REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 168 OF 2012

(consolidated with Petition No. 18 of 2012)

BAHOLA MKALINDI RHIGHO.....PLAINTIFF

=VERSUS=

1. MICHAEL SETH KASEME

2. SAMUEL KINGI MWANGI

3. COUNTY COUNCL OF TANA RIVER.....DEFENDANTS

IN PETITION NO. 18 OF 2012

1. PHILIF SUBILI RHIGHO & 8 OTHERS.....PETITIONERS

AND

1. MICHAEL SETH KASEME

2. HASSAN BARISA KALIME

3. SAMUEL KINGI MWANGI

4. THE COUNTY COUNCIL OF TANA RIVER.....RESPONDENTS

J U D G M E N T

Introduction

1. This suit was consolidated with Petition Number 18 of 2012.

Pleadings: - ELC No. 168 of 2012

2. In the Plaint dated 31st October, 2012, the Plaintiff averred that he resides in Hola within Tana River County; that he is the beneficial owner of all the unsurveyed and unregistered land in Hola adjacent to Redeemed Church, Hola, Laza Primary School and Laza Polytechnic (the suit property), which he acquired through inheritance from the larger Duko family.

3. According to the Plaintiff, the suit property is the ancestral land of the Duko family which it has been occupying, living on and doing farming.
4. The Plaintiff has averred that the 3rd Defendant has illegally allocated the suit property to the 1st and 2nd Defendants.
5. The Plaintiff is seeking for a declaration that the property described in the Plaint belongs to him and for a permanent injunction restraining the Defendants from interfering with his quite possession and enjoyment of the suit property.
6. In his Defence, the 1st Defendant denied that the Plaintiff is the beneficial owner of the land described in the Plaint; that he was born in Hola and that before the year 1987, it was resolved by the Government that the land in Hola be demarcated using River Tana.
7. The 1st Defendant averred in the Defence that one portion of the land demarcated by River Tana was for agricultural purposes while the area comprising the entire Hola Town was designated as Government Land.
8. It is the 1st Defendant's case that when the physical development plan for Hola Town was prepared in the year 2006, all stakeholders were invited, including the Plaintiff, who was in attendance, whereafter it was resolved that the new plan should be implemented.
9. The 1st Defendant averred that after the preparation of the plan, the same was advertised in the Kenya Gazette, the Daily Nation, the Standard Newspapers and Taifa Leo and that the Plaintiff is estopped from claiming the land.
10. According to the 1st Defendant's Defence, he applied for the suit property in the year 1998 with the intention of putting up a Tourist and Environmental Conservation Project; that a survey for the land was conducted and that the land being Government land was legally and procedurally allocated to him.
11. The 2nd Defendant's Defence is that he purchased the land he is occupying from Hassan Barisa Kalima in the year 2007 for Kshs.250,000; that Hassan Barisa Kalima had occupied the land for a period of 15 years and that he was issued with a letter of allotment on 18th May, 1999 by the 3rd Defendant.
12. According to the 3rd Defendant's Defence, the suit property has been Government land since 1967; that the said land was first planned as a township in 1967 under the stewardship of the Commissioner of Lands and that the said plan was further revised by the 1976 plan.

Pleadings in Petition No. 18 of 2012

13. Just like the Plaintiff in ELC No. 168 of 2012, the Petitioners are also residents of Hola.
14. The Petitioners have described themselves as members of the family of Mkalindi Righo, the Plaintiff in ELC No. 168 of 2012 and have averred in the Petition that they have filed the Petition in their capacity as members of that family.
15. Other than the 2nd Respondent, the other three Respondents are also the Defendants in ELC No. 168 of 2012.
16. According to the Petitioners' Petition, before the enactment of the 2010 Constitution, the land at Hola Town was categorised as Trust land and was held by the 4th Respondent in trust for the communities residing thereon.
17. It is the Petitioners' case that having occupied the suit property since time immemorial, their interests in the land is guaranteed by the provisions of the Trust Land Act, Section 114(1) of the former Constitution and Sections 40, 60 and 63 of the current Constitution.
18. The Petitioners are seeking for a declaration that the parcel of land measuring 15 acres near Hola water supply site and Laza Primary School belong to them and order of certiorari quashing the allocation of part of the suit property to the 1st, 2nd and 3rd Respondents.
19. These two matters proceeded by way of viva voce evidence on 17th September, 2015.

The Plaintiff's case:

20. The Plaintiff in ELC Case NO. 168 of 2012 informed the court that he was born in 1947.
21. It was the evidence of PW1 that the Defendants were unlawfully allocated the land belonging to

the larger Duko father, which comprises three families. According to the Plaintiff, his family Yuda Rhigho Duko, had two wives and that the first born son was known as John Jato Rhigho (deceased).

22. It was the evidence of PW1 that when his elder brother, John Jato Rhigho, died on 17th August 2011, he applied to the Clerk of the County Council for a freehold title for the larger Duko family.
23. However, instead of getting the title document, he came to learn that their ancestral land had been allocated to the 1st and 2nd Defendants.
24. According to the evidence of PW1, the suit property belonged to the Duko family and could not be allocated to the Defendants.
25. It was the evidence of PW1 that in the year 1954, his father and uncles entered into an agreement with the colonial government to use and be allowed to put up a water pumping machine on the suit property to irrigate Hola Irrigation Scheme which was on the left and right banks of River Tana.
26. According to PW1, the land that was leased to the colonial government is where the Hola Water Supply Pumping Machine stands now.
27. PW1 denied that him and his late brother, John Jato Rhigho, attended any meeting in the County Government Offices in the year 2006 in respect to the suit property and that in any event, the then County Council could not convene such a meeting because the land in question did not belong to it.
28. It is the evidence of PW1 that his grandfather and father were buried on the suit property and that the then County Council should not have allocated the land to the Defendants.
29. According to PW1, the person who purported to sell to the 2nd Defendant a portion of the suit property used to work at the Council in Hola and that his father had previously chased him from the land.
30. It was the evidence of PW1 that the Hola Water Irrigation Scheme was using a pumping machine which stands on their land and that the government leased that land from his late father. When his father died, the government stopped paying rent for the land.
31. In cross examination, PW1 stated that the Petitioners in Petition number 18 of 2012 are his brothers and that they are also entitled to the suit property.
32. According to PW1, the whole land in Tana River County has never been adjudicated and remains as community land; that the colonialists knew that the land belonged to their family and that he is currently the leader of the family.
33. The Plaintiff's neighbour, PW2, informed the court that his clan lives in the Southern part of the Bahola's family; that the Plaintiff is from the Uta clan and that the government identified the land belonging to the Bahola family and put up machines for irrigation.
34. According to PW2, the 1st Defendant's clan lives far away from the suit property and that the 1st and 2nd Defendants were unlawfully allocated land belonging to the Bahola's.
35. PW3 informed the court that he was an Assistant Chief of Subaki sub-location since 1977 until 1997.
36. According to PW3, he is aged 76 years and he saw the Duko's family living in the suit property since he was a young boy.
37. PW3 stated that the suit property has a water pump and that the colonial government used to pay the Duko family for using the land.
38. PW3 stated that it is the Duko's family that allowed the government to put a primary school, a nursery school and the Chief's Offices on their land.
39. PW3 denied ever attending a meeting to plan Hola Town.
40. PW3 stated that the land allocated to the 1st and 2nd Defendants belonged to the Bahola's family.
41. The Chairman of Gasa elders, PW4, informed the court that he dealt with the dispute between the Plaintiff and the 1st Defendant and that the elders decided that the suit property belongs to the Plaintiff's family.
42. According to PW3, the suit property belonged to three brothers, Paul Duko, Rhigho Duko and Hirbae Duko and that when they died, it is their sons who inherited the property.
43. The Affidavit in support of the Petition together with the annextures was adopted by the consent of the parties as the Petitioner's evidence, and so was the Respondents' Replying Affidavits and annextures.

The Defendants' case:

44. The 1st Defendant relied on his statement dated 25th November 2013.
45. According to DW1, in 1987, it was resolved by the Government that the land in Hola should be demarcated into two by use of River Tana, with one part being Agricultural land and the other part comprising Hola Town was designated as Government Land.
46. According to DW1, the Physical Planning Department prepared plan number TRD/312/KLF/87 for the town and that in the year 2006, a revision of the 1987 plan was done vide plan number TRD/312/2006/14.
47. It is the 1st Defendant's case that all the residents of Hola were invited for a stakeholder's meeting of 29th March, 2006 and that the Plaintiff was in attendance and never objected to the suggested changes in the plan.
48. DW1 informed the court that he applied for land and was allocated the land in the year 1998 with the intention of putting up a Tourist and Environmental Conservation Project and that the Plan for the project was approved by the Council.
49. According to DW1, there are several people who have developed their plots in the same area and that the Plaintiff and his family stay in the area designated as agricultural land.
50. According to DW1, his plot and the water tank are separated by a road and that his plot is identifiable by a Part Development Plan.
51. In cross-examination, DW1 stated that he was allocated his plot on 17th January, 2012 and paid for it.
52. When asked if he had the Council's Resolution referred to in the letter dated 15th November, 1998, the 1st Defendant stated that he did not have it.
53. The 2nd Defendant, 2DW2, stated that he stays in Hola.
54. It was the evidence of 2DW2 that he owns a plot which is designated on plan number TRD/312/95/41.
55. The evidence of 2DW2 was that he purchased the portion of land in question in the year 2007 from one Hassan Barisa Kalima vide an agreement of sale dated 26th July 2007.
56. According to 2DW2, Hassn Barisa Kalime was issued with a letter of allotment by the 3rd Defendant on 18th May, 1999.
57. The 3rd Defendant's Advocate closed his client's case without calling any witness.

Submissions:

58. The Plaintiff's counsel in HCCC No. 168 of 2012 did not file submissions.
59. The Petitioners' counsel in Petition No. 18 of 2012 submitted that the suit property is unadjudicated and that the land belongs to the Petitioners, including the Plaintiff in ELC Case No. 168 of 2012.
60. Counsel submitted that the suit property was a native reserve and that the colonial government leased part of it from the Petitioners.
61. According to counsel, the only compensation that was made by the colonial government was for a house which was demolished to give way to a pump house and that the rest of the land belongs to the Petitioners.
62. The Defendant's counsel relied on the evidence on record.

Analysis and findings:

63. Both the Plaintiff in ELC Case No. 168 OF 2012 and in Petition Number 18 of 2012 claim that the parcel of land measuring approximately 15 acres and situated at Hola Town in Tana River County near the Hola Water Supply site and next to Laza Primary School (the suit property) belong to them.
64. According to the Plaintiff and the Petitioners, the suit property belongs to the family of Mkalindi Righo who are members of the Uta clan. The two suits have been filed both on behalf of the claimants and in their capacity as members of the family (the Duko family).

65. The Duko family, according to the family tree and the evidence before the court comprised of the house(s) of Paulo Bahola Duko, Yuda Rhigho Duko and Richard Hirbae Duko (all deceased).
66. According to the evidence of the Plaintiff and the Petitioners, it is their family that was in occupation of all the land at Hola Town which was categorised as Trust land under the repealed Constitution.
67. The Petitioners and the Plaintiff produced documents in evidence to prove the assertion that the suit property has always been Trust land.
68. According to the letter dated 12th August 1957 by the Executive Officer of the African Land Development, the Executive Officer requested the Chief Engineer in the Ministry of Works to send to him drawing number 43986 so as to arrange for the setting aside of land within the Hola Settlement.
69. In a letter dated 17th January, 1957, the District Commissioner of Kipini informed the Executive Officer that "In 1954, on the inception of Hola Right Bank Irrigation Scheme, it was agreed that one Paola Bahola Duko should receive Kshs.50 as compensation for two houses on a shamba required for the pump house, and an annual rental of Shs.152 per acre for the land."
70. In the letter, the District Commissioner sought to know the duration that the rent had been paid to Paola Bahola Duko and for the payments of the arrears to him.
71. The letter of 3rd April, 1957 clarified that the payments were being made to Paulo Bahola Duko "for 1 acre on the right bank at Hola."
72. In the letter dated 8th January 1958, the District Commissioner forwarded to the then Provincial Agricultural Officer the vouchers which were payable to Mr. Paulo Bahola Duko for the period of 1st April, 1957 to 1st October 1957.
73. The Petitioners and the Plaintiff produced a sketch map of the site that was acquired by the colonial government for the construction of a pump house.
74. The sketch, which is drawn to scale, shows that the pump house was to occupy approximately 2 acres and was to be located in Hola-Laza area of Subakia location, Tana River District.
75. There is also a sketch map drawn to scale showing the "attachments" by the colonial government of more land for "construction" of dwelling houses, offices, workshops, airstrip etc" within the same locality. The land that was required for that purpose was approximately 325 acres.
76. The letter by the District Commissioner dated 2nd July 1957 and addressed to the Manager, Hola Irrigation Scheme, showed in detail the boundary of the "Native Land Unit" at Hola.
77. In the same letter, the District Commissioner concluded as follows:

> **"3. I believe that the area now under experimental irrigation and the site of the open camp are all more than one mile from the river [Not Native Land]. If this is so, the areas which should be set apart (Native Land) at Hola are:-**
>
> **(a) The site of the pump house.**
>
> **(b) A corridor from the pump house along the pipe line up to the edge of the land unit (i.e one mile from the river).**
>
> **(c) The area in which th works comp, the airstrips, the police station and the temporary housing occupied by yourself are included.**

78. Indeed, a map was drawn showing the area which were identified in the above letter as forming part of Native land in Hola Settlement which was: the site of the pump house, the corridor from the pump house along the pipe line to the boundary of area (c) and the area in which works camp, the D.C house and airstrip were to be located.
79. The payment vouchers that were produced in this court show that before independence, Paulo Bahola Duko was being paid annual rent for land "measuring 1 acre extending fifteen feet on either side of the center line of the pipe line, pump house and from the river to Laza road...."
80. The Plaintiff and the Petitioners are contesting the allocation of the suit property to the defendants because it is Trust land.
81. The Defendant's case on the other hand is that in 1967, Hola Town, including the suit property,

were designated as government land, when the town was planned.

82. The issues for determination therefore are whether, firstly, the suit property is government or Trust land and secondly, whether the suit property was lawfully allocated by the then County Council of Tana River to the Defendants.

83. Considering that the suit properties were allocated to the Defendants before the promulgation of the Constitution in the year 2010, I shall confine myself to the law relating to the allocation of Government and Trust land under the repealed Constitution.

84. In my Ruling of 27th September 2013, I discussed at length the law relating to Government land and Trust land under the repealed Constitution. I shall rehash what I stated in the Ruling in this Judgment.

85. Under the repealed Constitution and the Trust Land Act, Trust land was neither owned by the Government nor by the County Councils within whose area the land fell under. The County Council simply held such land on behalf of the local inhabitants of the area.

86. For as long as Trust land remained unadjudicated and unregistered, it belonged to the local tribes, groups, families and individuals of the area. Once adjudicated and registered, Trust land was transformed into private land. That is what the provisions of Sections 114, 115 and 116 of the repealed Constitution provided.

87. Indeed, Section 115(2) of the repealed Constitution provided that Trust land could only be dealt with in accordance with the African Customary Law vested in any tribe, group, family or individual.

88. The Constitution also provided that the only way Trust land could be legally removed from the purview of communal ownership of the people was through adjudication and registration or setting apart.

89. Adjudication and registration of Trust land removed the particular land from the purview of community ownership and placed it under individual ownership while *setting apart* removed the Trust land from the dominion of community ownership and placed it under the dominion of public ownership.

90. Trust land could only be allocated legally pursuant to the provisions of the Constitution, the Trust Land Act and the Land Adjudication Act.

91. The repealed Constitution, at section 115(4) mandated Parliament to make provisions under an Act of Parliament with respect to the administration of Trust land by a County Council.

92. Consequently, Parliament enacted the Trust Land Act, the Local Government Act (repealed) and the Town Planning Act which was repealed and replaced with the Physical Planning Act in 1996. These statutes, amongst others, allowed County Councils to deal and administer Trust land on behalf of the residents of their respective areas.

93. Section 117(1) of the repealed Constitution allowed, through an Act of Parliament, County Councils to *set apart* any area of Trust land vested in a County Council for use and occupation by a public body; or for purpose of the prospecting for or for the extraction of minerals or by any person for a purpose which in the opinion of the County Council is likely to benefit the person ordinarily resident in that area or any other area of Trust land vested in that County Council either by reason of the use to which the area so set apart is to be put or by reason of the revenue to be derived from rent in respect thereof.

94. Where an area of Trust land has been set apart by the County Council for the purposes that I have enumerated above, section 117(2) of the repealed Constitution provided that any rights, interests or other benefits in respect of that land that were previously vested in a tribe, group, family or individual under African customary law shall be extinguished.

95. However, under section 117 (4) of the repealed Constitution, the setting apart of Trust land was of no effect unless prompt payment of full compensation of any resident of the land set apart who under the African customary law had a right to occupy any part or was in some other way prejudicially affected by the setting apart.

96. Trust land could also be set apart for Government purposes. Under Section 118(1) of the repealed Constitution, if the president was satisfied that the use and occupation of an area of Trust land was required for the purpose of the Government of Kenya or for a body corporate or for the purpose of the prospecting for or the extraction of minerals, such land would be *set apart* accordingly and was vested in the Government of Kenya or such other person or authority.

97. If Trust land is *set apart* for the purpose of the Government, the Government was required to

make prompt payment of full compensation if the setting apart extinguished any estate, interest or right in or over the land that would have been vested in any person or authority.

98. Other than Trust land which has been set apart for government purposes, the Government also had land which was not Trust land. This was land which was not within the "Special areas" as specified in the Trust Land Act and which was on 31st May 1963 vested in the Trust Land Boards.

99. The Government Lands Act was enacted to make further and better provisions for regulating the leasing and other depositions of Government Land. Under this Act, it is only the President who could sign documents granting title although he would delegate these powers to the Commissioner of Lands.

100. Unalienated Government land was not Trust land in that it was not vested in local communities and it was not held in trust for them by a County Council.

101. Under section 3 of the Government Land Act, it is only the President who was allowed to make grants or disposition over unalienated Government land.

102. It is the Commissioner of Lands, on behalf of the President, who used to allocate unalienated Government land to the person whose application for the allocation of such land would have been approved by the President.

103. Once the approved candidate for the land had been selected, and an approved part development plan (PDP) by the Director of Physical Planning is issued, an offer was made to the person by the Government. The offer is what came to be known as a letter of allotment which used to be signed by the Commissioner of Lands, or his nominee.

104. Unlike Trust land, the County Councils had no role to play at all in the allocation of unalienated Government land. They could not even purport to administer such land on behalf of the Government.

105. The 1st Defendant informed the court that it was resolved in 1987 by the Government that the land in Hola should be demarcated into two by using River Tana, with one side being agricultural land and the other part comprising Hola Town was to be designated as Government land.

106. According to DW1, the Government then prepared the Hola Town Plan vide plan number TRD/312/KLF/1/87 which laid down the planning features of Hola Town and designated the land in town as Government land.

107. Other plan number TRD/312/KLR/1/87 that was produced in evidence, together with the revised plan that was done in the year 2006, there is no evidence that indeed the land which comprises the suit property, and by extension Hola Town was ever set apart in 1987 pursuant to the provisions of Section 118 of the repealed Constitution for Government purpose.

108. The fact that the physical plan for Hola Town was prepared in 1987 and revised in the year 2006 does not in itself transform into setting apart of Trust land.

109. The Director of Physical Planning is mandated under the Physical Planning Act, 1996 (and under the repealed Land Planning Act) to prepare regional physical development plans in respect to Government land, Trust land and Private land for the proper physical development of such land.

110. Section 16 of the Physical Planning Act, 1996 states as follows;

"A regional physical development plan may be prepared by the Director with reference <u>to any government land, trust land or private land</u> within the area of authority of a County Council for the purpose of improving the land and providing for the proper physical development of such land, and securing suitable provisions for transportation, public purpose, utilities and services, commercial, industrial, residential and recreational areas, including parks, open spaces and reserves and also the making of suitable provision for the use of land for building or other purpose."

111. The regional physical development plan must be published in the Gazzette and in such other manner as the Director deems expedient to the effect that the plan is open for inspection at the place or places and the time specified in the notice.

112. That is what the 3rd Defendant did in respect to the development plan for Hola town.

113. If the Government intended to set apart Trust land for its purposes, the procedure for doing so is provided for under section 7 of the Trust Land Act.

114. Under the Section, the Council is required to give a notice of the setting apart by publishing in the Gazette of its intentions.

115. The notice has to specify the boundaries to be set apart and the purposes for which the land is required to be set apart.
116. Section 8 of the Act provides that full compensation shall be promptly paid by the Government to any resident of the area of land to be set apart.
117. The Defendants have not produced any evidence to show that the procedure stipulated under Section 7 and 8 of the Trust Land Act were ever followed in 1987 or at all. The argument that the area where the suit property lies was designated as Government land in 1987 does not therefore arise.
118. In any event, the documents that the 1st and 2nd Defendants are relying on to claim the suit properties are letters of allotment that were issued by the Town Clerk and not the Commissioner of Lands. That alone shows that it is the Council which purported to allocate to them the suit property and not the Government.
119. In fact, the County Council had the mandate, through a full council meeting, to set apart Trust land and allocate it to individuals for purposes which in the opinion of the Council, was likely to benefit the people ordinarily residing in that area, with compensation to the affected parties.
120. The law that provided for the setting apart of Trust land by the Council pursuant to the provisions of Section 117(1) of the repealed Constitution is section 13 of the Trust Land Act.
121. Indeed, it may be true that the 1st and 2nd Defendants applied to be allocated the suit property, which is a few meters from the pump machine that the colonial government rented from the Plaintiff's father.
122. One of the requirements for the setting apart of Trust land by the Council is bringing the proposal to set apart the land to the notice of the people of the area concerned.
123. According to Section 13(3) of the Trust Land Act, where the Council approves a proposal to set apart land, the Council is required to publish a notice of the setting apart in the Gazette.
124. It is during the full council meeting that it would have been apparent, relying on the available records, whether the property was available for *setting apart* and allocating it to the 1st and 2nd Defendants or whether it belonged to the larger Duko family, and if so, to compensate the said family.
125. The Defendants did not produce in evidence the Minutes of the 3rd Defendant's full council meeting to show that the property in dispute was ever allocated to the 1st and 2nd Defendants. The council's letter of allotment reference number 17/1/12 is of no evidential value, prima facie, in the absence of the minutes of the full council meeting.
126. In fact, although the defunct Council was sued in these proceedings, its officials did not testify in this matter.
127. Considering that the Plaintiff and the Petitioners have shown that the late Paul Duko was the one who was in occupation of the land where the pump machine currently stands, and probably beyond, and in view of the fact that there is no evidence by the Defendants to show that the Plaintiff and the Petitioners or their forefathers were ever compensated for that land, or that indeed the procedure for setting apart Trust land was ever followed, I find and hold that the Plaintiff and the Petitioners have proved their cases on a balance of probabilities.
128. The allocation of the suit property to the 1st and 2nd Defendants was illegal, null and void. I however decline to declare that the Plaintiff is the owner of the suit property considering that the interests of the family and the Uta clan have to be considered along side those of the Plaintiffs.
129. In the circumstances, I shall allow the Plaintiffs' Plaint and the Petitioners' Petition in the following terms:-

(a) A declaration be and is hereby issued that the Petitioners' and the Plaintiff's rights, individually and in association with other members of the family/community to property as guaranteed in Article 40,50 &63 of the Constitution of Kenya 2010 and in Section 75 of the former Constitution of Kenya was and infringed by the 4th Respondents' action in allocating part of the Petitioners land situated at Hola town to the 1st and 2nd Respondents and in approving the 1st and 3rd Respondents development plans thereon.

(b) A declaration be and is hereby issued that all the parcels of land measuring 15 acres or thereabouts situated at Hola town in Tana River County near Hola water supply site and

Laza Primary School belongs to the Petitioners and the Plaintiff and their family to the exclusion of the 1st, 2nd and 3rd Respondents.

(c) A prerogative Order of Certiorari be and is hereby issued quashing the allocation by the 4th Respondent to the 1st Respondent of the Portion of land measuring 0.72 hectares or thereabout within the 15 acres parcel of land situated at Hola town in Tana River County forming part of the Petitioners' and the Plaintiff's land.

(d) A prerogative order of Certiorari be and is hereby issued quashing the allocation by the 4th Respondent to the 2nd Respondent of the portion of land measuring 150 feet by 100 feet or thereabouts within 15 acres parcel of land situated at Hola Town in Tana River County forming part of the Petitioners' and the Plaintiff's land.

(e) An Order of vacant possession of the said portion of land and the eviction therefrom of the 1st and 3rd Respondents is hereby allowed.

(g) The 1st, 2nd, 3rd, and 4th Respondents to pay the costs of the Petition, and the 1st, 2nd, and 3rd Defendants to pay the costs of the suit in ELC case No. 168 of 2012.

Dated, signed and delivered in Malindi this 15th day of April, 2016.

O. A. Angote

Judge