



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT OF KENYA**  
**AT MALINDI**  
**LAND CASE NO. 15 OF 2014 (O.S)**

**NASORO ALI MAITHA**

**KHADIJA MOHAMED MONGELE.....APPLICANTS**

**=VERSUS=**

**VIRGINIA KATUNGE JOHN.....RESPONDENT**

**JUDGEMENT**

1. The Applicants commenced the current suit by way of an Originating Summons. The originating summons does not quote under which law the Applicants were moving the court. The Originating summons is seeking for the following orders;-

**[a] That the Certificate of Confirmation of Grant dated 12<sup>th</sup> July, 2007 issued to the Respondent herein in Succession number 21 of 2006 be cancelled.**

**[b] That the fraudulent registration of Portions Nos.10719/454, 10719/455, 10719/469, 10719/529 and 10719/545 Malindi in the names of Hussein Abubakar Erwin Berner[deceased] be revoked and the Applicants be registered as the rightful owners.**

**[c] That the costs of the Application be provided for.**

2. According to the Affidavit of the 1<sup>st</sup> Applicant, the Applicants are the beneficiaries of the Estate of Zam zam Ali Maitha vide a Certificate of Confirmation of Grant dated 2<sup>nd</sup> October 2013 issued in Malindi Succession Cause No.175 of 2012; that the deceased was at the time of her death the owner of portion numbers 10719/454, 107719/455, 107719/469, 107719/529 and 107719/545 but the same had not been registered in her favour because the Deed Plans had not been issued.
3. The 1<sup>st</sup> Applicant further deponed that the deceased, who was the Applicant's mother had developed some of the portions.
4. Upon being issued with the Confirmation of Grant, the Applicants have stated that they realized that the said portions of land had been registered in the name of Hussein Abubakar Erwin Berner, also deceased, and the Respondent had even applied for letters of administration in respect of the Estate of the said Hussein Abubakar Erwin Berner and issued with a Certificate of Confirmation on 12<sup>th</sup> July, 2007.
5. According to the Applicants, the said Hussein Abubakar Erwin Berner was fraudulently registered as the owner of the portions of land in questions and that the Respondents whereabouts are not

known to them.

6. On 6<sup>th</sup> February, 2014 I allowed the Applicants' Application dated 5<sup>th</sup> February, 2012 to serve upon the Respondents by way of advertisement in one of the daily newspapers of nationwide circulation. The Applicants served the Respondent with the Originating Summons by way of advertisement in the Saturday nation newspaper of 8<sup>th</sup> February, 2014. The Respondent did not file any response.
  7. The Applicants are asking this court to cancel the Certificate of Confirmation of Grant dated 12<sup>th</sup> July, 2007 issued to the Respondent in Malindi Succession Cause No. 21 of 2006. That file was not placed before me. This court is unable to determine the circumstances under which that Certificate of Confirmation of Grant was issued to the Respondent by a court of concurrent jurisdiction. In my view, this Application should have been filed in that particular file.
  8. The Applicant has also asked me to cancel the titles that were issued in respect of portion numbers 10719/454, 107719/455, 107719/469, 107719/529 and 107719/545 because they were registered in favour of the Respondent pursuant to a fraudulent Certificate of Confirmation of Grant.
  9. I am unable to grant an order for cancellation of the said titles because the Certificate of Confirmation dated 12<sup>th</sup> July 2007 has not been revoked by the court which issued it.
  10. In any event the titles that the Applicants are asking this court to cancel have not even been exhibited to enable the court examine them before it can make an informed decision.
11. For the reasons I have given above, I find that the Applicant's suit is unmeritorious and I hereby strike it out with no orders as to costs.

**Dated and delivered in Malindi the 6<sup>th</sup> day of June, 2014**

**O. A. ANGOTE**

**JUDGE**