



Mukhongo & 8 others v Mbevo Investment Limited & 6 others (Enviromental and Land Originating Summons E037 of 2024) [2025] KEELC 4574 (KLR) (24 April 2025) (Judgment)

Neutral citation: [2025] KEELC 4574 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E037 OF 2024**

**JG KEMEI, J
APRIL 24, 2025**

BETWEEN

- LUSIKE LYNETTE MUKHONGO 1ST APPLICANT**
- BERNARD ODHIAMBO ODUGE 2ND APPLICANT**
- CELESTINE ACHIENG OGADA 3RD APPLICANT**
- NIMO ALI MOHAMED 4TH APPLICANT**
- RUTH NJERI NGIGI 5TH APPLICANT**
- STEPHEN MWEMA KILUNGYA 6TH APPLICANT**
- KHADIJA IBRAHIM 7TH APPLICANT**
- CHRISTIAN DOMINIC ALUKWE WATILA 8TH APPLICANT**
- LIONSCOM MANAGEMENT LIMITED 9TH APPLICANT**

AND

- MBEVO INVESTMENT LIMITED 1ST RESPONDENT**
- JANE MONICA NDINDA MUINDI 2ND RESPONDENT**
- VICTORIA NDUKU MUINDI 3RD RESPONDENT**
- SAMUEL WATUKA MUINDI 4TH RESPONDENT**
- KAREN MUTHIKE MUINDI 5TH RESPONDENT**
- SAVANNAH COURT LIMITED 6TH RESPONDENT**
- THE CHIEF LAND REGISTRAR 7TH RESPONDENT**



JUDGMENT

1. The Plaintiffs filed suit by way of originating summons dated the 3/6/24 seeking the following orders;
 - a. That the directors of the 1st Defendant are hereby ordered to execute a transfer of the reversionary leasehold interest in Land Reference Number 209/11342 (Original Number 209/10505/3) I. R No. 57798 in favour of the 9th Plaintiff and to cause the said transfer to be registered in the name of the 9th Plaintiff within 14 days of this order.
 - b. That in default of execution of the said transfer, by the directors of the 1st Defendant, the Deputy Registrar of the Environment and Land Court at Nairobi to execute all documents required to effect successful transfer of reversionary leasehold interest in Land Reference Number 209/11342 (Original Number 209/10505/3) I. R No. 57798 to the 9th Plaintiff.
 - c. That in the event the Directors of the 1st Defendant fail to avail the Original Certificate of title; the Land Registrar is hereby directed to register the revisionary interest in Land Reference Number 209/11342 (Original Number 209/10505/3) I. R No. 57798 in favour of the 9th Plaintiff without requiring the production of the Original Certificate of Title and to make such other entries in the Register as would give effect to the Court's orders herein.
 - d. That the Directors of the 1st Defendants are hereby ordered to surrender the Original Certificate for Land Reference Number 209/11342 (Original Number 209/10505/3) I. R No. 57798 with reversionary interest registered in favour of the 9th Plaintiff to the Plaintiffs' Advocates.
 - e. That in the event the Directors of the 1st Defendant fail to avail the Original Certificate of title; the Land Registrar is ordered to issue a provisional Certificate of Title for Land Reference Number 209/11342 (Original Number 209/10505/3) I. R No. 57798 with reversionary interest registered in favour of the 9th Plaintiff.
 - f. Costs of Application to be provided for.
2. The summons is based on the grounds annexed thereto and the supporting affidavit of Christian Dominic Alukwe Witila, the 8th Plaintiff sworn on the 3/6/24. He deponed that he has authority to swear the affidavit on his own behalf and that of the rest of the Applicants/Plaintiffs.
3. It is the 1st -8th Plaintiffs case that they own the 1st -8th flats erected on land Reference Number 209/11342 (original number 209/10505/3 IR No 57798 in South C Nairobi County forming a gated community.
4. That the 2nd -5th Defendants are directors of the 1st Defendant, the original owner and developer of the suit land. The 1st Defendant constructed 8 flats and sold them to the Plaintiffs by way of assigning leases for the remainder period of the mother title.
5. The 6th defendant is a company created by the 1st Defendant with the intention of serving as a management company to hold the reversionary interest in the suit land upon which the flats sit and also to manage the common areas and provide commons services on behalf of the flat owners. However, it was averred that the 6th defendant has never been operationalized and or the shares issued in favour of the Plaintiffs and therefore the Plaintiffs are yet to acquire shares two decades later. It is for that reason



- that the 1st-8th Plaintiffs have formed the 9th Plaintiff Company to manage the common areas and hold the reversionary interest in the suit title on their behalf.
6. That after the sale of the last flat in 2004, the 1st Defendant lost interest in the suit land with respect to the transfer of shares and the operationalization of the 6th Defendant and the attendant transfer and registration of the reversionary interest in favour of the flat owners. That said, the Plaintiffs have continued in occupation while meeting their obligations in respect to payment of the land rent and other outgoings for the suit property.
 7. That according to the sale agreement between the plaintiffs and the 1st Defendant, the purchasers paid for the reversionary interest and the 1st Defendant was obligated to transfer the said reversionary interest to the 6th Defendant Company to hold on behalf of the Plaintiffs. Secondly the plaintiffs were to pay to the management company their share of the management expenses for the common areas and services. Further to the sale agreement, the 1st and 6th Defendants and the purchasers entered into a sublease agreement which stipulated that the manager (6th Defendant) had been incorporated for the purpose of holding the reversionary interest as well as manage the estate on behalf of the Plaintiffs. The Plaintiffs paid the sum of Kshs 1000/- each being their apportioned share of the reversionary interest as well as subscription for one ordinary share of Kshs 100/- fully paid in the 6th Defendant. The membership and ownership of the share was to remain inseparable portion of the lease.
 8. That in total breach of the terms of the agreement for sale and the sublease the directors of the 1st and 6th Defendant have refused and or neglected to transfer both the shares in the management company and the reversionary interest in the suit title to the management company to hold for the benefit of the Plaintiffs.
 9. As a consequence of the said breach of the agreement of sale and the sub lease, the 1st-8th Plaintiffs are unable to effectively manage, tend to and carry out general up keep of the areas and grounds forming part of the common areas and or own the reversionary interest in the title. The title for the suit land still remains in the name of the 1st Defendant despite all the flats, shares and the reversionary interest having been sold to the Plaintiffs. Also, he contends that the whereabouts of the original title for the suit land is unknown.
 10. In addition, he averred that the whereabouts of the directors of the 1st and 6th Defendants remain unknown despite efforts to trace them including service of the summons herein through substituted services.
 11. That it is just and proper that the court allows the summons to enable the Plaintiffs to own the reversionary interest and manage their property through the 9th Plaintiff which is jointly owned by the plaintiffs.
 12. Save for the 7th Defendant, the rest of the defendants despite service failed to enter appearance and or file defences.

The evidence

13. At the hearing of the suit, the evidence of the plaintiffs was adduced by Christian Dominic Alukwe Witila who relied entirely on the supporting affidavit on record along with the documents annexed thereto and marked LML1-9 on pages 11-55 of the plaintiffs' trial bundle.
14. He stated that the Plaintiffs are apartment owners having purchased the said flats from the 1st Defendant. That save for the shares in the would-be management company (6th Defendant) and the



reversionary interest in the title, all the flats were transferred to each of the Plaintiffs, the last being in 2004.

15. That arising from the breach of the agreement of sale and the sublease by the 1st Defendant, they incorporated a company, the 9th Defendant owned by all the 1st -8th Plaintiffs for the purpose of managing the common areas and providing common services to the Plaintiffs. It is this company that they want to hold the shares and the reversionary interest in the title.
16. With that the Plaintiffs closed their case
17. As alluded earlier the defendants failed to enter appearance nor file defenses.

The submissions

18. The Plaintiffs have filed written submissions which I have read and considered and form part of the Judgement

Analysis and determination

19. Having considered the summons, the evidence adduced at the hearing and the written submissions the key issue for determination is whether the Plaintiffs are entitled to the reliefs sought.
20. It is not in dispute that the suit is undefended. Despite service none of the defendants entered appearance nor filed defence. That said the plaintiffs bear the burden of proving their case however undefended it may be.
21. It has not been refuted that the 1st Defendant being the registered owner of the suit land developed 8 flats in the 1990s and sold to the 1st -8th Plaintiffs, the last having been sold in 2004. The 1st Defendant incorporated the 6th Defendant with the intention that it would be the management company that would manage the common areas in the suit property and hold the reversionary interest in the land upon which the flats are situate. The 2nd -5th Defendants are the directors of the 2nd Defendant while the 2nd and the 4th defendants are directors of the 6th Defendants.
22. It is not in dispute that the Plaintiffs entered into sale agreements and sublease agreements with the 1st Defendant for the sale of the flats, reversionary interest and the subscription of shares in the management company. The court has perused one of such lease agreements and the sale agreements on pages 25 – 42 and 48-53 of the trial bundles respectively and will highlight some of the relevant clauses. For example, Para F of the sale agreement provided that the purchaser shall pay transfer fee for the reversionary interest to the management company in the sum of Kshs 4000/-
23. It was a term of the agreement under clause G thereof that the vendor shall execute a transfer of its reversionary interest of the last seven days to the management called Savannah Court Limited in which each of the purchasers of the 8 flats on the said piece of land shall have an equal share upon completion of the sale of the 8 flats. It was acknowledged that the purchaser has paid a consideration of Kshs 1000/- to J M Njage & Company Advocates being the proportionate share for the purchase of the reversionary interest to hold the same as stakeholder pending the registration the transfer of the reversionary.
24. Under clause I of the said agreement it was agreed by the parties that the purchasers shall pay to the management company which shall be formed by the owners of all the flats and shall share all expenses incurred by the management company in the upkeep and maintenance of the grounds and buildings forming part of the said piece of land together with the proportionate share of all expenses in respect of the common services thereto as more specifically detailed in the lease.



25. The corresponding clauses in the lease agreement are found in clause 4 which stipulates that the 1st Defendant has incorporated a management company for purposes of holding the reversionary interest in the land on behalf of the flat owners and for managing the estate and that the payment of Kshs 1000/- had been paid for one ordinary share in the said management company.
26. Under cause 4 (e) of the special conditions of the lease, the 6th Defendant would receive the reversionary interest within 60 days of the registration of transfer of all the 8 flats. According to the copy of the title adduced by PW1, the last lease was registered on 19/5/2004 and therefore in accordance with the said special condition the reversionary interest was to be transferred to the management company by 20/8/2004. The plaintiffs have led unchallenged evidence that the 1st Defendant is yet to comply with the provisions of the lease which bound the parties.
27. The court has also perused the copy of the search dated the 27/2/25 in form of the certified copy of the title and it is evident that the reversionary interest is yet to be transferred to either the 6th Defendant or the plaintiffs for that matter. It is still in the name of the 1st Defendant.
28. PW1 confirmed that all the flats have been sold and each of the lessees has paid for the reversionary interest as well as the shares in line with the terms of the lease and the sale agreement. He further confirmed that none of the defendants have any other interest in the suit property having received the full purchase price as per the purchase/sale agreements aforesaid. The Plaintiffs are desirous to have the reversionary interest be transferred to the 9th Plaintiff, a company owned by each of the flat owners. In the circumstances, there is no valid reason why the Defendants should continue to hold the reversionary interest in the suit property. It is therefore the finding of this court that the 1st – 8th defendants are entitled to the reversionary interest and the defendants are obligated to transfer the same to the 9th defendant forthwith.
29. I agree with the plaintiffs that absent the reversionary interest in their favour their rights to property will be affected in that their ownership of the flats will be incomplete. Without the reversionary interest the plaintiffs right to own the suit property including the flats and fulfil their rights under the head lease to the head lessor will be curtailed.
30. It is for the foregoing reasons that I find that, on a balance of probabilities, the plaintiffs have proved their case.
31. Costs follow the event. In this case the suit was undefended and therefore I make no orders as to costs.

Final orders for disposal

32. In the end the Plaintiffs' suit is meritorious and I enter judgment in their favour as follows;
 - a. The directors of the 1st Defendant be and are hereby ordered to execute a transfer of the reversionary leasehold interest in Land Reference Number 209/11342 (Original Number 209/10505/3) I. R No. 57798 in favour of the 9th Plaintiff and to cause the said transfer to be registered in the name of the 9th Plaintiff within 30 days of this order.
 - b. In default of execution of the said transfer, by the directors of the 1st Defendant, the Deputy Registrar of the Environment and Land Court at Nairobi be and is hereby ordered to execute all documents required to effect successful transfer of reversionary leasehold interest in Land Reference Number 209/11342 (Original Number 209/10505/3) I. R No. 57798 to the 9th Plaintiff.



- c. In the event the Directors of the 1st Defendant fail to avail the Original Certificate of title; the Land Registrar is hereby ordered to register the revisionary interest in Land Reference Number 209/11342 (Original Number 209/10505/3) I. R. No. 57798 in favour of the 9th Plaintiff without requiring the production of the Original Certificate of Title and to make such other entries in the Register as would give effect to the Court's orders herein.
- d. The Directors of the 1st Defendant are hereby ordered to surrender the Original Certificate for Land Reference Number 209/11342 (Original Number 209/10505/3) I. R. No. 57798 with reversionary interest registered in favour of the 9th Plaintiff to the Plaintiff's Advocates.
- e. In the event the Directors of the 1st Defendant fail to avail the Original Certificate of title; the Land Registrar is hereby ordered to issue a provisional Certificate of Title for Land Reference Number 209/11342 (Original Number 209/10505/3) I. R. No. 57798 with reversionary interest registered in favour of the 9th Plaintiff.
- f. I make no orders as to costs.

33. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Ms Wahito HB for Mr Muturi

NA for the 1st -6th Defendants

Ms Nyawira for the 7th Defendant

CA- Ms Catherine

