

REPUBLIC OF KENYA

IN THE NATIONAL ENVIRONMENT TRIBUNAL AT NAIROBI TRIBUNAL

APPEAL NO NET /06/2005

1. MALINDI GREEN TOWN MOVEMENT1ST APPELLANT
2. MALINDI SOUTH RESIDENTS ASSOCIATION..... 2ND APPELLANT

VERSUS

1. DIRECTOR GENERAL, NEMA.....1ST RESPONDENT
2. OVERLOOK MANAGEMENT LTD.....2ND RESPONDENT
3. SILVER AND CAMPING SITE LTD.....3RD RESPONDENT

RULING ON PRELIMINARY OBJECTION

1. By a Notice of Preliminary Objection dated 27th January 2006 the 2nd and 3rd Respondents raised a preliminary objection which, during submissions on 28th April 2006, turned on whether the Tribunal had the jurisdiction to issue orders reverting the ownership of the land which is the subject matter of this Appeal to public ownership. Counsel for the 2nd and 3rd Respondents pointed out, quite rightly, in the Tribunal’s view, that title to the land in question could not be challenged before this Tribunal, and that such a challenge, if any, must be mounted in the High Court.
2. Counsel for the Appellants, however, pointed out that the Appeal sought orders reverting Plots 4151/4 and 4381 to public use, not to public ownership. The matter therefore fell squarely within the jurisdiction of this Tribunal.
3. The Tribunal has perused the Notice of Appeal filed on 21st December 2005. Paragraph 6 sets out the relief sought by the Appellant as follows: “to revert plots 4151/4 and 4381 to public use.” The Tribunal does not see this prayer as requiring that the Tribunal makes orders directed at the ownership of the land. The Tribunal’s jurisdiction deals with the use of land, which is the subject matter of this Appeal. The Tribunal therefore does not find merit in the Preliminary objection and orders the matter to proceed to a hearing on the merits.

Dated at Nairobi this 28th day of April 2006

Signed:

Donald Kaniaru..........Chairman

Dwasi Jane..........Member

Albert Mumma..........Member

Stanley Waude..........Member

Joseph Njihia..........Member