



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

**AT MALINDI**

**ELC CIVIL CASE NO.217 OF 2014**

**AZZURI LIMITED.....PLAINTIFF**

**VERSUS**

**1. CHARO LAWRENCE KADENGE ZIRO**

**2. KAMBI KADENGE ZIRO**

**3. VALERIO BUCCIARELLI.....DEFENDANTS**

**AND**

**1. KADZIRO BEACH LIMITED**

**2. SETTLEMENT FUND TRUSTEES.....NECESSARY PARTIES**

**R U L I N G**

1. The Application by the necessary parties dated 1<sup>st</sup> April, 2016 is seeking for the following orders:-

**(a) THAT at first instance, service of this application on the parties to this suit is dispensed with, and the matter is placed before the duty court immediately to obviate grave miscarriage of justice and irreparable mischief that may ensure due to delay.**

**(b) THAT Kadziro Beach Limited and Settlement Fund Trustee (SFT) (see Section 167 of Agriculture Act, Cap 318) are joined in these proceedings as necessary parties, or defendants, or as the court may find appropriate, their presence before court being necessary for the effectual determination of the issue:- Kadziro Beach Limited or Azzuri Limited the rightful owner of Chembe/Kibabamshe/356;**

**(c) THAT there is double registration of the said land, and both Kadziro Beach Limited (Title Deed issued on 17<sup>th</sup> June 2015) and Azzuri Limited (Title Deed issued on 31<sup>st</sup> October 2014) and have title deeds issued in their respective names.**

**(d) To prevent a travesty of justice and irreparable damage to either of the title deed holders, it is only fair and just that pending the determination of the application by Kadziro Beach Limited to join these proceedings, further construction of the perimeter wall is suspended or stayed, so as to prevent waste and burdening of the suit land, to the grave prejudice of**

**whoever may ultimately be decreed as the true owner of the land;**

**(e) The applicant proposes to file a written undertaking as to damages, as the court may direct, to facilitate the grant of interim relief to preserve the status quo ante.**

2. The Application is supported by the Affidavit of the Applicant's director who has deponed that the Applicant entered two written agreements for purchase of parcel of land known as Chembe/Kibabamshe/356 and that the Applicant confirmed that the suit property was registered in the name of Lawrence Kadenge Ziro before it entered into the agreement aforesaid.

3. It is the deposition of the Applicant's director that he also obtained the uncertified extracts of the register in respect of the suit property; that it transpired that the Assistant District Land Registrar, Kilifi had in the interim wrongfully issued a parallel title deed for the suit property to the Plaintiff and that when the vendor complained about the double registration, the Chief Land Registrar instructed the District Land Registrar to expunge from the register the second set of the title deed issued in the name of the Plaintiff.

4. According to the Applicant's director, the former Land Registrar, Mary Ndale Kai has acknowledged that the original title for Chembe/Kibabamshe/356 issued in 2001 in the name of Lawrence Kadenge Ziro is the genuine title deed; that the Director of Land Adjudication and Settlement cannot regularly issue two letters of allotment and that the Applicant's purchase of the land was first in point of time and that equity of properties would tilt the scales of justice in favour of the Applicant.

5. In his Replying Affidavit, the Plaintiff's Managing Director deponed that the 1<sup>st</sup> Defendant is part of a cartel of fraudsters intent of defeating the Plaintiff's proprietorship; that after the death of the 1<sup>st</sup> Defendant, the Applicants have been forced to come out in the open and continue with the attempt of sanitising a criminal conspiracy and that the Applicant is not an interested or necessary party to the suit.

6. It is the Plaintiff's case that the suit property was adjudicated in favour of Lawrence Kadenge Ziro and Kambi Kadenge Ziro; that the land belonged to the Ziro family; that the Plaintiff ensured that all the adult members of the Ziro family signified their approval to the sale and that vide an agreement of 14<sup>th</sup> June, 2014, Lawrence Ziro and Kambi Ziro, on behalf of the Ziro family, sold to the Plaintiff the suit property for Kshs.18,900,000.

7. The Plaintiff's director deponed that after paying the two transferors Kshs.13.5 Million, they executed a Transfer in favour of the Plaintiff and that the Plaintiff settled the subject property's indebtedness to the Settlement Fund Trustees.

8. It is the Plaintiff's director's deposition that Lawrence Ziro has in the past used three different fake title deeds which indicated that he was the sole registered owner; that the Ziro family was aware that the Applicant had paid to Lawrence Kshs.1.5 Million; that while in the banking hall, the Applicant's director insisted that he should be repaid Kshs.3,000,000 instead of Kshs.1,500,000 and that the Plaintiff is having to defend its proprietorship against the fraudulent actions of the 1<sup>st</sup> Defendant.

9. In his written submissions, the Applicant's advocate submitted that it is necessary to join the Applicant in this suit; that the Applicant will be able to explain how and when it acquired the suit land from Lawrence Kadenge Ziro and that the Plaintiff having consented to the joinder of the Land Registrar, Kilifi and the SFT, it will be unfair not to join the only other party who claims to have a title deed in respect of the suit land.

10. The Plaintiff's/Respondent's advocate on the other hand submitted that Kadziro Beach Limited has absolutely no legal right to the suit land and that its presence in these proceedings is not necessary.

11. The Plaintiff's counsel submitted that the Ziro family, and each of them, recognise the Plaintiff as the proprietor of the land; that the Applicant was conned by the 1<sup>st</sup> Defendant and was duly compensated by the family and that to allow Kadziro Limited in the proceedings would be to allow it to introduce a new

substantive cause of action not otherwise anticipated by the Plaintiff.

### **Analysis and findings:**

12. In the Plaint dated 19<sup>th</sup> November, 2014, the Plaintiff has prayed for an order of permanent injunction restraining the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant from alienating parcel of land known as Chembe/Kibabamshe/356 and from trespassing on the said land.

13. The Plaintiff's cause of action arises from the fact that it purchased the suit property vide an agreement of sale dated 14<sup>th</sup> June 2014 at a consideration of Kshs.18,900,000.

14. According to the particulars of breach pleaded in the Plaint, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have denied the Plaintiff access to the suit property even after making a payment of Kshs.13,500,000; that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have entered into another agreement with third parties and that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are cunning and mischievous.

15. According to Kadziro Beach Limited, the Applicant, 6 months before the Plaintiff purchased the suit property, it had purchased the same land from the 1<sup>st</sup> Defendant and a title deed was subsequently issued to it.

16. Because of the purported sale of the suit property twice by the 1<sup>st</sup> Defendant, the Applicant is seeking to be enjoined in this suit together with the Settlement Fund Trustees.

17. The Plaintiff has conceded in its Plaint that the 1<sup>st</sup> Defendant entered into several sale agreements with third parties.

18. Indeed, it is apparent that other than selling the suit property, together with the 2<sup>nd</sup> Defendant, to the Plaintiff, the 1<sup>st</sup> Defendant also sold the same land to Kadziro Beach Limited.

19. The Applicant, Kadziro Beach Limited, has exhibited the agreement dated 8<sup>th</sup> January, 2014 between the 1<sup>st</sup> Defendant and its Director, in respect to the suit property.

20. The Applicant has also exhibited the Title Deed that was issued to it on 17<sup>th</sup> June, 2015 for parcel of land Chembe/Kibabamshe/356 together with a copy of the letter of offer that was issued to the 1<sup>st</sup> Defendant by the SFT in December, 2000.

21. An uncertified copy of the register has also been annexed on the Applicant's Director's Affidavit.

22. According to the copy of the register for parcel of land known as Chembe/Kibabamshe 356, the land was registered in favour of SFT on 23<sup>rd</sup> August, 1986 before the same was transferred to the 1<sup>st</sup> Defendant on the same day.

23. From the documents that have been annexed on the Plaintiff's and Applicants' director's Affidavits, it would appear that contrary to the provisions of the Registered Land Act (repealed) and the Land Registration Act, parcel of land number Chembe/Kibabamshe/356 has more than one set of registers, all showing different transactions.

24. It is therefore obvious that from the record presented to this court by both parties, there are two letters of allotment in respect to the same parcel of land, two different registers and two Title Deeds, one issued to the Plaintiff and the other one to the Applicant.

25. Given the above scenario, this court cannot effectually and completely determine the issue of ownership of the suit property without joining and hearing the two Applicants.

26. Although it is the Plaintiff who always has a say as to who to sue, the court, pursuant to the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules, has the power to call upon a Plaintiff to amend his pleadings, so as to introduce and bring before court all the parties whose presence before it is necessary for the effectual and complete adjudication of all questions involved in the suit.

27. The Plaintiff having consented to the joinder of the Land Registrar, Kilifi and the SFT, the adjudication of the dispute cannot be complete without joining Kadziro Beach Limited. That is the only way the Judgment of this court will bind all the parties who have an interest in the suit property.

28. The question as to who is entitled to the suit property can only be determined after the said joinder and upon hearing all the parties.

29. In view of the fact that the Applicant has not filed any pleadings, other than the current Application, this court shall not delve into the issue of whether it can review its orders of 19<sup>th</sup> June, 2015 in which the Plaintiff's Application for injunction was allowed.

30. For those reasons, the Applicants' Application dated 1<sup>st</sup> April, 2016 is allowed in the following terms:-

**(a) Kadziro Beach Limited, the Settlement Fund Trustees and the Land Registrar, Kilifi be and are hereby joined in these proceedings as Defendants.**

**(b) The Plaintiff to amend the Plaint to introduce Kadziro Beach Limited, the Settlement Fund Trustees and the Land Registrar, Kilifi within 15 days from the date of this Ruling.**

**(c) Kadziro Beach Limited, the SFT and the Land Registrar, Kilifi to enter appearance and file their respective Defences within 14 days from the date of service of the amended Plaint or within 29 days of today's date in the event the Plaintiff does not amend the Plaint.**

**(d) Each party to bear its own costs.**

Dated, signed and delivered in Malindi this 14<sup>th</sup> day of November, 2016.

**O. A. Angote**

**Judge**