



**Kanyi & 3 others v Nextgen Office Suites Limited & 4 others (Environment & Land Case E063 of 2022) [2023] KEELC 16434 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16434 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E063 OF 2022  
OA ANGOTE, J  
MARCH 16, 2023**

**BETWEEN**

**GEORGE KANYI ..... 1<sup>ST</sup> PLAINTIFF  
STANLEY KIMANI ..... 2<sup>ND</sup> PLAINTIFF  
SANJAY SHIVJI ..... 3<sup>RD</sup> PLAINTIFF  
ALEXENDER MUEMA ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**NEXTGEN OFFICE SUITES LIMITED ..... 1<sup>ST</sup> DEFENDANT  
THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT  
PRINCIPAL SECRETARY, MINISTRY OF LANDS & PHYSICAL  
PLANNING ..... 3<sup>RD</sup> DEFENDANT  
MINISTRY OF LANDS & PHYSICAL PLANNING ..... 4<sup>TH</sup> DEFENDANT  
THE COUNTY GOVERNMENT, NAIROBI CITY COUNTY ... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. By way of an application dated 11<sup>th</sup> February 2022, the Plaintiffs in this matter have sought for the following orders:
  - a. Pending the hearing and determination of this Application and substantive suit, the Plaintiffs be granted leave to incorporate a management company of Owners/Purchasers, Nextgen Commercial Center, erected on L.R. No. 209/18648, Nairobi with membership and ownership drawn from all owners/purchasers of the units of Nextgen Commercial Center, erected on L.R. No. 209/18648, Nairobi to manage the affairs of Common Areas and Common



interests of all units owners/purchasers pending compliance with the [Sectional Properties Act](#), 2020, Laws of Kenya.

- b. Pending the hearing and determination of the substantive suit, an order of inhibition be and is hereby issued by this court inhibiting dealing with property known as NEXTGEN COMMERCIAL CENTER, ERECTED ON L.R. NO. 209/18648, NAIROBI.
  - c. Costs be in the cause.
2. This application is supported by the grounds on the face of it and the supporting affidavit sworn by George Kanyi, the 1<sup>st</sup> Plaintiff, who deposed that the Plaintiffs are purchasers of units in the property known as Nextgen Commercial Center/Mall, erected on L.R. No. 209/18648, Nairobi (the suit property) and that contrary to the requirements of the [Sectional Properties Act](#) 2020, the Developer has frustrated the efforts of the Plaintiffs and other unit owners to conclude the transfer process with issuance of lease certificates to them.
  3. It was deposed by the 1<sup>st</sup> Plaintiff that no management company has been established with membership drawn from the unit owners to manage the affairs of the common property, and that if this court does not intervene by granting conservatory orders, the substratum of this suit will be extinguished.
  4. The 1<sup>st</sup> Defendant's Director opposed the application vide a Replying Affidavit sworn on 23<sup>rd</sup> March 2022 in which he deposed that the prayers in the application are not in consonance with the prayers sought in the main suit; that this suit is not an individual suit but rather a representative suit brought without the authority and notice of other unit owners the Plaintiffs purport to represent and that the 1<sup>st</sup> Plaintiff's supporting affidavit does not disclose any breach or any fault on the part of the 1<sup>st</sup> Defendant.
  5. It was deposed that the 1<sup>st</sup> Defendant has not interfered with the Plaintiffs' quiet enjoyment of their properties under Article 40 of [the Constitution](#) and that the 1<sup>st</sup> Defendant has never frustrated the Plaintiffs or any unit owner in their quest to obtain share certificates and has at all times adhered to the terms of the sub-leases.
  6. According to the 1<sup>st</sup> Defendant's Director, it was an express term of the standard sale agreement dated 14<sup>th</sup> January 2015 that the same shall be in force with regard to obligations or restrictions not provided for in the lease, and that parties are bound by the terms of the sale agreement and the sub-leases.
  7. The 1<sup>st</sup> Defendant's Director averred that a further term in the sub-leases was that share certificates could only be issued to unit owners after the last lease in the development is registered, which is yet to occur and that there are different management companies for the different developments on the suit land i.e Ruby Tower Management Company managing one block of 70 apartments, Sapphire Tower Management Company managing a second block of 70 residential apartments, and Nextgen Mall Management Company, managing the commercial centre.
  8. It is the 1<sup>st</sup> Defendant's case that all management companies will be given one share in the main management company, Nextgen Management Ltd, to which reversionary interest will be transferred; that a management company is in place and conducting its duties as set out in the respective sub-leases; and that in good faith, the 1<sup>st</sup> Defendant granted the Plaintiffs and other unit owners an informal arrangement where they appoint their representatives to manage the general administration of the center in co-ordination with the Nextgen Mall Management Company Limited.
  9. According to the 1<sup>st</sup> Defendant, any allegation that the management affairs of the 1<sup>st</sup> Defendant does not have membership drawn from the Plaintiffs and unit owners is unfounded.



10. The Plaintiffs responded to the 1<sup>st</sup> Defendant's Affidavit by way of a Further Affidavit sworn on 19<sup>th</sup> May 2022. They averred that the prayers sought in the application are conservatory orders and not temporary orders as contemplated under Order 40 of the Civil Procedure Rules, and urged the court to see the broad connection between the prayers in the application and in the main suit.
11. It was deposed by the 1<sup>st</sup> Plaintiff that this suit is a representative suit and a notice of intention to take legal action on behalf of unit owners was issued vide minutes of 5<sup>th</sup> February 2022 and that the 1<sup>st</sup> Defendant is compelled by law to comply with the Ministry of Lands and Physical Planning's Public Notice dated 10<sup>th</sup> May 2021 requiring conversion of long-term sub-leases to conform with the provisions of Section 54(5) of the [Land Registration Act](#), 2012 and the Sectional Property Act, 2020.

### **Submissions**

12. Counsel for the Plaintiffs, through written submissions filed on 2<sup>nd</sup> June 2022, submitted that the Plaintiffs have a strong prima facie case; that the current management company is exclusively controlled by directors; that the 1<sup>st</sup> Defendant and the current unit owners are excluded from daily decisions of the property; that the current management company's accounts were frozen and garnished vide CMCC Suit No. 4803 of 2018 and that the company is owed by several creditors and its state as a going-concern is now in doubt.
13. The Plaintiffs' counsel submitted that the 1<sup>st</sup> Defendant's directors, through proxy companies, own units in Nextgen Commercial Center and that the said companies do not pay service charge. Counsel relied on the case of Vincent A. Chokaa & Another vs Changdu Guangling Kenya Co. Ltd & 3 Others [2016] eKLR.
14. Counsel submitted that the Plaintiffs stand to suffer irreparable injury which cannot be cured by damages if the application is not allowed; that they have already suffered the consequences of non-participation in the management company, being mismanagement of the suit property and that they have gradually lost business and clients because of the mismanagement of the suit premises.
15. It was submitted that the Plaintiffs continue to suffer loss of business opportunities; that the balance of probabilities tips in their favour as the management company is in a near-collapse state and that the incorporation of a new management company would boost efficiency and transparency in the management of Nextgen Commercial Center.
16. The Applicant's counsel submitted that this court should make an order inhibiting dealing with the suit property pending determination of this suit as there is a real danger that the 1<sup>st</sup> Defendant and the developers may deal with the suit property in a manner likely to deny the unit owners their rights to have sectional titles.
17. Counsel for the 1<sup>st</sup> Defendant submitted that the prayers sought in the application are not anchored in the main suit and that there is no proper suit upon which the interlocutory inhibition order can be granted. Counsel relied on Section 68 of the [Land Registration Act](#) and the cases of Nyamira F.C.S vs The Chief Land Registrar & Another [2005] eKLR, Yang Guang Property Design & Manufacturing Limited vs China Wu Yi Company (K) Ltd [2021] eKLR and Margaret Rachel Mbogo & Another vs Robert Njoki Muthara & Another [2021] eKLR.
18. The 1<sup>st</sup> Defendant's counsel submitted that though this application and the entire suit has been couched as an individual suit, it is in fact a representative suit brought without the authority and notice of all the other unit owners, who are more than 400 in number and that this is in violation of Order 1 Rule 8 of the Civil Procedure Rules. Counsel relied on Yiapas Ole Seese & 4 Others vs Sakita Ole



Narok & 2 Others [2008] eKLR and Kahindi Katana Mwango & Another vs Cannon Assurance (K) Ltd [2013] eKLR.

19. It was counsel's submission that the Plaintiff's suit is not ripe for determination as the 1<sup>st</sup> Defendant is yet to transfer all the 400 units in the Nextgen Commercial Center to their individual owners, which is a term of the sublease and sale agreement. Counsel further submitted that this application and the suit fall outside the ambit of Regulation 18 of the Sectional Properties Regulations 2021.
20. According to the 1<sup>st</sup> Defendant's counsel, the conversion of long-term leases to section units is predicated on transfer of all units to the respective owners and transfer of reversionary interest to the management company to hold in it in trust; that this is not the case in this matter, and that the rights of the Plaintiff under Regulation 18 have not crystallised. Counsel sought to rely on the case of Republic vs National Employment Authority & 3 Others ex-parte Middle East Consultancy Services Ltd [2018] eKLR where the court considered the doctrine of ripeness.
21. The 1<sup>st</sup> Defendant's counsel further submitted that the property in question is a large mixed user development which is exempted from operations of the *Sectional Properties Act* 2020, by dint of Regulation 22 of the Sectional Properties Regulations 2021. Counsel relied on Judges Statutes [Oxford University Press, 2014] and the Republic vs Kenya School of Law & Another Ex-parte Kithinji Maseka Semo & Another [2019] eKLR on interpretation of statutes.
22. Counsel submitted that the application for an order of inhibition, has failed to satisfy the threshold of an injunctive order; that the Plaintiffs have not demonstrated that they will suffer any irreparable harm if the orders sought are not granted having admitted to being members of the management company. Counsel relied on Jan Bolden Nielsen vs Herman Phillipus Steya also known as Hermannus Philipus Steyn & 2 Others [2012] eKLR.

### **Analysis and Determination**

23. The Plaintiffs in this suit are seeking to enforce the provisions of the *Sectional Properties Act*. The *Sectional Properties Act* 2020 was enacted in 2020 to align with the provisions of the land laws enacted in 2012. Subsequently, the Cabinet Secretary for the Ministry of Lands and Physical Planning gazetted the Sectional Properties Regulations ("the Regulations") on 16 November 2021.
24. The Act provides for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and to provide for the use and management of the units and common property. The Regulations operationalize the Act and outline the procedure for registration of sectional plans and conversion of long-term leases registered under the *Land Registration Act* to sectional titles, among others.
25. The sectional regime of ownership of land simplifies sale transactions since individual sectional titles can be transferred in the typical way that land is transferred. Lengthy lease documents will no longer be required under the regime. By simplifying the process of obtaining title documents for the units, unit owners can easily secure financing by charging the units in favour of the lenders, and offers better protection to the unit owners.
26. Sectional developments are regulated by the comprehensive provisions of the Act and the by-laws of the management corporations. The Act requires a sectional plan describing two or more units to be prepared by a surveyor from a building plan approved by the county government.
27. The application to register a sectional plan is accompanied by an application to incorporate a management corporation. The management corporation consists of the unit owners. Once the



- sectional plan is registered, the Land Registrar is required to submit the registered plan to the county government for apportionment of rates within 21 days.
28. The consequences of registration of a sectional plan is that the register relating to the mother title is closed and its title is surrendered to the land registry. A separate register is then opened for every sectional unit. Certificates of title (for freehold land) or certificates of lease (for leasehold land) are issued for each sectional unit and the interests registered against the mother title, including encumbrances, are endorsed on the sectional title documents.
  29. The Act requires that a sectional unit owner's interest in the common areas to be endorsed on their certificate of title or certificate of lease (as applicable); each sectional unit owner will be responsible for payment of land rent and rates for their individual unit; the common areas are owned by the sectional unit owners as tenants in common in shares proportionate of their units; and the management corporation manages the common areas on behalf of the unit owners in accordance with the provisions of the Act and by-laws adopted by the members.
  30. Once the corporation under the Act is registered, the management company is required to transfer all its assets and liabilities to the management corporation within one (1) year of registration of the management corporation. The management company will then be wound up in accordance with the [\*Insolvency Act\*](#).
  31. The Act provides that conversion of leases applies only to long term leases of a period of 21 years and above and which confer ownership of building units. Conversion may be initiated by a developer, the management company or an owner of any unit of a development. If the parties indicated above who are responsible for making the applications for conversion do not do so, any owner of any unit in the development can apply for conversion.
  32. Conversion is effected by submitting to the land registry an application for conversion and an application for registration of the management corporation. The application for conversion must be accompanied by the sectional plan; the leases; and the original or copy of the mother title (or if not available, an indemnity). Upon registration, certificates of title or certificates of lease will be issued for the individual units.
  33. The 1<sup>st</sup> Defendant has raised three grounds of opposition to the application and by extension, the suit: that the prayers sought in the application are not anchored in the main suit; that this suit is not an individual suit but a defective representative suit and that this suit is not ripe for determination.
  34. Although the 1<sup>st</sup> Defendant has stated that the suit before the court is a representative suit, and that the rules for a representative suit set out in the Civil Procedure Rules in respect of advertisement of such a suit should have been complied with, the reading of the Plaint shows that the Plaintiffs filed the suit as purchasers of units within Nextgen Commercial Center, erected on L.R. NO. 209/18648 (the suit premises).
  35. It may be true that the interests of the Plaintiffs in the suit property are similar to the other purchasers of the units within the establishment. However, it cannot be said that the suit is a representative suit contemplated under Order 1 of the Civil Procedure Rules. Indeed, the mere fact that the orders of this court may affect the other purchasers cannot convert the suit into being a representative suit as claimed by the 1<sup>st</sup> Defendant.
  36. The 1<sup>st</sup> Defendant has argued that the suit was not ripe because the 1<sup>st</sup> Defendant has not sold all the 400 units in the premises. The 1<sup>st</sup> Defendant has relied on the case of Republic vs National Employment



Authority & 3 Others Ex-parte Middle East Consultancy Services Ltd [2018] eKLR, where the court defined the doctrine of ripeness as follows:

“Ripeness refers to the readiness of a case for litigation; “a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.”[38] The final decision was yet to be made, hence, there is no decision to be quashed. The goal of ripeness is to prevent premature adjudication; if a dispute is insufficiently developed, any potential injury or stake is too speculative to warrant judicial action. The U.S. Supreme Court fashioned a two-part test for assessing ripeness challenges in *Abbott Laboratories vs. Gardner* [39] as follows:

“Without undertaking to survey the intricacies of the ripeness doctrine it is fair to say that its basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. The problem is best seen in a twofold aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.”[40]”

37. The 1<sup>st</sup> Defendant argues that the rights of the Plaintiffs have not crystallized under Regulation 18 of the Sectional Properties Regulations, 2021 and that in accordance with Regulation 22, the suit property is exempted from application of conversion of long-term leases as it falls under the category of large mixed-use developments.
38. According to the 1<sup>st</sup> Defendant, it is yet to sell all the units in the suit property; that the conversion of long-term leases to sectional units is predicated on transfer of all units to the respective owners and transfer of reversionary interest to the management company to hold it in trust, which is not the case in this matter, and that the rights of the Plaintiffs under Regulation 18 have not crystallized.
39. The *Sectional Properties Act* provides for the registration of units in a building. Section 13 (1) of the Act provides as follows:
  - “(1) If a building contains premises that are;
    - a. rented for residential or commercial purposes to a tenant who is not a party to a purchase agreement; and
    - b. not included in a sectional plan, the owner of the premises or a person acting on his behalf shall not sell those premises as a residential or commercial unit until the sectional plan that includes those premises is registered at a registry.”
40. Section 13 (2) of the *Sectional Properties Act* provides for conversion of long-term leases to the Act as follows:

“All long term sub-leases that are intended to confer ownership of an apartment, flat, maisonette, town house or an office that were registered before the commencement of this Act shall be reviewed to conform to section 54 (5) of the *Land Registration Act*, 2012 (No. 3 of 2012) within a period of two years of the commencement to this Act.”



41. Regulation 18 of the Sectional Property Regulations sets out the process of conversion of the leases under Section 13(2) of the [Sectional Properties Act](#) as follows:
- “Pursuant to section 13(2) of the Act, long-term leases shall be converted to sectional units in accordance with these regulations, where-
- (a) all the units have been transferred to the respective owners and the reversionary interest has been transferred to the management company to hold in trust for the owners as noted on the title; or
  - (b) all the units have been transferred to the respective owners and the reversionary interest is by written agreement intended to be transferred to the management company to hold in trust for the owners; or
  - (c) part of the units have been transferred to the respective owners and the reversionary interest is by written agreement intended to be transferred to the management company to hold in trust for the owners.”
42. Regulation 18 is in respect of the process of conversion of long term leases into sectional units. In that regard, one has to show that all the units have been transferred to the respective owners and the reversionary interest has been transferred to the management company to hold in trust for the owners as noted on the title; or all the units have been transferred to the respective owners and the reversionary interest is by written agreement intended to be transferred to the management company to hold in trust for the owners; or where only part of the units have been transferred, the reversionary interest is by written agreement intended to be transferred to the management company to hold in trust for the owners.
43. From all this, it must either be evident that reversionary interest has already been transferred or there is an intention expressed in an agreement that reversionary interest is to be transferred to the management company, whether all units have been sold or not.
44. Further, it is apparent under this Regulation that the process of conversion may be commenced by the developers, the management company or the individual unit owners. If the developer is unwilling to surrender the mother title for purposes of the conversion, the registrar may register a restriction against the title to prevent any further dealings on it.
45. In the Notice of Preliminary Objection and the 1<sup>st</sup> Defendant’s Replying Affidavit, the 1<sup>st</sup> Defendant has averred that “all management companies will be given one share in the main management company, Nextgen Management Limited, to which reversionary interest will be transferred.” The admission by the 1<sup>st</sup> Defendant that indeed there is an intention to transfer the reversionary interest to the main management company, Nextgen Management Limited, after all the units have been sold clearly brings the suit premises within the purview of Regulation 18 (c).
46. The 1<sup>st</sup> Defendant has argued that mixed-use large developments are excluded from Regulation 18 under Regulation 22, and that the suit premises falls in this category. However, the 1<sup>st</sup> Defendant’s Director’s Affidavit says otherwise.
47. According to the 1<sup>st</sup> Defendant, “there are different management companies for the different developments on the suit land i.e Ruby Tower Management Company managing one block of 70 apartments, Sapphire Tower Management Company managing a second block of 70 residential apartments, and Nextgen Mall Management Company, managing the commercial centre (emphasis).



48. The suit premises therefore has two different, well delineated use, with different management companies, that is residential apartments, managed by Ruby Tower Management Company and Saphire Tower Management Company and the commercial center managed by Nextgen Mall Management Company. The Plaintiffs interest in this matter is in respect to the commercial center which is distinct from the apartments, albeit sharing one mother title. Regulation 22 is therefore not applicable in this case.
49. The last argument by the 1<sup>st</sup> Defendant in the Notice of Preliminary Objection is that the sub-leases provided that share certificates could only be issued to unit owners after the last lease in the development is registered, which is yet to occur. It is the 1<sup>st</sup> Defendant's argument that all the 400 units in the commercial center have not been transferred to their owners.
50. Regulation 18 (c) of the Sectional Properties Regulations brings the suit premises within the ambit of the Act the moment the developer sells a unit. Under the Act, it is not for the developer to decide, by way of an agreement or otherwise, the number of units he should sell before complying with the provisions of the Act in respect to issuing certificates of leases to the purchasers.
51. In addition, considering that the details as to the number and names of the people who have purchased the units in the commercial center is within the knowledge of the 1<sup>st</sup> Defendant, it was for the 1<sup>st</sup> Defendant to provide to this court the details of the said purchasers for the court to ascertain that indeed all the units have not been sold. Having failed to do so, the court will at this stage presume that the developer has sold all the units in the commercial center.
52. Further, the Plaintiffs' case, as I understand it, is that no management company has been established with membership drawn from the unit owners to manage the affairs of the common property as required by the law, which has in essence affected the running of the affairs of the suit property, and the conversion of their ownership of the units into sectional units pursuant to Regulation 18.
53. Section 17 of the Act provides for the incorporation of a Corporation. Section 17 (1) provides as follows:
  - "On the registration of a sectional plan, there shall be constituted a Corporation under the name "The Owners, Sectional Plan No. (the number to be specified being the number given to the plan on registration)".
  - (2) The Registrar shall issue a certificate of registration of the corporation.
  - (3) A Corporation shall consist of all those persons -
    - (a) who are the owners of units in the parcel to which the sectional plan relates; or
    - (b) who are entitled to the parcel when the sectional arrangement is terminated under this Act.
  - (4) The Corporation shall have perpetual succession and a common seal.
  - (5) The Corporation shall be regulated in accordance with this Act and the bylaws specified in the regulations shall subject thereto, have effect in relation to the corporation and its board.
  - (6) The provisions of the [Companies Act](#), 2015 (No. 17 of 2015) shall not appl



54. Section 20 of the Act provides for the functions of the Corporation to include: keeping the common property in a state of good repair; complying with any notice or order duly served on it by the county government or public body requiring repairs to, or work to be performed in respect of, the land or any building or improvements thereon; and control, manage, and administer the common property and do all things reasonably necessary for the enforcement of the by-laws.
55. Other functions of the Corporation include doing all things reasonably necessary for the enforcement of any lease or licence under which the land is held; doing all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section; and doing all other things to ensure the property is well managed including engaging the services of a property manager or any other persons they deem necessary.
56. The Corporation is also required to establish and maintain a fund for administrative expenses sufficient, in the opinion of the Corporation, for the control, management, and administration of the common property, and for the payment of any insurance premiums, and the discharge of any other obligation of the Corporation; determine from time to time the amounts to be paid for the purposes aforesaid; and raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective units.
57. Section 27 of the *Sectional Properties Act* provides that when a developer registers a sectional plan, he shall within ninety days from the day that fifty percent of the units are sold; or one hundred and eighty days from the day that the first unit is sold, whichever is sooner, convene a meeting of the Corporation at which a board shall be elected. Section 28 provides that the board shall, once every year, convene an annual general meeting of the owners.
58. The Act provides how the units that were existing before the Act came into operation should be registered under the Act. Section 4 (1) of the Act provides that an existing structure may be designated a building containing a unit or part of a unit or divided into two or more units by the registration of a sectional plan prepared, by a surveyor, from a building plan that has been approved by a county government.
59. Section 4 (3) provides that a sectional plan shall be accompanied by an application for registration by the Corporation and a list of the persons who are the owners of the units in the parcel which shall be updated from time to time on need basis.
60. What is the import of the above provisions. Firstly, the objective of the Act which came into force on 28<sup>th</sup> December, 2020 is to provide for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and to provide for the use and management of the units and common property. The suit premises fall within this category.
61. Secondly, the Act requires the registration of a Corporation consisting of all those persons who are the owners of units in the parcel to which the sectional plan relates; or who are entitled to the parcel when the sectional arrangement is terminated under this Act. It is the requirement of the law that when a developer registers a sectional plan, he shall within ninety days from the day that fifty percent of the units are sold; or one hundred and eighty days from the day that the first unit is sold, whichever is sooner, convene a meeting of the Corporation at which a board shall be elected.
62. My understanding of the above provisions is that the membership of the Corporation, is not dependent on whether the developer has sold all the units or not. The owner of units become shareholders, depending on the number of units they purchase the moment the leases are registered in



their favour. Indeed, the law allows all the members of the Corporation to participate in the election of the Board, and in the daily running of the premises through the said Board.

63. The standard contract between the Plaintiffs and the 1<sup>st</sup> Defendant providing that a unit owner would be allotted a share in the Nextgen Center Management Limited upon registration of the leases of all other purchasers in the premises is not only encouraging the 1<sup>st</sup> Defendant not to have the premises registered under the Act, but is contrary to the spirit and letter of the Act.
64. Under the law, it is the duty of the 1<sup>st</sup> Defendant to undertake the process of conversion of leases under section 13 of the Act and Regulation 18 of the Sectional Properties Regulations 2021, if it has not done so, and to have all the persons owning units in the premises to be shareholders of the Corporation, including the Plaintiffs, which company will have the sole mandate of managing the operations of the building, including managing the common areas as stipulated in the Act.
65. Indeed, under the Act, the sectional plan of the premises should be accompanied by an application for registration by the Corporation and a list of the persons who are the owners of the units and not the 1<sup>st</sup> Defendant. What this means is that until the Corporation is registered in the names of all unit holders as shareholders, the process of converting the suit property into sectional units cannot commence.
66. Until the Corporation is registered, with all the unit owners listed as shareholders is done, it is the finding of this court that the 1<sup>st</sup> Defendant has, prima facie, failed to comply with the Sectional Properties Act and should be inhibited in dealing with the suit premises, other than establishing the Corporation and conversion of all leases into sectional units.
67. For those reasons, the Plaintiffs' application dated 11<sup>th</sup> February 2022 is allowed as follows:
  - a. Pending the hearing and determination of this suit, the Plaintiffs be and are hereby granted leave to incorporate a Corporation of Nextgen Commercial Center, erected on L.R. No. 209/18648, Nairobi with membership and ownership drawn from all owners/ purchasers of the units of Nextgen Commercial Center, erected on L.R. No. 209/18648, Nairobi to manage the affairs of common areas and common interests of all units owners/purchasers in compliance with the Sectional Properties Act, 2020.
  - b. Other than the process of establishing the Management company/ Corporation and conversion of all leases into sectional units pursuant to the provisions of the law, the 1<sup>st</sup> Defendant is hereby inhibited from dealing with property known as Nextgen Commercial Center, erected on L.R. NO. 209/18648, pending the hearing and determination of the suit.
  - c. The 1<sup>st</sup> Defendant to pay the costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 16<sup>TH</sup> DAY OF MARCH, 2023.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Mr. Keaton for Applicants

Mr. Leseigor for 1<sup>st</sup> Defendant



