



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 38 OF 2011

BRUNELLA PANINI & 66 OTHERS.....PLAINTIFFS/APPLICANTS

=VERSUS=

1. POLICINO OASIS MANAGEMENT LIMITED

2. POLICINO OASIS LIMITED

3. GIOVANNI DE CARO

4. POLICINO COSIMO

5. THOMAS HINZANO NGONYO.....DEFENDANTS/RESPONDENTS

AND

1. CLAUDIA ZANONI

2. BELLUOMINI GIULIANA

3. MARIA PETRINO

4. GIANNA ELISA RECCOSTA

5. ALESSANDRO CAZZANTI

6. MARIELLA PALAZZICLAUDIOCLAUDIO BONE

7. VIGNAROLI VITTORINO

8. VIRGNAROLI VITTORINO

9. LUIGI ARCARI.....INTERESTED PARTIES/RESPONDENTS

RULING

1. Since this matter was filed, numerous Applications have been filed without any prospect of the main suit being set down for hearing. The current Application was filed by the Plaintiffs and is

dated 15th July, 2015. In the Application, the Plaintiffs are seeking for the following orders:

(a) The Ruling of this Honourable Court made on 26th June 2015 which appointed Coral Properties Limited be reviewed with a view of explaining and expounding the terms of reference of the company to ensure the property is managed soundly and within predictable parameters.

(b) That pending the hearing and determination of this Application, this Honourable Court be pleased to issue an order of injunction against the defendants, interested parties their servants and agents from interfering and/or influencing the mandate of Coral Properties Limited.

(c) That the Honourable Court be pleased to make such further orders as are necessary for the ends of justice to be met.

(d) That the cost of the Applicant be provided for.

2. The Application is premised on the grounds that the court erroneously made an order to the effect that the surplus funds collected by the independent Company will be applied to the structural repairs of the suit property; that the situation in respect of the structural integrity of the suit property has not changed and it remains dire and in need of urgent redress and that the court failed to critically examine the quotation for workers wages and salaries quoted by Coral Properties Ltd which is lower than what is allowable in law.
3. The other grounds are that the court failed to clearly stipulate that the company ought to manage the property independent of any external influence; that the court did not pronounce itself as to the amount collected by the erstwhile receiver managers for the year 2015 and that the court failed to consider and provide for the manner and mode of collection of the service charge.
4. The 1st to 4th Interested Parties advocate filed Grounds of Opposition in which he averred that the order sought to be reviewed is not attached to the Application and that the Application is misconceived, mischievous, in bad faith, frivolous and vexatious.
5. The 5th to the 9th Interested Parties on their part averred that the Application is bad in law because it is res judicata; that the Application does not meet the criteria set out in Order 45 of the Civil Procedure Rules and that the Application offends the principle that litigation must come to an end.
6. The 1st, 2nd, 4th and 5th Defendants' advocate filed a Notice of Preliminary Objection in which he stated that the grounds in the Application are not reasons capable of founding an order for review.
7. The parties appeared before me on 15th September 2015 and made their submissions. I have considered those submissions and the authorities.
8. The Ruling that the Applicant is seeking to review was occasioned by the 4th to 9th Interested Parties' Application in which the Applicants were seeking for the appointment of an independent professional company to manage the affairs of Polcino Oasis Limited until such time that Polcino Oasis Limited shall be able to run its affairs independently and effectively.
9. Whereas the Plaintiffs preferred the firm of Pivot Valuers Limited to manage the suit property, the Interested Parties and the Defendants preferred either the firm of Coral Property Consultant Limited or Coast Valuers Limited.
10. After considering the reports that were presented to this court by the three firms, the court appointed the firm of Coral Property Consultants Limited to manage, protect and preserve the assets of Polcino Oasis Village.
11. The current Application is seeking for a review of the Ruling of 26th June 2015 with a view to explaining and expounding the terms of reference of the company to ensure the property is managed soundly and within predictable parameters.
12. The grounds on which the Application is premised on reads like a Memorandum of Appeal. Indeed, throughout those grounds, the Applicants have averred that this court either "erred" or failed to consider certain facts.
13. Whether this court "erred" or failed to consider certain facts when it arrived at its decision of 26th

- June 2015 cannot be a basis of an Application for review but an appeal.
14. In any event, how can the court be asked to explain and expound its Ruling when the reasons for the decision were given by the court.
 15. It is not in the province of parties to ask the court to explain its Ruling by way of review because the so called explanation is always in the Ruling.
 16. If the Applicants' position is that the Ruling was given without "reasons", then they should move the Court of Appeal on that ground.
 17. In any event, the Ruling and the final orders of this court are clear on the terms of reference of the company that is to manage the affairs of the suit property. I shall not reiterate those terms in this Ruling.
 18. Finally, I would like to state that the court's mandate is to deal with the issues which are placed before it.
 19. It was therefore open to this court, while dealing with the Interested Parties' Application, to deal with matters that were not canvassed in the Application, including the structural integrity of the suit premises. All that the court was required to do was to appoint a manager and give clear directions on how the company was supposed to manage the suit properties. That is what this court did and shall not re-visit that issue.
 20. In the circumstances, I find and hold that no sufficient reasons have been given to enable me review the Ruling of 26th June 2015.
 21. For those reasons, I dismiss the Application dated 15th July 2015 with costs.

Dated and delivered in Malindi this 13th day of **November** 2015.

O. A. Angote

Judge