



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ELC. NO. 126 OF 2011**

**MHANDISI ENTERPRISES LTD. .... PLAINTIFF/APPLICANT**

**- V E R S U S -**

- 1. MOHAMED SWALEHE MWAJEMBE**
- 2. RAMA OMARI CHIMWEGA**
- 3. DISTRICT LAND REGISTRAR (KWALE)**
- 4. ATTORNEY GENERAL**
- 5. MARY NDALE KAI**
- 6. OMAR ATHUMANI**
- 7. ATHUMANI JUMA**
- 8. MUHAMED SWALLEHE**
- 9. KWALE DISTRICT SURVEY OFFICER ..... DEFENDANTS/RESPONDENTS**

**RULING**

[1] When this matter came for hearing on 8th July, 2013 Mr. Wangalwa advocate for the applicant, Mr. Gikandi advocate for the 1st, 2nd and 8th defendants and Miss. Kiti State Counsel for 3rd and 9th defendant/respondents filed a consent in court.

The consent was as follows:-

*"REPUBLIC OF KENYA*

*IN THE HIGH COURT OF KENYA*

*AT MOMBASA*

*CIVIL SUIT NO. 126 OF 2011*

*MHANDISI ENTERPRISES LTD ..... PLAINTIFF/APPLICANT*

-VERSUS

MOHAMED SWALEH MWAJEMBE ..... 1ST DEFENDANT/RESPONDENT

RAMA OMARI CHIMWEGA ..... 2ND DEFENDANT/RESPONDENT

DISTRICT LAND REGISTRAR (KWALE) ..... 3RD DEFENDANT/RESPONDENT

ATTORNEY GENERAL ..... 4TH DEFENDANT/RESPONDENT

MARY NDALE KAI ..... 5TH DEFENDANT/RESPONDENT

OMAR ATHUMANI ..... 6TH DEFENDANT/RESPONDENT

ATHUMANI JUMA ..... 7TH DEFENDANT/RESPONDENT

MUHAMED SWALLEHE ..... 8TH DEFENDANT/RESPONDENT

KWALE DISTRICT SURVEY OFFICER ..... 9TH DEFENDANT/RESPONDENT

ORDER

BEFORE HON. JUSTICE S. MUKUNYA IN OPEN COURT ON 8TH JULY 2013

UPON READING the application by way of Notice of Motion dated 10th November, 2011 brought under section 3,3A and section 63E of the civil procedure act, Order 40 Rules 1,3, and 4 of the civil procedure rules and all other enabling provisions of the law AND UPON HEARING Mr. Wangalwa for the plaintiff/applicant Mr. Gikandi for the 1st,2nd and 8th Defendants/respondents and Mukiti for 3rd and 9th defendants/respondents

IT IS HEREBY ORDERED BY CONSENT

That the Notice of Motion dated 10th January, 2012 be marked as settled on the following terms:-

1. That an order is hereby issued directing the Kwale District Survey Officer the 9th Defendant/respondent to reestablish the boundary and replace any missing beacons on plot No. Kwale/Diani Beach/Block 653 and the O.C.S. Diani Police Station to provide the necessary security when the said exercise is to be carried out. The same to be done within 60 days.
2. That the D.C.I.O. Kwale to attend the court on 23rd September, 2013 at 9.00 a.m and produce the two Green Cards in respect of Plot No. Kwale/Diani Beach Block 653.
3. That the existing status quo on Plot No. Kwale/Diani Beach/Block 653 to remain intact i.e. there should be no further encroachment including cultivation or quarrying should take place until the final disposal of this suit.

GIVEN under my hand and seal of the court at Mombasa this 8th day of July, 2013.

DEPUTY REGISTRAR

HIGH COURT OF KENYA

MOMBASA

ISSUED at Mombasa this 19th day of July, 2013"

[2] Mr. Gikandi advocate for 1st, 2nd and 8th defendant, Mr. Wangalwa advocate for the plaintiff and Miss. Kiti State Counsel for 3rd and 9th respondents signed the handwritten consent. They later had that order extracted and had the Deputy Registrar issue the same on 19th July, 2013.

Their respective clients therefore knew and were privy to the consent and the court order. The 1st, 2nd and 3rd respondent have not denied that while the court orders are in force they have proceeded to transfer and made a document called Memorandum of Transfer and altered green cards with the Kwale County Government. The 1st and 2nd defendant have not denied that they have undertaken massive development namely boreholes, subdivision and quarrying stones on the premises.

[3] It is not also in doubt that the alteration of the suit premises have been done when the two green cards are with the District Criminal Investigation Officer pursuant to court orders.

[4] The fact that the 1st and 2nd defendants have title deeds showing ownerships and that the applicant has no right to ownership and that the respondents have been on the land since time immemorial as alleged by Mr. Wandera Learned Counsel for the respondents have no relevance to contempt of court orders. They cannot disobey court orders to which they have been privy to with impunity. I find them in contempt of court. I order that the three respondents be arrested and brought to court to show cause why they should not be punished as the law requires.

**Dated and delivered in open Court at Mombasa this 18th day of September, 2014.**

**S. MUKUNYA**

**JUDGE**

**18.9.2014**

In the presence of:

Mr. Wangalwa advocate for the plaintiff/applicants

Mr. Wandera advocate for the defendants