



**Pwani Baridi Water Ways Limited v Muya & another (Environment & Land
Case 74 of 2021) [2024] KEELC 4151 (KLR) (17 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 4151 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT & LAND CASE 74 OF 2021
AE DENA, J
APRIL 17, 2024
(FORMERLY ELC 34 OF 2021 MOMBASA)**

BETWEEN

PWANI BARIDI WATER WAYS LIMITED PLAINTIFF

AND

LINUS CHIRA MUYA 1ST DEFENDANT

LAND REGISTRAR KWALE COUNTY 2ND DEFENDANT

RULING

1. The application subject of this ruling is the Notice of Motion dated 11/07/23 brought by the 1st Defendant. It seeks orders that; -
 1. The Plaintiff's suit herein be struck out for want of capacity and/or existence of the Plaintiff/1st Respondent.
 2. The costs of this application and of the entire suit be borne by the Plaintiff/1st Respondent.
2. The application is premised upon the grounds that the Plaintiff filed this suit on the 15th February, 2021 under the name of Pwani Baridi Waterways Limited. That upon conducting a search with the Registrar of Companies to verify the existence of the Plaintiff Company, the Registrar of Companies confirmed that the Plaintiff Company does not exist. This being the case the suit should therefore be struck out. That Certificate of Incorporation that forms part of the Plaintiff's List of Documents dated 8th February, 2021 is a Forged Document.
3. The application is also supported by the affidavit of Linus Chiira Muya of 11/07/23. The deponent reiterates the above grounds. It is stated that on the 5th July, 2023 the Registrar of Companies confirmed that the Plaintiff Company herein, Pwani Baridi Waterways Limited does not exist in their database of registered entities. That vide the above information obtained from the Registrar of Companies,



Nairobi it was established that the Certificate of Incorporation No. C93007 that forms part of the Plaintiff's List of Documents dated 8th February, 2021 is clearly a forged document. It is stated that the Plaintiff Company for reasons of its non-existence is a non-legal entity which is not capable of suing or being sued. That the Plaintiff Company does not exist in Law and therefore the suit cannot be maintained as filed.

4. The application is opposed by the replying affidavit of Hellen Mutee Muema a director of the Plaintiff. She avers that the issues raised by the applicant with regards to the existence of the Plaintiff Company are part of the issues that are supposed to be determined in the main trial. The authenticity of the existence of the Plaintiff/Respondent Company should not be dismissed on the basis of the alleged letter written by the Registrar of Companies which is contested by the Plaintiff.
5. The Plaintiff further contends that in a recent search dated 16th August 2023 a CR12 (HMM2) and produced herein shows a company by the name Pwani Barindi Waterways Limited and registered as No C 93007 just as similar as registration as for the Plaintiff/Respondent in existence and in a strange twist of fate, the two directors of the Plaintiff/Respondent company herein are also co-directors of the said company together with other two strangers as co-directors hence further casting doubt on the claim by the Applicant herein that the Plaintiff/Respondent does not exist. That further evidence of the existence of the Plaintiff company is to be found in the certified copy of the green card record herein produced and marked as HMM3 a) and b) which document is prepared by the 2nd Defendant/Respondent and clearly indicates that the land in question had been registered in the names of the Plaintiff company and not in any way in the names of the alleged Pwani Barindi Waterways Limited. That it should also not be lost in this application that the Applicant has never produced a copy of the CR12 he used as part of his transfer documents, being a pre-requisite in the transfer of any land, further illustrating that the purported transfer of land from the Plaintiff Company to the 1st Defendant/Applicant thereof was a fraud.
6. The Plaintiff strongly believes that the Registrar of Companies should be called upon as a witness to further shed light on the identity of the Plaintiff Company Vis a Vis Pwani Barindi Waterways Limited which according to the Plaintiff has been falsely created to steal the identity of the Plaintiff Company.

Submissions

7. The application was heard by way of written submissions. The 1st Defendant filed their submissions dated 1/11/23 on the same date. The Plaintiff filed submission dated 21/12/23. I have considered the submissions and the authorities cited for and against the application.

Determination.

8. I will proceed to determine if the application is merited to warrant the grant of the orders sought.
9. In the further affidavit of Hellen Mutee Muema sworn on 4/3/22 and filed on 8/3/22 the depositions therein clearly indicate there are allegations of fraud pitting two companies Pwani Baridi Waterways Limited and Pwani Barindi Waterways Limited at the center of the dispute of the ownership of the suit property. The former is alleging that the latter is a ghost company and that the CR 12 for the later has never been annexed as part of the 1st respondent's documents in support of their case and the sale transaction. This is reiterated in the Plaintiffs replying affidavit to this application. This is further supported by the substantive pleadings. The 1st Defendant contends at paragraph 9 (e) of their defence that the Plaintiff has never owned the suit property, that the company which owned and sold the property to the 1st Defendant was known as Pwani Barindi Waterways Limited and not the Plaintiff which is Pwani Baridi Waterways Limited. The Plaintiff at paragraph 7(a) alludes to the use



of false documents and impersonation of its directors. It has now emerged that counter allegations are now being raised by the 1st Defendant that the Plaintiff Company is nonexistent.

10. The court is faced with two companies that seem to bear some common characteristics both in terms of name of the companies and some directors including sharing the same CR registration number. The Registrar of Companies is said to have by a search dated 16/3/2020 confirmed in the CR 12 the existence of the Plaintiff and this said search is attached (see HMM1). The same office is now said to have issued another search confirming the nonexistence of the same Plaintiff. The Certificate of Incorporation No. C93007 that forms part of the Plaintiff's List of Documents dated 8th February, 2021 is termed to be a forged document. The standard of proof of fraud is also now established to be of higher threshold see *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* (2000) eKLR. Further the same Companies registry is said to have issued another search of 16/08/23 confirming the existence of Pwani Barindi Waterways Limited (see HMM2) which is questioned by the Plaintiff. Should a court given such contradicting positions from the same office proceed and believe one version vis a vis the other. The answer is in the negative. I agree with the Plaintiffs submission that that the existence of the conflicting reports cannot be wished away.
11. In my view, foregoing allegations go to the substratum of the dispute and will definitely form one of the issues for determination and can only be resolved upon hearing both sides of the divide. The Registrar of Companies must be put under the test of cross examination to assist the court in coming up with a just and proper determination on the issue of locus. Justice must be seen to be done.
12. The upshot of the foregoing is that the Notice of Motion dated 11/07/23 lacks merit and is dismissed with costs to the 1st Defendant.
13. The matter is fixed for mention on 7th May, 2024 for further directions.

It is so ordered.

RULING DATED SIGNED AND DELIVERED THIS 17TH DAY OF APRIL 2024 VIA EMAIL BY CONSENT OF THE PARTIES.

A.E DENA

JUDGE

HON. LADY JUSTICE A.E DENA

