
18. Considering that the terms of the Lease are clear on the right of the Plaintiff to re-enter the premises with the leave of the court, it does not matter that the deceased had other creditors.
19. In the circumstances, I allow the Originating Summons dated 22<sup>nd</sup> September, 2016 as prayed.

Dated, signed and delivered in Malindi this **3<sup>rd</sup>** day of **February**, 2017.

**O. A. Angote**

**Judge**