



Moorgate Investments Limited v Romsard Limited & 3 others; Chief Land Registrar & 3 others (Interested Parties) (Civil Case 67 of 2016) [2025] KEELC 1456 (KLR) (19 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1456 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
CIVIL CASE 67 OF 2016
EK MAKORI, J
MARCH 19, 2025**

BETWEEN

MOORGATE INVESTMENTS LIMITED PLAINTIFF

AND

ROMSARD LIMITED 1ST DEFENDANT

BENTER CAROLYNE OTIENO 2ND DEFENDANT

IBRAHIM ABDI ATHMAN 3RD DEFENDANT

MARGARET NYACHAE KAPTUIYA CHEBOIWO 4TH DEFENDANT

AND

THE CHIEF LAND REGISTRAR INTERESTED PARTY

THE REGISTRAR OF COAST LAND TITLES INTERESTED PARTY

THE REGISTRAR OF COMPANIES INTERESTED PARTY

THE ATTORNEY GENERAL INTERESTED PARTY

RULING

1. The plaintiff sued the defendants in this matter, seeking the following reliefs:
 - a. A declaration that the plaintiff is the lawfully registered proprietor of the leasehold interest in apartments E1, E2, E12, and E18, the staircase accessing apartments E12 and E18, the bank premises and terrace A erected on all that land known as plot No. 603 title No. LT.41 FOLIO 60/A FILE 11222.
 - b. A declaration that the 3rd defendant is not and has never been a director or a shareholder of the plaintiff and that the transfer of sub-lease executed by the 2nd and 3rd defendants dated 16th



October 2015 in respect to apartments E1, E2, E12, and E18 in favour of the 1st defendant was null and void and incapable of divesting the plaintiff of its lawful interest in the suit premises.

- c. A declaration that the 4th defendant is not and has never been the company secretary of the plaintiff and all company secretarial documents prepared by her in that capacity are null and void and are of no legal effect.
 - d. A declaration that the registration of the sublease dated 16th October 2015, concerning apartments E1, E2, E12 and E18 erected on all that land known as plot No. Portion 603 Title No. LT. 41. Folio 60/A file 11222 was unlawful, null, and void and did not divest the plaintiff of its lawful interest therein.
 - e. An order that the 1st defendant does surrender, within fourteen [14] days from the date of judgment, the sub-lease dated 16th October 2015 concerning apartments E1, E2, E12, and E18 erected on all that land known as plot No. Portion 603 title No. LT.41 Folio 60/A file 11222 to the 2nd interested party for cancellation and reinstatement of the plaintiff as the registered owner of the said leasehold interest.
 - f. An order that the 2nd interested party rectifies the plot No register. Portion 603 title No. LT.41.Folio 60/A file 11222 by canceling all entries therein about the transfer of apartments E1, E2, E12, and E18 to the 1st defendant and reinstating the plaintiff as the registered leasehold proprietor of the said apartments, the staircase accessing apartments E12 and E18, the bank premises and the terrace erected on plot No. Portion 603 title No. LT.41 FOLIO 60/A file 11222.
 - g. A permanent injunction restraining the 1st, 2nd, and 3rd defendants, whether by themselves or through their servants, employees, agents, or through anyone deriving title through them or otherwise howsoever from entering, using, occupying, leasing, transferring, charging, selling, interfering with or in any manner whatsoever in dealing adversely with apartments E1, E2, E12 and E18 or any of the plaintiff's premises erected on or forming part of all that land known as plot No. Portion 603 title No. LT.41 folio 60/A file 11222.
 - h. A permanent injunction restraining the 4th defendant, whether by herself or through her servants, employees, agents, or through anyone deriving title through them or otherwise howsoever from having any dealings with the corporate secretarial matters of the plaintiff and from acting and or holding herself out as the company secretary or officer of the plaintiff and this order be served on the 1st interested party and the 1st interested party be directed to file the same in the company file CPR/2011/62586.
 - i. Costs incidental to the suit.
 - j. Any other or further relief this court may deem appropriate to award.
2. On the 6th of February 2025, this court, after considering the evidence tendered and the arguments by the parties, reached the following final verdict, which is of utmost significance:

“The plaintiff's claim will succeed with costs as stated below, and the counter-claims by the defendants will be dismissed with costs. Thus:

- a. A declaration be and is hereby issued that the plaintiff is the lawfully registered proprietor of the leasehold interest in apartments E1, E2, E12, and E18, the staircase accessing apartments E12 and E18, the bank premises and terrace A



erected on all that land known as plot No. 603 title No. LT.41 FOLIO 60/A FILE 11222.

- b. A declaration be and is hereby issued that the 3rd defendant is not and has never been a director or a shareholder of the plaintiff and that the transfer of sublease executed by the 2nd and 3rd defendants dated 16th October 2015 in respect to apartments E1, E2, E12, and E18 in favour of the 1st defendant was null and void and incapable of divesting the plaintiff of its lawful interest in the suit premises.
 - c. A declaration be and is hereby issued that the 4th defendant is not and has never been the company secretary of the plaintiff. All company secretarial documents she prepared in that capacity are null and void and of no legal effect.
 - d. A declaration be and is hereby issued that the registration of the sublease dated 16th October 2015, concerning apartments E1, E2, E12, and E18, erected on all that land known as plot No. Portion 603 Title No. LT. 41. Folio 60/A file 11222 was unlawful, null, and void and did not divest the plaintiff of its lawful interest therein.
 - e. An order be and is hereby issued that the 2nd interested party rectifies the register concerning plot No. Portion 603 title No. LT.41.Folio 60/A file 11222 by canceling all entries therein about the transfer of apartments E1, E2, E12, and E18 to the 1st defendant and reinstating the plaintiff as the registered leasehold proprietor of the said apartments, the staircase accessing apartments E12 and E18, the bank premises and the terrace erected on plot No. Portion 603 title No. LT.41 FOLIO 60/A file 11222.
 - f. A permanent injunction be and is hereby issued restraining the 1st, 2nd, and 3rd defendants, whether by themselves or through their servants, employees, agents, or through anyone deriving title through them or otherwise howsoever from entering, using, occupying, leasing, transferring, charging, selling, interfering with or in any manner whatsoever in dealing adversely with apartments E1, E2, E12 and E18 or any of the plaintiff's premises erected on or forming part of all that land known as plot No. Portion 603 title No. LT.41 folio 60/A file 11222.
3. Dissatisfied with this court's judgment, the 1st defendant/ applicant has moved this court vide application dated 28th February 2025 to seek a stay of execution pending appeal, contending that the appeal is meritorious and that if stay orders are not granted, the applicant may suffer irreparable harm as the substratum of the suit may change, rendering the appeal an academic exercise.
 4. The applicant contends that all parties were served. They did not file replies nor contest the averments disclosed in the application.
 5. This court will determine whether to grant a stay pending appeal and the attendant costs.
 6. A stay of execution pending an appeal is regulated by Order 42, Rule 6 of the Civil Procedure Rules. This rule states that the mere act of filing an appeal does not automatically suspend the execution of a court order or decree. However, the court from which the appeal is made has the authority to grant a stay of execution if it determines that there is sufficient reason to do so. Should the lower court deny the request for a stay, or if the applicant is not satisfied with the lower court's ruling, they



may seek a stay from the appellate court. To successfully obtain a stay, the applicant must provide evidence that: Substantial loss may result if the stay is not granted. The application for the stay has been made without unreasonable delay. The applicant provides security as ordered by the court for the due performance of the decree or order if it is ultimately binding on them.

7. The objective of a stay is to halt the enforcement of the lower court's ruling while the appeal is being considered, thereby ensuring that the appeal does not become ineffective. A stay of execution serves as an equitable remedy, requiring the court to weigh the conflicting interests of the parties concerned. See [*Chege v Gachora*](#) (Civil Appeal 265 of 2023) [2024] KEHC 1994 (KLR) (29 February 2024) (Ruling).
8. At the core of these proceedings are two warring claims of ownership of the suit property, pitting the plaintiff, who alleges that its transfer and acquisition to the 1st defendant/applicant were tainted with fraud perpetrated by the other defendants.
9. The court has ruled on how the 1st defendant acquired the suit property and decided that it was through fraudulent and illegal processes:

“The conclusion is that the 1st defendant's title originates from fraudulent and illegal processes; both the 1st and 2nd defendants and Ruggero Scommerri were fully aware that the documents they allegedly used to sell the apartments to the 1st defendant were acquired through fraud and deception. To paraphrase the holding by Munyao J. in the *Alice Chemutai Too Case* (supra) - the significant implication of Section 26 (1) (b) as read with Article 40(6) of the [*Constitution*](#) is to eliminate the protection offered to an innocent purchaser or titleholder. This implies that the title of an innocent individual can be challenged if it was obtained illegally, improperly, or through a corrupt arrangement. The titleholder is not required to have played a role in these detrimental factors. In my opinion, Section 26 (1) (b) intends to safeguard genuine titleholders from being stripped of their rights due to subsequent transactions. The innocent purchaser falls back and sues for recovery of the purchase money from the perpetrators – in this case, the 2nd and 3rd defendants and one Ruggero Sciommeri.”

10. The appeal's primary focus will remain determining which party, the plaintiff or the 1st defendant, possesses a legitimate and valid title to the property. The appellate court will resolve this matter, as I am unable to reconsider it myself.
11. For now, balancing the interests of all the warring parties, I will grant a temporary stay of execution for 30 days from today to enable the parties to move to the Court of Appeal.
12. Costs in the intended appeal

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 19TH DAY OF MARCH 2025.

E. K. MAKORI

JUDGE

In the presence of:

Mr. Renee, for the Plaintiff

Ms. Oloo, for the 1st Defendant/Applicant

Happy: Court Assistant

In the absence of:



Mr. Komora for the 3rd Defendant.

