



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

**ELC CIVIL CASE NO.128 OF 2014**

**1. HAMID BIN MOHAMED**

**2. RUKIA HEMED alias RUKIA SAID**

**MBARAK** (suing as the Executrix of the Estate of

Said Bin Mbarak Bin Tahir.....**PLAINTIFFS/RESPONDENTS**

**=VERSUS=**

**1. ALI MWINYI HAJI**

**2. MUMBO NGANYI**

**3. AMANI KENGA**

**4. JAPHET MARAA JILANI**

**5. MAMBO SAID**

**6. KAHMIS KESI**

**7. RAMADHANI KITI YAA**

**8. KAZUNGU TSOFA**

**9. ABDALLA JAHA**

**10. ATHUMAN SALIM BAYA**

**11. RUKIA NASORO**

**12. SALIMU JABIRI**

**13. MTENZI MOHAMED**

**14. ABDHUL JAMAAN**

**15. MOMO KHAMIS DENA**

**16. ALI JUMA JAHAA**

**17. KAFEDHA KATANA**

**18. MTENZI AHAMED SAID**

**19. ALI MWALAGO**

**20. NGALA KUZE**

**21. FATHUMA AHMED SAIDI**

**22. ALII YAA NGARI**

**23. MZUNGU AHMED MOHAMED**

**24. KANZE BAYA.....DEFENDANTS/APPLICANTS**

### **R U L I N G**

1. What is before me is the Application by the Defendants dated 28<sup>th</sup> April 2015 seeking for the following orders:

**(a) That the Lands Registry, Kilifi County and the National Land Commission be enjoined as Interested Parties in this suit and consequently leave be granted to amend the 2<sup>nd</sup> to 24<sup>th</sup> Defendants' Defence and counterclaim accordingly.**

**(b) That any other consequential and/or incidental relief(s) be made to meet the ends of justice.**

**(c) That costs of this Application be provided for.**

2. The Application is premised on the ground that the issues in respect to plot number 75/MN raise historical injustices and an element of manipulation of title documents which can only be resolved with the input of the National Land Commission and the Land Registrar, Kilifi.

3. It is the Defendants' case that the Plaintiffs shall not suffer any prejudice if the orders sought are granted.

4. In his Replying Affidavit, the 2<sup>nd</sup> Respondent deponed that the suit property is registered in the Mombasa Land Registry under the Land Titles Act (repealed); that the suit does not in any way raise any issues of historical injustices and that the Defendants attempts to enjoin the Land Registrar and the National Land Commission is a strategy to legitimize and sanitize their unlawful actions.

5. In their submissions, the Defendants'/Applicants' counsel submitted that to give effect to Article 159 of the Constitution, the Applicants should be allowed in the suit as necessary or interested parties.

6. The Plaintiffs'/Respondents' counsel submitted that for an Application under Order 1 Rule 10 of the Civil Procedure Rules to succeed, the Applicant must show that there is a right to some relief against such party in respect of the matter in question.

7. Counsel submitted that the Applicants have not demonstrated that they have at any time raised any complaint to the Nationality Land Commission and that the Applicants have not annexed an amended defence and counterclaim indicating any complaint they intend to seek against the parties they are seeking to enjoin and that in their Complaint, the Plaintiffs are seeking for orders to compel the Defendants to

demolish and remove their structures and buildings on the suit property.

8. According to the Plaint, the Defendants have since March, 2014 invaded the suit property at the incitement of the local leaders.

9. The suit property is known as L.R. No. 75/Section IV Mainland North. The registration district is in Mombasa and not Kilifi.

10. The Registrar in charge of the Mombasa registry is not the Kilifi Land Registrar. Consequently, the prayer to enjoin the Land Registrar, Kilifi fails on that ground alone.

11. The Defendants have also sought to enjoin the National Land Commission because that is the Commission that is mandated by the Constitution to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and recommend appropriate redress. There is no evidence before me to show that the National Land Commission had initiated investigations into the issue surrounding the suit property.

12. There is also no evidence before me to show that the Defendants ever complained to the National Land Commission to investigate how the Plaintiff was allocated the suit property.

13. Indeed, the Commission has not requested to be joined in the suit.

14. In the absence of the evidence or pleadings to show the relief that the Defendants are seeking as against the Commission, and considering that the Commission has not prayed to be joined in the suit, I find that the joinder of the Commission shall not in any way help this court to effectually and completely adjudicate upon and settle all questions involved in the suit.

15. Having being sued, the Defendants are not precluded to raise the question of historical injustices in their Defence. The inclusion of a Commission that has not initiated any investigations is superfluous.

16. For those reasons, I dismiss the Application dated 28<sup>th</sup> April 2015 with costs.

Dated and delivered in Malindi this **18<sup>th</sup>** day of **September** 2015.

**O. A. Angote**

**Judge**