



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

**AT MALINDI**

**ELC NO. 72 OF 2012 (OS)**

**KACHIMBIZI KATANA MWAGANDI & 384 OTHERS.....PLAINTIFFS**

**=VERSUS=**

**FORT PROPERTIES LIMITED.....DEFENDANT**

**RULING**

1. The Notice of Motion before me is the one dated 13<sup>th</sup> September 2015. In the Application, the Plaintiffs are seeking for the following orders:-
  - (a) **THAT the Plaintiffs/Applicants herein be allowed to amend their Originating Summons and introduce all the subdivisions arising from plot number 130 Malindi.**
  - (b) **THAT the amended Originating Summons attached herewith be deemed as duly filed and served upon payment of the requisite court fees.**
  - (c) **THAT costs to this Application be provided for.**
2. The Application is premised on the grounds that the Plaintiff has come across important evidence which was not within their reach at the time of filing this suit; that the amendments sought are meant to bring out the real question in controversy and that plot number 130 has ceased to exist and new certificates of title have been issued.
3. In his response, the Defendant's Property Manager deponed that had the applicants conducted due diligence, they would not have made this application to delay the matter; that if the amendments are allowed, they are likely to affect other people who are not parties to this suit and that some of the titles were issued in the year 2009.
4. In his submissions, the Plaintiff's advocate submitted that this suit was filed after the Defendant filed Malindi ELC No. 171 of 2011 in which the Defendant sought for vacant possession of plot number 130.
5. The Plaintiff's advocate submitted that this suit was filed based on the facts and documents supplied by the Plaintiffs in Malindi HCCC No. 171 of 2011; that the Defendant has since caused the suit property to be subdivided into 259 portions and that the Defendant has transferred some of the portions to third parties.
6. This suit was commenced by way of an Originating Summons by 385 Plaintiffs. The Plaintiffs are claiming that they are entitled to be declared as proprietors of plot number 130 Malindi which they have purportedly acquired by adverse possession.
7. In support of the Originating Summons, the Plaintiffs annexed the copy of the Certificate of Title

- for plot number 130 measuring 142.12 Ha together with a postal search as at 27<sup>th</sup> January, 2012.
8. The search shows the registered owner of plot number 130 as Fort Properties Limited. Under the encumbrances section, the search states as follows: “The plot has been sub-divided into various sub-plots”.
  9. The search that the Plaintiffs obtained as at the time of filing the suit did not show the registered proprietors of the subdivisions.
  10. The sub-divisions of plot number 130 have now been availed by the Defendant.
  11. Indeed, the Defendant has admitted that plot number 130 has ceased to exist and that other people who are not parties to this suit may be affected.
  12. Considering that the Parties have not closed their respective cases, and to enable the court to effectually and completely settle all questions involved in the suit, the parties who have purchased the subdivisions of plot 130 should be enjoined in this suit.
  13. The Plaintiffs are also entitled to include the new portion numbers in the suit for the proper determination of the issues in this matter.
  14. In the circumstances, and in view of the fact that the proposed amendments are not prejudicial to the Defendant, I allow the Application dated 13<sup>th</sup> September, 2015 as prayed.
  15. The Plaintiffs are ordered to file and serve the amended Originating Summons within 14 days from the date of this Ruling.

Dated, signed and delivered in Malindi this 15<sup>th</sup> day of **April**, 2016.

**O. A. Angote**

**Judge**