



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**CIVIL CASE NO. 243 OF 2010**

**PAOLA ROSSI .....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**JOANNA SHABIR MUSSANI.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**SHABIR SULEIMAN MUSSANI.....3<sup>RD</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**CHRISTIAN ROSSI.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**DR. IZZO ANNUNZIATA.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

1. This is the Notice of Motion dated 11th July 2017. It is brought by under Article 48, 159 (2) (d) of the Constitution, Section 3A of the Civil Procedure Act Chapter 21 Laws of Kenya, Order 10 Rule (2) of the Civil Procedure Rules 2010, and all other enabling provisions of the Law, and the inherent jurisdiction of this court.

2. It seeks orders;

1. Spent

2. Spent

3. That this Honourable Court be pleased to enjoin the Honourable Attorney General and Land Registrar Kwale as necessary parties to this suit.

4. That the costs of this application be in the cause.

3. The grounds are on the face of the application listed as paragraphs 1 – 4.

4. The application is supported by the affidavit of Taffere Abraha, the donee of the power of Attorney by the Defendants/Applicants, sworn on the 11<sup>th</sup> July 2017.

5. The application is opposed. There is a replying affidavit sworn by Paola Rossi, the Plaintiff/Respondent sworn on the 28<sup>th</sup> August, 2017.

6. On the 26<sup>th</sup> September 2017, the Defendant/Applicants counsel suggested that the application be disposed by way of filing written submissions. He also sought leave to file further affidavit. The court granted the Defendant/Applicants request and directed that the submissions and the further affidavit be filed within fourteen (14) days. A date for ruling was set for 31<sup>st</sup> October 2017.

By the time of writing this ruling no further affidavit and/or submissions had been filed.

7. I have considered the Notice of Motion, the supporting affidavit. I have also considered the Relying affidavit. I have gone through the court record. The defence case has been heard partly. The issue for determination is whether this application ought to be allowed in the interest of justice.

8. It is the Defendants/Applicants' case that the evidence of the Land Registrar is fundamental to the overall outcome of this matter.

The Plaintiff/Respondent on the other hand contends that the Defendant/Applicants' puports to join the proposed parties to this suit is unprocedural and unwarranted and is intent on delaying the determination of this suit.

9. I have considered the prevailing circumstances herein. I agree with counsel for the Defendant/Applicant that the evidence of the Land Registrar is crucial to the overall outcome of this matter.

10. Article 15 (2) (d) of the Constitution provides that;

a) .....

b) .....

c) .....

d) Justice shall be administered without undue regard to procedural technicalities.”

I am guided by the above principle and I allow this application in the interest of justice.

11. Accordingly I find merit in this application and I grant the orders sought namely;

a) That the Attorney General and Land Registrar, Kwale be and are hereby enjoined as necessary parties to this suit.

b) That costs of the application be in the cause.

**It is so ordered.**

**Dated, signed and delivered at Mombasa on the 31<sup>st</sup> day of October 2017.**

**L. KOMINGOI**

**JUDGE**

**31/10/2017**

**Mr. Gitonga :** We pray that we be granted a hearing date.

**Mr. Mwanganya :** We can take a date

**L. KOMINGOI**

**JUDGE**

**31/10/2017**

**Court : Hearing on 11<sup>th</sup> December 2017.**

**L. KOMINGOI**

**JUDGE**

**31/10/2017**