

OFFICIAL GAZETTE



**of the
COMMON MARKET FOR EASTERN
AND SOUTHERN AFRICA**

Vol. 7 No. 4

Published by Order
of the Council

9th August, 2001
Price:

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By Order of the Council

Mr. Erastus J.O. Mwencha, MBS
Secretary-General
COMESA

LEGAL NOTICE NO. 6 OF 2001
RULES OF THE COURT OF JUSTICE, 1998
NOTICE OF INITIATION OF PROCEEDINGS
(Under Rule 10)

IT IS HEREBY NOTIFIED in terms of Rule 10 of the Rules of the Court of Justice that the following case was registered on 19th July, 2001 as Reference No. 3 of 2001.

(a) Names of the parties:

Coastal Aquaculture Limited - **(Applicant)**

vs.

The Republic of Kenya - **(1st Respondent)**

The Commission of Lands, Kenya - **(2nd Respondent)**

(b) Address of the Parties:

Applicant:

C/O Messrs Walker Kontos
Advocates
5th Floor, Williamson House
4th Ngong Avenue
P.O. Box 60680, 00200
City Square
Nairobi
Kenya

Tel: 00254-2-713023-6, 718433-6

Fax: 254-2-718429

Email: CNamachanja@WalkerKontos.com

Respondents:

C/O The Attorney General of Kenya
Attorney General's Chambers
Sheria House
State Laws Offices
Harambe Avenue
P.O. Box 40112
Nairobi

Tel: 254-2-227461

Fax: 254-2-315105

Email: None available

(c) Subject matter of proceedings:

The subject matter of the proceedings relates to:

- (i) The Applicant is the legal owner of L.R. Nos. 17600 and 17601/2, Tana River, Kilifi District, in the Republic of Kenya;
- (ii) The First Respondents have on three previous occasions attempted to acquire the Applicant's land, vide Gazette Notice No. 3590 of 23rd July, 1993, Gazette Notice No. 5689 of 5th November, 1993 and Gazette Notice No. 3624 of 16th June, 2000;
- (iii) The first two Gazette Notices were found to be defective and invalid both by the High Court in Miscellaneous Civil Application No. 1252 of 1996. The third Gazette Notice was found to be defective by the High Court Miscellaneous Civil application No. 55 of 1994 and the Court of Appeal in civil appeal No. 252 of 1996. The third Gazette Notice was found to be defective by the High Court in Miscellaneous Civil Application No. 169 of 2000;
- (iv) There exists a legal charge in favour of Trade Bank (in liquidation) Kenya, over L.R. Nos. 176000 and 17601/2, which the applicant has been unable to service as a result of the Respondents actions;
- (v) There have been incidents of trespass on to the Applicants said property by the Government of the United States of America with the full knowledge and participation of the First Respondent;
- (vi) The Applicant has a legal interest in 2674 Hectares of Land in Kilifi District commonly known as the Ngomeni Peninsula by way of a letter of Allotment Ref. No. 125124/4 issued in June 1992.
- (vii) The Applicants legal rights have been obviated and frustrated as a result of fraud committed by the Second Respondent culminating in the issuance of Title Deeds, falling within the applicants land to various other companies and individuals.
- (viii) The said fraud has and continues to frustrate the implementation of the Applicants multi-million dollar Tourism Project and Aquaculture Project in Ngomeni and as such the Applicant continues to suffer loss, damage and damage to business reputation.

(d) Form of Order sought:

The Applicant is seeking the following Order from the Court:

- (i) An injunction restraining the First Respondent, its servants, agents or officers from acquiring L.R. Nos. 17600 and 17601/2, Tana River, Kilifi District without first making provision for the advance payment of adequate compensation and payment of damages as pleaded below;

- (ii) An Injunction restraining the First Respondent, its servants, agents or officers from acquiring L.R. Nos. 17600 and 17601/2, Tana River, Kilifi District without first complying fully with the provisions of section 75 of the Constitution of Kenya;
- (iii) An Injunction restraining the First Respondent, its servants, agents or officers from acquiring L.R. Nos. 17600 and 17601/2, Tana River, Kilifi District without first complying fully with the provisions of the Land Acquisition Act CAP 295 of the Laws of Kenya;
- (iv) An Injunction to restrain the First Respondent, its servants, agents or officers from acquiring L.R. Nos. 17600 and 17601/2, Tana River, Kilifi District without first making provision for the prompt payment of compensation for any intended acquisition process, being a deposit of 90% or such other percentage of the Applicants Expert Valuation as this Honourable Court may deem fit, by payment of such percentage into a joint interest earning account in the names of the Applicant and the Respondent or such other suitable provision as this Honourable Court deems fit;
- (v) An Injunction to restrain the first Respondent, its servants, agents or officers from interfering in any way whatsoever with the Applicants properties known as L.R. Nos. 17600 and 17601/2, Tana River, Kilifi District or at all until such time as set down by this Honourable Court;
- (vi) Special damages in relation to the Applicants land L.R. Nos. 17600 and 17601/2, Tana River, Kilifi District in the sum of US\$723,669,343.00 together with interest thereon at commercial rates prevailing from time to time from the respective due dates until payment in full;
- (vii) General damages for breach of contract;
- (viii) General damages for breach of duty to care;
- (ix) A declaration that the applicant has a legal interest in all that land known as Ngomeni Peninsula;
- (x) A declaration that all titles issued and falling within the Applicant's land known as Ngomeni Peninsula including but not limited to the following Titles be declared null and void:

(1)	LR No	20085	Fometsa Enterprises Ltd.
(2)	LR No	20078	Baia Enterprises Ltd.
(3)	LR No	20086	Aretco Ltd.
(4)	LR No	20081	Tokole Investments Ltd.
(5)	LR No	20066	Koit Developers Ltd.
(6)	LR No	20073	Kildo Developers Ltd.
(7)	LR No	20077	Masole Ltd.
(8)	LR No	20076	Saman Developers Ltd.
(9)	LR No	20065	Kilel Developers Ltd.
(10)	LR No	20072	Metel Enterprises Ltd.
(11)	LR No	20088	Gilera Ltd.
(12)	LR No	20075	Kenete Enterprises Ltd.

(13)	LR No	20087	Linsala Enterprises Ltd.
(14)	LR No	20071	Leidero Holdings Ltd.
(15)	LR No	20082	Marimic Enterprises Ltd.
(16)	LR No	20074	Somatro Holdings Ltd.

- (xi) An Order at the Registrar of Titles, Kenya to rectify the Register of Titles by canceling, correcting or substituting the entries relating to the properties set out in paragraph (1) above to give effect to the judgement of this Honourable Court;
- (xii) An Order directing the Registrar-General of Kenya to cancel all other entries and instruments in the Register pertaining to and failing within the Applicants land known as Ngomeni Peninsula;
- (xiii) An Order directing the Registrar-General of Kenya to issue entries in the Registrar as may be necessary to give effect to the Judgement or order to this Honourable Court;
- (xiv) An Injunction to restrain the First Respondent, its servants, agents or officers from interfering in anyway whatsoever with the Applicants properties known as Ngomeni Peninsula or at all or until such time as set down by this Honourable Court;
- (xv) Special damages in relation to the Applicants land in Ngomeni in the sum of US\$350,000,000.00 together with interest thereon at commercial rates prevailing from time to time from the respective due dates until payment in full;
- (xvi) An Order that the Respondents do pay to the Applicant damages for frustration of mortgage facilities of Kshs70,000,000.00 plus interest accrued thereon or in the alternative the Respondents do assume full liability for the Applicant's indebtedness to the Trade Bank Limited and its successors, assigns or liquidators as the case may be;
- (xvii) Special damages in relation to (xvi) above in the sum of Kshs500,000,000.00 together with interest continually accruing thereon at commercial rates prevailing from time to time from the respective due dates until payment in full;
- (xviii) There be and is issued an order of declaration that the Respondents actions depriving the applicant free use and exploitation of its land L.R.17600 and 17601/2 Tana River district was a gross violation of the Applicants fundamental rights and also a breach of contractual right engendered by the restrictions on the Applicant's leasehold Title;
- (xix) General damages for trespass and violation of the Applicant's property;
- (xx) General and special damages for violation of the provisions of the COMESA Treaty;
- (xxi) General and special damages for violation of the Constitution of Kenya, the Land Acquisition Act of Kenya, the Trespass Act, and the rules of Natural Justice;

- (xxii) General damages for loss of business reputation and credibility;
- (xxiii) Punitive damages;
- (xxiv) Interest on (vi), (vii), (viii), (xv), (xvi), (xvii), (xix), (xx), (xxi), (xxii) and (xxviii) above at the rates set out therein or at such other rate and for such period as this Honourable Court deems fit to grant.
- (xxv) Such other Orders as this Honourable Court deems just, fit and proper in the circumstances.

Thus done at Lusaka, Zambia, this 9th day of August, 2001.

Habben Nkonkesha
ACTING REGISTRAR
COMESA COURT OF JUSTICE