REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 28 OF 2013

WATER RESOURCES MANAGEMENT AUTHORITY…....PLAINTIFF

=VERSUS=

KENSALT LIMITED.....DEFENDANT

R U L I N G

Introduction

1. On 21st November 2013, the Plaintiff commenced this suit by way of a Plaint. In the Plaint, the Plaintiff is seeking for the payment of Kshs.270,295,759 by the Defendant being the outstanding water use charges for the period between 1st October 2007 to 31st September 2013 together with interest as per the Water Resources Management Rules, 2007 (the Rules).
2. The Defendant has filed an Application dated 17th January 2014 pursuant to the provisions of Order 2 Rule 15 (1) (a) and (d) of the Civil Procedure Rules seeking for the following orders:

a. **That the Plaint herein be struck out.**
b. **That the suit be dismissed with costs to the Applicant.**

The Defendant's/Applicant's case

3. According to the Affidavit of the Defendant's General Manager, the Plaint does not disclose a reasonable cause of action as against the Defendant/Applicant because sea water is not a water resource as defined under section 2 of the Water Act (the Act) and consequently, the Defendant/Applicant does not require a permit for the use of the sea; that the absence of the term sea water in the express definition of “water resource” under section 2 of the Act is a clear indication that it was plainly not the intention of the legislature to define sea water as a water resource and that the National Land Commission is the relevant state organ that has exclusive jurisdiction over sea water falling within the territorial sea and the exclusive economic zone.
4. The Applicant's general manager finally deponed that sea water is *res nullius* and is incapable of ownership by any person in law and in equity. Consequently, it was deponed, the Plaint does not disclose any reasonable cause of action as against the Defendant/Applicant and should be struck out with costs.

The Plaintiff's/Respondent's case

5. In the Replying Affidavit, the Chief Executive Officer of the Plaintiff deponed that the Plaintiff is a body corporate established under section 7 of the Water Act, 2002 (the Act) whose mandate, *inter alia*, is to determine charges to be imposed for the use of water from any water resource.
6. The Plaintiff's representative has deponed that Article 66 of the Constitution as read together with Section 2 of the Act gives the State power to regulate the use of any land, which includes any body of water under the surface and marine waters in the territorial sea and exclusive economic zone; that the Plaintiff is the national State agency mandated under the Water Act, 2002 to regulate the use of water resources including sea water within the territorial sea and that the Defendant has misunderstood the scope and the nature of the mandate of the National Land Commission.
7. While the National Land Commission is supposed to manage rivers, lakes and other water bodies, it was deponed, the role of the Plaintiff is to regulate the use of such water.
8. It is the Plaintiff's case that the Defendant/Applicant is a profit making company and is one of the largest producers of salt for commercial purposes using raw sea water; that the Defendant/Applicant carries out its commercial manufacturing along the coastline of Malindi, through a process whereby sea water is lent into stabilization ponds where the water goes through a process of salt manufacturing and the affluent is discharged into land leading to the damage of vegetation and also pollution of ground water and that the water use charges are applied by the Plaintiff/Respondent to meet its regulatory functions.

Submissions:

9. The Defendant's/Applicant's counsel submitted that sea water, as defined under the Water Act (the Act), is an extending definition which requires an interpretation of what "other body of flowing or standing water" means. Counsel submitted that "an ocean" has been defined to mean a continuous body of salt water covering the greater part of the earth's surface and surrounding its land masses.
10. According to counsel, the general words "other body of flowing or standing water" in the Act in the definition of "a water resource" cannot be construed to include the ocean or sea; that Rule 4(2) of the Water Resources Management Rules excludes any rights exercisable over the territorial sea and that the Plaintiff can only regulate water within the territorial land boundaries of Kenya.
11. If the legislature had intended to apply the Water Act and the Water Resources Management Rules to territorial waters or sea water, it was submitted, nothing would have been easier that for to expressly say so in the statute.
12. The Defendant's counsel submitted that the draft Water Bill, 2014, has included waters within the territorial jurisdiction of Kenya in the definition of what a water resource is. Consequently, it was submitted, the statute relied on by the Plaintiff does not support the Plaintiff's claim.
13. The Defendant's counsel submitted that the question of ownership of sea water was considered by the Court of Appeal in the case of **Kenya Port Authority Vs East Africa Power & Lighting Company (1982) KLR 410** in which the court held that sea water was incapable of ownership by anyone.
14. The Defendant's counsel further submitted that Kenya's sovereign rights over the territorial sea and the exclusive economic zone only extends to exploration, exploitation, conservation and management of the natural resources of the zone and that the concept of sovereignty and ownership of the sea water is reinforced by the provisions of the United Nations Convention on the Law of the Sea, the Maritime Zones Act and Court of Appeal decision in the **Kenya Port Authority** case (*supra*).
15. In the circumstances, it was deponed, the Plaintiff cannot claim that the State owns sea water or purport to levy or recover charges for the use of sea water within the territorial sea and the

exclusive economic zone.

16. The Defendant's/Applicant's counsel further submitted that Article 210 of the Constitution bars the imposition of any tax or licensing fee except as provided for by legislation; that the Water Act is a taxing statute and that statutes which impose pecuniary burdens are subject to the strictest rules of construction.
17. The Defendant's counsel submitted that there is no basis either under the Water Act or under the Water Resources Management Rules to contend that the Defendant had failed to obtain a permit or submit a self-assessment form to the Plaintiff in respect to the use of sea water as pleaded in the Plaint.
18. The Plaintiff's/Respondent's counsel submitted that marine waters in the territorial sea and the exclusive economic zone rests in and is owned by the national government for the people of Kenya; that the definition of water resource is so clear that there is no ambiguity.
19. Counsel submitted that the argument that territorial sea is not part of the water resource of Kenya is such a dangerous argument that if the same were to be entertained it will expose the coastal beaches, territorial sea and the continental shelf to uncontrolled exploitation, not just of water resources but of fish, minerals, crude oil and other natural resources lying in the territorial sea.
20. The Plaintiff’s/Respondent’s counsel submitted that section 8(1) (g) of the Water Act as read together with Rule 104 expressly obligates the Plaintiff to charge for the use of water derived from a water resource.
21. According to the Plaintiff's advocate, the provisions of Article 62(3) and 260 of the Constitution shows that Marine Waters in the territorial sea and the exclusive economic zone vests in and is owned by the national Government for the people of Kenya and cannot be said to be res nullis.
22. Counsel relied on the provisions of Article 66 of the Constitution to argue that the state may regulate the use of any land, including both private and public land.
23. The Plaintiff's counsel submitted that the regulation of the territorial waters is the duty of the State and not of the National Land Commission as suggested by the Applicant.
24. Counsel submitted that the Constitution and the Water Act does not distinguish and classify water into various groups since all these classess form part of the water resources of Kenya.
25. It cannot be said, it was submitted, that the legislator in legislating the Water Act expressly wanted to leave territorial sea to the control of foreign countries and opportunistic selfish organizations like the Defendant who is only keen to benefit itself at the expense of the people of Kenya.
26. The Plaintiff's advocate submitted that the Water Act clearly shows that the Plaintiff is the special government agency created by the legislator for the purposes of regulating water use and protecting the water resources, including sea water.
27. Counsel submitted that the jurisdiction of this court to strike out a suit or a pleading is discretional, which discretion ought to be exercised in favour of the Plaintiff to enable it carry out its legitimate mandate as set out in the Water Act.

Analysis and findings

28. The Plaintiff is claiming from the Defendant Kshs.270,295,759.90 being the outstanding water use charges for the period commencing 1st October 2007 to 31st September 2013 together with interest.
29. The Plaintiff's claim is premised on the provisions of Section 8 (g) of the Water Act (the Act) and Rules 104 and 114 of the Water Resources Management Rules, 2007 (the Rules).
30. Section 8 (1) (g) of the Act provides that the Authority (the Plaintiff) shall have the power, in accordance with guidelines in the national resources management strategy, to determine charges to be imposed for the use of water from any water resources while Rule 104 of the Water Resources Management Rules provides that any person required to have a permit for

water use shall be required to pay to the Authority water use charges for using water derived from a water resource. The payable rates are set out in the First Schedule.

31. The Defendant has raised an objection on the legality of the Plaintiff's claim on the basis that the Plaintiff has no *locus standi* to demand for money from it for using sea water. It is the Defendant's case that the Plaintiff can only levy charges for use of water derived from "a water resource" as defined under the Act and not for the use of sea water.
32. It is not in dispute that the Defendant drains sea water from the Kenyan territorial sea into the stabilizing ponds located on its land and uses the water to manufacture salt.
33. The issues that this court is supposed to determine at this stage is whether the Plaintiff, as a State organ, can regulate the use of sea; whether sea water is *res nullius* and incapable of ownership; whether sea water is a water resource as defined under the Water Act and who between the Plaintiff and the National Land Commission has the jurisdiction to regulate and or manage the use of sea water, if at all.
34. The Constitution at Article 260 has defined "land" to include any "marine waters" in the territorial sea and the exclusive economic zone.
35. Public land has been defined under Article 62 (1) (j) of the Constitution to include the territorial sea, the exclusive economic zone and the sea bed.
36. Article 62 (3) of the Constitution provides that the territorial sea, the exclusive economic zone and the sea bed shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.
37. Section 5 of the Maritime Zones Act provides that Kenya shall within the exclusive economic zone, exercise sovereign rights with respect to the exploitation and conservation and management of the natural resources of the zone.
38. Article 2(1) of Part II of the United Nations Convention on the Law of the Sea, which Kenya ratified on 2nd March 1989 provides as follows:

"The sovereignty of a coastal state extends, beyond its land territory and internal waters, to an adjacent belt of sea, described as the territorial sea."

39. The Defendant's/Applicant's counsel has argued that in view of the above provisions of the Maritime Zones Act and the United Nations Convention on the Law of the Sea, the State has no proprietary interest in sea water located in the territorial sea because sea water is *res nullius*. Counsel relied on the case of **Kenya Power Ports Authority Vs East African Power & Lighting Company (1982) KLR 410** in which the Court of Appeal held that port waters was *res nullius* and was therefore not the property of the appellant. Madan J A, in his usual flair stated as follows:

"The sea water that was damaged was a moving, shifting, vanishing element which had no fixed area containing it. It was unidentifiable as a fixed property unless put in a bucket or bowser. It was incapable of ownership by anyone. In Shimanzi Creek today, away tomorrow, may be many miles away, in another creek, even rising in waves in open sea. No ownership, no injury, hence no cause of action".

40. According to the Defendant's counsel, the Plaintiff is not making a distinction between a State's sovereignty over the geographical area which comprises the territorial sea with ownership of the sea water within the territorial sea.
41. It is the Defendant's argument that the exercise of control by a State over its territorial sea is defined by reference to a particular geographical area but not the ownership of sea water. Counsel relied on the Judgment of Law J. A in the **KPA** case (*supra*) in which he stated as follows:

"Whatever rights may be vested in government to the sea bed in territorial waters, no government or person has any proprietary rights in the water above the sea."

42. I find the argument by the learned Judges in the **KPA** case interesting, as much as I am bound by their decision. The totality of the decision by the Court of Appeal in the **KPA** case is that sea water can be used by all and sundry, and can even be polluted to any extent possible because such water is not owned by anybody. Consequently, it has been urged, the Defendant should be allowed to use the sea water within the territorial sea of this country as it wishes.
43. The decision in the KPA case was premised on the ground that no actual damage had been caused to any of the appellant's property by virtue of the pollution of the port waters and therefore the pecuniary loss which arose out of the precautionary measures taken by the appellent to clean up the polluted water was not recoverable at common law.
44. That might have been the position before the enactment of the Environmental Management and Coordination Act, 1999 and the proclamation of the Constitution of Kenya in 2010, but not anymore. Indeed, the KPA decision was made before the country ratified the United Nations Convention on the Law of the Sea.
45. Section 3 (1) of the Environmental Management and Coordination Act, 1999 provides that every person in Kenya is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment. The Act defines "environment" as the physical factors of the surroundings of human being, which in my view includes sea water.
46. Section 3 (3) and (4) of the same Act allows any person alleging that the entitlement conferred under subsection (1) has been, is being or is likely to be contravened in relation to him to bring an action notwithstanding that such a person cannot show that the defendant's act or omission has caused or is likely to cause him any personal loss or injury. This provision has been repeated at Article 70 of the Constitution.
47. In so far as the Constitution has included the territorial sea, the sea bed and the exclusive economic zone in the definition of public land, and has defined land at Article 260 to include marine waters in the territorial sea, I do not subscribe to the Defendant's argument that sea water is not capable of ownership. Sea water, otherwise known as marine water in the territorial sea, just like land as is traditionally known and the internal waters, is vested in the State notwithstanding the fact that it is unidentifiable and keeps on moving.
48. My finding above is based on the provisions of Article 61(1) of the Constitution which provides that all land in Kenya, including marine water in the territorial sea belongs to the people of Kenya collectively as a nation, as communities and as individuals. The people of Kenya are therefore the owners of the marine water in the territorial sea and the exclusive economic zone and the national government holds such land in trust for them.
49. Indeed, the Forth Schedule to the Constitution stipulates under Part 1, paragraph 2 that the use of international waters and water resources is a function of the national government, clearly showing that such waters are not *res nullius.* I do not see how sovereignty over such waters can be separated from ownership as argued by the Defendant's counsel.
50. I have looked at the International law and I agree that there are exceptions to the issue of exclusive ownership of sea water, like the right of innocent passage through the territorial sea. Indeed, there have been debates on the juridical nature of the territorial sea. In his book, ***International Law, 5th Edition***, Malcolm N. Shaw states as follows at page 506:

"Nevertheless, it cannot be disputed that the coastal state enjoys sovereign rights over its maritime belt and extensive jurisdictional control, having regard to the relevant rules of international law. <u>The fundamental restriction upon the sovereignty of the coastal state is the right of other nations to innocent passage through the territorial sea,</u> and this distinguishes the territorial sea from the internal waters of the state, which are fully within the unrestricted

jurisdiction of the coastal nation."

51. The right of other nations to innocent passage upon the territorial sea or economic exclusive zone of this country under international law does not negate the concept of ownership of such waters in so far as the Constitution and the international law is concerned.
52. In fact, the rights of other States to use sea water within the territorial sea or exclusive economic zone of Kenya have been provided for in various Conventions and at section 6 of the Maritime Zones Act. Those rights include navigation and over-flight, lying of submarine cables and properties and other lawful uses recognised in international law.
53. If the United Nations Convention on the Law of the Sea and the Maritime Act allows Kenya to exercise sovereign rights with respect to the exploration, exploitation, conservation and management of the natural resources within its territorial waters and exclusive economic zone, how can it be said that it cannot own such waters, other than pursuant to the exceptions provided for by the international and domestic law" That, in my view is splitting hairs.
54. You can only explore and exploit the natural resources in such water if you own the water, as long as the water is within the territorial sea and the exclusive economic zone, in the first place.
55. Having found that the marine water in the territorial sea is indeed "public land," it follows that sea water can only be used in accordance with the laws of this country, including international law.
56. Article 62 (4) of the Constitution provides as follows-

"Public land shall not be disposed of or otherwise <u>used</u> except in terms of an Act of Parliament specifying the nature and terms of that disposal or <u>use</u>."

57. The issue that I am supposed to determine is whether there is a law specifying how sea water, having been defined as public land, is supposed to be used.
58. The Defendant has argued that by virtue of the provisions of Article 62(3) of the Constitution, the Plaintiff has no regulating mandate over sea water within the territorial sea and the exclusive economic zone since under the said Article, it is only the National Land Commission which is entrusted with the exclusive jurisdiction over sea water.
59. The territorial sea, the exclusive economic zone and the seabed, according to Article 62(3) of the Constitution, is vested in and is held by the national government on behalf of the people of Kenya and administered on its behalf by the National Land Commission.
60. Article 62(3) of the Constitution is complemented by Article 67 (2) (a) which provides that it is the National Land Commission that shall manage public land on behalf of the national and county government. This function of the National Land Commission has been repeated in section 5 (1) (a) of the National Land Commission Act, 2012.
61. The National Land Commission is therefore the only body that is supposed to administer and manage the territorial sea, the exclusive economic zone and the sea bed on behalf of the people of Kenya and not any other State organ.
62. What these constitutional and statutory provisions mean is that although the territorial sea, the exclusive economic zone and the sea bed is owned by the national government on behalf of the people of Kenya, the national government or its organs cannot purport to deal with the territorial sea, the exclusive economic zone and the sea bed in any manner it wants.
63. It is only the National Land Commission which can decide on how the territorial sea, the exclusive economic zone and the sea bed can be used and to regulate its use, because it is the only body that is constitutionally mandated to administer and manage public land.
64. The **Black's Law Dictionary**, 9th edition defines the word "administration" to mean the management or performance of the executive duties of a government, institution or business. All the performance of the executive duties in relation to the use of the territorial sea, the exclusive economic zone and the sea bed is therefore bestowed to the National Land Commission by the

Constitution and the National Land Commission Act, 2012.

65. The only occasion that the national government can regulate the use of the territorial sea, the exclusive economic zone and the sea bed in the interest of defence, public safety, public order, public health or land use planning (see Article 66 (1) of the Constitution).
66. The Constitution at Article 62 (4) stipulates that public land, which includes the territorial sea, the exclusive economic zone and the sea bed is, should not be used except in the manner specified in an Act of Parliament.
67. Legislation on regulation of land use and property is supposed to be enacted by parliament within five years from the date of the promulgation of the Constitution pursuant to the provisions of the Fifth Schedule of the Constitution.
68. Parliament has enacted the Land Act, 2012 which provides how the administration of public land is to be carried out at Part III. Section 20 (1) of the Land Act provides that the National Land Commission may grant a person a licence to use unalienated public land (which includes the territorial sea, the exclusive economic zone and the sea bed) for a period not exceeding five years.
69. It therefore follows that under the new constitutional dispensation, it is only the National Land Commission that can licence a person to utilize sea water within the territorial sea and the exclusive economic zone for the period stipulated in the Land Act and not any other State organ.
70. However, what is puzzling is that the Land Act only repealed the Way leaves Act and the Land Acquisition Act. The other pieces of legislation dealing with the administration and management of public land like the Water Act and the Kenya Maritime Authority Act, amongst others, are still in force.
71. The pieces of legislation purporting to create bodies that tend to perform the functions reserved for the National Land Commission by the Constitution are bound to be declared unconstitutional in the foreseeable future.
72. It is therefore true, as argued by the Defendant's advocate, that it is only the National Land Commission which has the constitutional mandate to administer and manage all public land, including the territorial sea, the exclusive economic zone and the sea bed on behalf of the national government, and not any other State organ. That mandate includes deciding the person that may use such resources by issuing of licences.
73. The administration and management of the territorial sea, the exclusive economic zone and the sea bed, in my view, can only be defined and contextualized upon the passing of relevant legislation. In the meantime, any legislation purporting to deal with the administration and management of the territorial sea, the exclusive economic zone and the sea bed, if any, has to be construed with alteration, adaptations, qualification and exceptions, necessary to bring it into conformity with the Constitution (see section 7 of the sixth schedule of the Constitution).
74. Although it is the National Land Commission that has the mandate of administering and managing all public land, either on behalf of the national government or the county government, the Commission cannot levy taxes on the usage of such land.
75. It is only the national government, through its organs, that can impose tax or licensing fee for the usage of sea water which is a national resource, pursuant to the provisions of Article 209 (1) and (2) of the Constitution.
76. However, Article 210 of the Constitution bars the imposition of any tax or licensing fee except as provided for by legislation. The Plaintiff can therefore lawfully levy taxes for the usage of a water resource as defined in the Water Act on behalf of the national government.
77. The question that the Defendant has raised in the current application is whether the charges levied by the Plaintiff are legal in view of the provisions of the Water Act.
78. It was settled many years ago that that any charges imposed on a subject must be imposed by clear and unambiguous language. Rowlatt J in **Brandy Syndicate Vs IRC (1921)IKB at 74** stated as follows:

"In a taxing Act, clear words are necessary in order to tax the subject....it simply means that in a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be imposed. One can only look fairly at the language used."

79. The Defendant has argued that the reading of sections 2 and 25(1) (a) and (b) of the Water Act shows that a water permit is only required in relation to the water resources defined in the said Act and Rules.
80. The Defendant has also argued that the Plaintiff can only impose a licence fee for the use of a "water resource" which has been defined in section 2 of the Water Act as *"any lake, pond, swamp, marsh, streams, water course, estuary, aquifer, artesian basin or other body of flowing or standing water, whether above or below the ground."*
81. Sea water is not included in the definition of the word water resource. Consequently, it was submitted, the Plaintiff cannot impose charges for the use of such water pursuant to the provisions of the Water Act.
82. The issue that I am supposed to determine at this preliminary stage is whether the words *"other body of flowing or standing water"* as used in the Act can be interpreted to include sea water.
83. The words *"other body of flowing or standing water"* as used in the Act are general words which follow particular and specific words set out in the definition of what a water resource is. Therefore, under the *ejusdem generis* rule, those general words are supposed to be confined to things of the same genus.
84. Cockburn CJ in **R Vs CLEWORTH (1864) 4B & S927 at 932** stated as follows:

"According to well established rules in the construction of statutes, general terms following particular ones apply only to such personal or things as are ejusdem geneneris with those comprehended in the language of the legislature."

85. In **R VS EDMUNDSON (1859) 28 LJMC 213 at 215,** Lord Campbell stated as follows:-

"Where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified."

86. Can sea water within the territorial sea and the exclusive economic zone be said to be of the same kind as lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer and artesian basin"
87. Article 1 of Part II of the United Nations Convention on the Law of the Sea recognizes that the sovereignty of a coastal state extends beyond its land territory and internal waters described as the territorial sea.
88. All the "waters" defined by the Act as "water resource" are what can be described as internal waters, that is water within the territory of Kenya excluding the territorial sea and the economic exclusive zone. The words *"other body of flowing or standing water, whether above or below ground"* as used in the statute can only refer to the internal waters and not the territorial sea or sea water."
89. The non-similarity of what a lake, a pond, a swamp, a marsh, a stream, a watercourse, an estuary, an aquifer and an artesian basin is and what sea water is can be discerned from the definition of what "land" and "public land" is in the Constitution. Rivers, lakes and other water bodies as defined by an Act of Parliament have been clustered together at Article 62(1) (i) of the Constitution while the territorial sea, the exclusive economic zone and the seabed have been clustered under Article 62(1) (j).
90. The intention of Parliament to confer jurisdiction on the Plaintiff to levy charges for the use of only

"internal waters" and not "sea water" can also be discerned from the Water Resources Management Rules, 2007, which is the basis of the Plaintiff's case as read together with the Act.

91. Rule 4(2) of the "Rules" provides as follows:

"These Rules shall apply to all water resources and water bodies in Kenya including all lakes, watercourses, streams and rivers, whether perennial or seasonal, aquifers, and shall include coastal channels leading to territorial waters."

92. Rule 4 (2) limits the application of the "Rules" to coastal channels leading to the territorial waters thus stopping the Plaintiff from exercising its rights over the territorial sea or sea water.
93. The draft Water Bill, 2014 has now taken care of the lacuna in the Water Act by proposing to redefine the definition of the word "water resource" as follows:

".....Any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other water body of flowing or standing water, whether above or below the ground, and includes trans-boundary water resources within the territorial jurisdiction of Kenya."

94. The section goes further to define "trans-boundary waters" as "the ocean water beyond territorial waters."
95. The meaning of "a water resource" as defined in the Act must be confined to the water resources that exist on the main land. "Other body of standing or flowing water" cannot include water that exists outside the mainland such as marine water. This is because all the examples of water bodies given in the Act refer to water bodies that exist within the land territory of a State, otherwise known as internal waters.
96. If Parliament had intended to include sea water in the definition of "a water resource" for the purpose of levying taxes, nothing would have been easier than for it to state so considering that the definition of sea or ocean is quite distinct from other standing or flowing water within the internal boundaries of a country.
97. It may be argued that the strict interpretation of what flowing or standing water is will allow the Defendant and other parties to evade tax. In the case of **Inland Revenue Commissioner Vs Wolfson (1949) I ALL ER 865,** the House of Lords held as follows:

"It was argued that the construction that I favour leaves an easy loophole through which the evasive taxpayer may find escape. That may be so, but I will repeat what has been said before. It is not the function of a court of law to give to words a strained an unnatural meaning because only thus will a taxing section apply to a transaction which, had the legislature thought of it, would have been covered by appropriate words."

98. I am in agreement with the above holding. A statute imposing tax on the subject must be clear in its language so as not to allow speculation on what is payable with the concomitant result of abuse by the State organ mandated to collect taxes. Parliament should have specifically stated that sea water is a water resource for the purpose of levying charges for its use by the Plaintiff.
99. In the circumstances, I find that a lake, pond, swamp, marsh, stream, water course, estuary, aquifer, artesian basin and sea water are two different categories of water and cannot be said to be of the same kind, class or nature for the purpose of statutory interpretation. The Plaintiff therefore does not have the *locus standi* to levy charges for the use of sea water under the Water Act and the Water Resources Management Rules.
100. In view of the fact the Plaintiff's suit is wholly based on the erroneous presumption that it can levy charges for the use of sea water pursuant to the provisions of the Water Act and the Water Resources Management Rules, I find and hold that the Plaintiff's suit does not disclose a

reasonable cause of action in law as against the Defendant.

101. For the reasons I have given above, I shall, which I hereby do, strike out the Plaintiff's suit with costs.

O. A. Angote

Judge

Dated and delivered in Malindi this **17th** day of **October, 2014.**