



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

**AT MALINDI**

**ELC NO. 152 OF 2014**

**1. GERALD KATANA MWAMUMBA**

**2. SHIRKA HAMISI MUTSONGA**

**3. CHANDE HAMISI YAWA**

**4. MATSAKI HAMISI YAWA.....PLAINTIFFS**

**=VERSUS=**

**ARM CEMENT LIMITED.....1ST DEFENDANT**

**1. STEUBEN NZARO MTSONGA**

**2. CARLSON MATSAKI MTSONGA**

**3. PERSTON MATSAKI MSONGA**

**4. ALLAN MAJALIWA MTSONGA**

**5. DIDA MTSONGA MATSAKI**

**6. MWAMUMBA MUTSONGA MATSAKI**

**7. GEOFFREY G. MUTSONGA**

**8. KWEKWE MUTSONGA MATSAKI**

**9. NZALE MTSONGA MTSONGA.....PROPOSED INTERESTED PARTIES/DEFENDANTS**

**R U L I N G**

1. The Notice of Motion before me is the one dated 17<sup>th</sup> July, 2015 in which the Plaintiff is seeking for the following orders:-

**(a) The nine proposed interested parties be joined as Defendants in the suit and the parties be at liberty to amend their respective pleadings.**

**(b) Costs of this Application be provided for.**

2. The Application is based on the grounds that the nine (9) proposed Interested Parties are the beneficial owners of the suit property; that the late Mtsonga Matsaki Mwamanga held an original Title Deed and that the Plaintiffs herein have fraudulently obtained the letters of administration without the knowledge of the proposed interested parties.
3. According to the Interested Parties, the Plaintiffs are not related to the deceased.
4. The 1<sup>st</sup> proposed Interested Party deponed that he is the son of the late Mtsonga; that the real question in controversy between the parties cannot be determined unless the parties amend their pleadings after joining the proposed Interested Parties and that the letters of administration being held by the Plaintiffs were fraudulently obtained.
5. In his response, the 1<sup>st</sup> Plaintiff deponed that the issues as to the beneficiaries of the late Mtsonga was dealt with in High Court Succession Cause No. 344 of 2008 in which the letters of administration of the Estate of the deceased was issued to him and the 2<sup>nd</sup> Plaintiff.
6. According to the 1<sup>st</sup> Plaintiff, the Plaintiffs do not have any claim whatsoever against the proposed Interested Parties; that the proposed Interested Parties are free to file their own proceedings against the Plaintiffs and that the issue between themselves and the proposed Interested Parties was heard and concluded by the Provincial Land Tribunal.
7. The Plaintiffs' and the Defendants' advocates filed brief submissions in which they rehashed their clients' depositions. I have considered those submissions.
8. The Plaintiffs have described themselves in the Plaint as the beneficial owners of parcel of land known as Kilifi/Chauringo/110.
9. The Plaintiffs' claim is that the Defendants illegally entered onto the suit property and started extracting limestone therefrom. The Plaintiffs are seeking for a permanent injunction against the Defendant and for special damages amounting to Kshs.34,256,250 being the value of the limestone that has already been mined.
10. The proposed Interested Parties are seeking to be enjoined in the suit on the ground that they are the ones who are the beneficial owners of the suit property.
11. According to the proposed Interested Parties, the Plaintiffs have used a fraudulently obtained letters of administration to file the current suit.
12. It is the proposed Interested Parties' case that the 5<sup>th</sup> and 9<sup>th</sup> proposed Interested Parties are the widows of the registered proprietor of the suit property while the 1<sup>st</sup> -7<sup>th</sup> proposed Interested Parties are the deceased's children.
13. The proposed Interested Parties cause of action viz-a-viz the suit property is quite different from the Plaintiffs' cause of action as against the Defendants
14. The proposed Interested Parties are basically challenging the Plaintiffs' locus standi to bring this suit on behalf of the Estate of Mtsonga Matsaki Mwawanga.
15. Considering that the Plaintiffs' standing to institute this suit is premised on the letters of administration that were issued by the High Court in Succession Cause No. 344 of 2008, the proposed Interested Parties can only succeed in their claim by challenging the said letters of administration.
16. Indeed, this court does not have the jurisdiction to delve into the issue of whether the letters of

administration in Mombasa Succession Cause NO. 344 of 2008 were issued fraudulently to the Plaintiffs. That is an issue that the proposed Interested Parties should pursue in that suit, and not in this matter.

17. Until the proposed Interested Parties set aside the letters of administration in Mombasa Succession Cause 344 of 2008, they cannot be said to be necessary parties in this matter.

18. It is for those reasons that I dismiss the proposed Interested Parties' Notice of Motion dated 17<sup>th</sup> July 2015 with costs.

Dated, signed and delivered in Malindi this **24<sup>th</sup>** day of **June**, 2016.

**O. A. Angote**

**Judge**