



REPUBLIC OF KENYA



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**Ashbourne Properties Limited v Thegeya & another (Environment & Land
Case 365 of 2015) [2022] KEELC 2894 (KLR) (11 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 2894 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 365 OF 2015**

JA MOGENI, J

MAY 11, 2022

BETWEEN

**ROBERT NICHOLAS DARBY (SUING FOR AND ON BEHALF OF
PROPERTIES LIMITED PLAINTIFF**

AND

**HILLARY MAINA THEGEYA PREVIOUSLY KNOWN AS MWANGI
THEGEYA 1ST DEFENDANT**

FINTEL LIMITED 2ND DEFENDANT

JUDGMENT

1. By a Plaint dated 5/05/2015, the Plaintiff herein sought for Judgment against the Defendant for the following orders: -
 - a. That the Transfer of the suit property L.R. No. 209/9859 situate at Dam Estate Langata to the 1st Defendant be cancelled together with all subsequent entries on the title and an appropriate order do issue to the relevant Land Registrar.
 - b. The assets and liabilities of the Company be shared out in proportion to the shareholding as at 15th May 2012.
 - c. That the Company be wound up upon sharing of the assets and liabilities.
 - d. Costs of this suit be provided.
2. The suit is opposed. The Defendant entered appearance on 13/07/2015 and filed a defence dated 24/07/2015. The suit proceeded by way of viva voce evidence. Both parties called one witness each. Both parties testified on 16/02/2022.



PLAINTIFF'S CASE

3. It was the Plaintiff's contention that the Plaintiff company has a nominal share capital of Kshs. 100,000/= divided into one thousand (1000) shares of Kshs. 100/= each. The shares are fully allotted to two (2) shareholders in the following equal proportions; The Plaintiff: 500 shares and the 2nd Defendant: 500 shares.
4. The Plaintiff avers that as at 10/05/2012 the shares in the 2nd Defendant were held by Evans Kuria Thegeya (49 shares) and the 1st Defendant (51 shares) both of P.O. Box 17244 Nairobi. Evans Kuria Thegeya represented the 2nd Defendant on the board of the Company but unfortunately, he died on 25/4/ 2011.
5. Further that the 1st Defendant then came to the Company representing the 2nd Defendant but could not get along with the Plaintiff, the other equal shareholder, and there arose a deadlock forcing the Company Secretary, Africa Registrars, to resign. No legitimate power of the Company could be exercised at the AGM or at the Board.
6. The Plaintiff avers that at all material times the Company had acquired and was the registered owner of all that property known as L.R. No. 209/9859 situate at Dam Estate in Langata Nairobi. That the Defendants then usurped the powers of the Company and by Transfer dated 26/11/2012 illegally and fraudulently transferred the suit property to Maina Mwangi Thegeya.
7. It is the Plaintiff's allegation that the particulars of fraud by the Defendants are: the name Maina Mwangi Thegeya was vide a Kenya Gazette Notice of 12/4/1996 formally and absolutely renounced and abandoned by the 1st Defendant and can no longer be used or hold property, there was no meeting called or decision reached by the Company to sell or transfer the suit property to the 1st Defendant, the consideration of Kshs. 500,000/= was never sought or paid to the Company, there was no resolution reached by the Company to seal and/ or sign the said Transfer, that MM Thegeya and L. N. Kaheta who executed the Transfer were neither directors nor shareholders of the Company, that the purported sale and transfer of the suit property was not made known to the Plaintiff a director and owner of 50% of the issued shares, that there was no meeting of the Company to permit the execution of the Transfer, that the Defendants were not acting on behalf of the Company or in promotion of its interests, that the 2nd Defendant through its directors are beneficiaries of this fraud intended to deprive the Plaintiff of his interest in the Company.
8. The Plaintiff seeks cancellation of the Transfer to the 1st Defendant and all consequential entries and return of the title to the Company.
9. Plaintiff avers that owing to the relationship between the shareholders of the Company and the conduct of the Defendants, the Company should be wound-up.

Evidence by the Plaintiff

10. PW1 – Robert Nicholas Darby testified that he is a Project Manager and that he brings the suit on behalf of the plaintiff company. He testified that he had 50% shares and he is a director.
11. It is his evidence that the 1st defendant is a director of Ashbourne representing a company Fintel who are the 2nd defendant. So the 1st Defendant represents the interest of the 2nd defendant as a director of Ashbourne limited. That at all material times there were 2 directors. The shareholders of the 2nd defendant were Evans Thegeya who had 49% and Hilary who had 51% in the 2nd defendant company.



12. He avers that he has brought this suit to recover the suit property. The 1st defendant requested that another director be created for Ashbourne but he refused. He contends that the 1st defendant did so without any board resolution and so those two directors transferred the land out of the company.
13. He adopted his witness statement dated 5/05/2015 and relied on list and bundle of documents dated 30/12/2017 as his evidence in the Court.
14. He pointed that the transfer on page 25-28 on the plaintiff's bundle had Maina Mwangi Thegeya as beneficiary. That at the time of transfer, he did not know the person, but he later learnt that this was the name of the 2nd defendant and he had renounced it. This was through gazette notice dated 12/04/96 and it was appearing on page gazette notice no. 2295. So, it is his case that the 1st defendant renounced his name as early as 1996. The date of transfer is 26/11/2012. So at 2012, the name had been renounced and the 1st defendant was no longer Maina Mwangi.
15. The price for transfer was Kshs. 500,000.00. The transfer at page 25 shows that there is an assessment by the Ministry of Lands by CN Kitui and the value is Kshs. 3 million by a government valuer. The Plaintiff contends that the 1st defendant acquired property at below market price. The transfer was signed at page 27 by Maina Mwangi Thegeya and LN Kahata. They were not directors of the company. He contends that he was not aware of Kahata and MN Thegeya.
16. PW1 avers that in his plaint, he has listed the illegalities committed. He states that they never reached a decision to sell the property. The money was not paid to the company. The transfer did not promote vision for the company. The motive was to fraudulently remove the asset from Ashbourne. He prays that the court cancels the transfer and give him costs of the suit. They limit to the two prayers.
17. During cross examination, it was his testimony that he purchased 500 shares in Ashbourne. He did not have any document to show the shareholding. He stated that he had an agreement with the late Evans Thegeya that they both put Kshs. 5 million in equity. He contended that his equity was the fees/bills that accrued and for Evans, the land. He added that he paid the bills and would give Evans the receipts. He avers that he paid upto Kshs. 1,404,000.00 in total. The payments were for a physical planner, planning approval, architect fees, land rent, NEMA, stamp duty and change of user.
18. PW1 testified that he put in Kshs. 1,404,000.00 including project management fees. He adduced a letter showing the assessment of project management in 2007-8, the value of the land was assessed at Kshs. 5,500,000.00. He admitted that the land was originally in the name of the 1st Defendant, Fintel, when it was established it had 2 shares, Hillary owned 1% share and Evans had 99% shares. Evans' land was put as equity and was in the name of the 1st Defendant. At the time, the transfer was done from the 1st defendant to Ashbourne Ltd in November 2010 for Kshs. 500,000.00. He suspects that the money may have been paid to the 1st defendant. That it may have been done by share transfer in Fintel.
19. Pw1 averred that Ashbourne did not have a bank account and as such he is unaware of the arrangement between Hillary and Evans. He averred that he did not pay the purchase price. The compensation to previous owners was in shares. He reiterated that he contributed Kshs. 1,404,000.00 in bills. The last bill was for Kshs. 200,000.00 for stamp duty. Under Article No. 3, at the time of registration, each director had 500 shares each. There was then an agreement for each director to put in Kshs. 5,500,000.00.
20. PW1 averred that the transfer was a part of the process agreed. There are no minutes and records in court. The share transfer in Fintel was how Hillary was paid. Evans passed away in April 2011.



21. It was his case that the company was created to develop the suit premises. The company was going to own the land that was Evans contribution to get 50% in the Company. He avers that everything was ready but then the title got lost. Evans wrote letters to Ministry of Lands to trace the title. He avers that they had an agreement with HCFK to finance the project and the security was the land. The provisional title was issued on 15/07/2011. The process of bringing on board other directors was done by sending out forum's forms from the registrar. He states that he never found out if the proposed Lucy Kahata had any letters. When Evans died, Hilary said he was taking over Evans' shares in Ashbourne. He stated that the same was possible as he signed a document allowing it but not to allow Lucy as a Director. He contends that the transfer of land from Ashbourne to Hilary was fraudulent. He added that the transfer to Hilary was signed by Hilary, yet he had transferred to Ashbourne.
22. During re-examination, the plaintiff contended that there is a record of allocation of shares at page 23. He stated that the suit property became an asset of the Plaintiff company through Fintel. He confirmed that 51% shares belong to Hilary and 49 % shares belongs to Evans. He averred that according to the new search, there were two new directors appointed without the involvement of the Plaintiff. The shareholding has not changed. Because PW1 did not sign the resolution, he avers that the two directors are there illegally as well as the property transfer.
23. With that evidence, the Plaintiff closed its case.

Defendants' Case

24. The Defendants entered appearance on 13/07/2015 and filed a defence dated 24/07/2015. The Defendants deny every allegation and averred that the shares in Ashbourne properties Limited were at the inception allocated to the 2nd Defendant but one Shiberu Akatsa-Darby but the later did not pay for any of the shares thus excluding her from being a voting member.
25. Further that it was the Plaintiff who was keen on frustrating the efforts of the Defendants to reconstitute the Board of Directors and deliberately failed to attend called meetings and/or respond to requests made by the Company Secretary and the other Shareholders.
26. The Defendants aver that the property known as L.R. No. 209/9859 was registered in the name of the 1st Defendant having purchased it for value in the year 1989 and the said Ashbourne Properties Limited did not acquire the property at any time for any consideration from the 1st Defendant.
27. Further the Defendants aver that neither the original shareholders Shiberu Akatsa - Darby or the Plaintiff being the successor thereof in ownership of the shares is entitled to any dividends or to exercise any privileges as a member for failure to comply with Article 3 of the Company's Articles of Association.
28. The Defendants contends that the 2nd Defendant paid for all its shares by virtue of the transfer of the property to the company. That the said Ashbourne Properties Limited was incorporated solely for the purpose of developing of the property then known as L.R. No. 209/9859 and was never meant to acquire it, the transfer to it Ashbourne Properties Limited only being for the purposes of securing financial facilities from Ms. Housing Finance Company of Kenya Limited which declined to finance the project unless the property was in the name of the developer.
29. The Defendants deny each and every particular of fraud and illegality alleged by the Plaintiff.
30. The Defendants aver that the 2nd Defendant had a right to replace the deceased director with nay person (s) to the Board of Directors of Ashbourne Properties Limited and the Plaintiff could not in any way veto such appointments and the appointment of the 1st Defendant and Lucy N. Kahata had



no illegality in it at all as the Company had to function in spite of the obstinance and intransigence of the Plaintiff.

31. The 1st Defendant avers that even after renouncing his name Maina Mwangi Thegeya the same has never been officially revoked in Government Records as it proved impossible to change the official registration particulars in respect of his names and the many other documents bearing his name and both names have been used to refer to one and the same person.
32. The Defendants aver that the Board Meetings called after the registration of the two directors were legal, legitimate and any action done by the said directors is valid, binding and legal. Consequently, therefore the Plaintiff cannot seek the cancellation of the transfer of the property as prayed for at paragraph 11 of the plaint as it was an action by the Company.
33. The Defendants aver that they no longer have any interest in the Company, and they can transfer their shares held by the 2nd defendant to the Plaintiff or his nominee(s) as there is nothing to wind up as prayed for in the plaint as the Company has no known assets or value.
34. The defendants aver that the plaintiff has no capacity to sue for and on behalf of Ashbourne Properties Limited and can only sue in his capacity as a shareholder (if he qualifies to be a shareholder by the payment to the company of the shares allotted to him or the person he bought from) or in his individual capacity and as such the suit is therefore patently and incurably defective.
35. Further the Defendants contend that the plaintiff has no cause of action against the 2nd defendant whatsoever. That the plaintiff did not at any one time give any demand and or Notice of the intention to sue to the defendants and the defendants will demand the costs of this suit in that regard.
36. Lastly, the defendants pray that the plaintiff's suit be dismissed with costs.

EVIDENCE BY THE DEFENDANT

37. DW1 – Hilary Maina Mwangi Thegeya testified that he is a director of the 2nd defendant company. He stated that he is sued in two names as per the pleadings and that both of those names are his: Maina Mwangi Thegeya and Hilary Maina Mwangi Thegeya. He adopted his witness statement dated 27/07/2015 and relied on list and bundle of documents dated 27/07/2015 as his evidence in the Court.
38. DW1 testified that the suit property L.R No. 209/9859 is his land and that he bought it and later transferred it to Ashbourne Ltd. He stated that his brother had told him that he had been approached by the Plaintiff and they needed to do a project and so he asked him (DW1) to transfer the property to the plaintiff company so that they could get some financing.
39. It is his case that he was never paid. He never got any money from his brother or the plaintiff. The transfer went through, but the title got lost in the lands office. He avers that he went to the lands ministry himself and searched until he got the title. That the registrar inquired about the name that was to be on the title and DW1 told them to use Ashbourne Ltd. This was in the year 2010.
40. He contended that he got a provisional certificate of title, later and he re-transferred the land back to himself. His brother later died but the project could not go on. He stated that he was not involved in the incorporation of Ashbourne. The plaintiff came with a proposal, and it had to be done as a development for NW Realite Ltd but DW1 found that the Plaintiff was not cooperating with their proposal and because he had not been paid, he decided to transfer the suit property back to himself. He avers that he proposed that Fintel was to appoint another director. That the plaintiff refused to sign the document appointing DW1 as a director, so they went ahead and appointed other directors and so this informed the transfer. DW1 contended that he did not have a record of the Plaintiff's expenditure,



but he offered to pay him back Kshs. 1,404,000.00 and add Kshs. 200,000.00 for good will. PW1 rejected the offer and so DW1 contends that he proposed that they wind up the company. He added that Ashbourne is not operational, and it has no bank account.

41. During cross-examination, DW1 testified that the value of the land had gone up to Kshs. 22 million. He states that he didn't know that the Plaintiff had spent any money. That he didn't inform the Plaintiff when he made the transfer. The title shows that as early as 1989, DW1 had the name as Hilary Maina Thegeya. He contends that he used the Deed poll to transfer the land.
42. DW1 testified that in 2013, he transferred the land to Maina Mwangi Thegeya and had it gazette in 1996. He stated that he transferred the title to the name he had abandoned in 1996. It was his evidence that the transfer was not to conceal his identity.
43. He averred that he took over as a board member of Ashbourne when his brother died. He added that he wanted to increase the directors in order to recover the title. When he signed the transfer that was to take the land back to himself, he avers that the plaintiff was not present. He admits that he did not have a resolution, but he informed the Registrar. DW1 added that he wasn't aware that the plaintiff left New Realite in 2007. He further admitted that he did not pay the plaintiff any money for the transfer.
44. During re-examination, DW1 testified that his passport names have the name Maina Mwangi and when he transferred the land in 2013, the names on his ID were Maina Mwangi Thegeya only. His current identification now is as per the ID stated above. It is his contention that the plaintiff knew all those names and that they referred to the same person.
45. With that evidence, the Defendants closed their case.

Submissions

46. Both the Plaintiff and Defendants filed submissions that I have considered. The Plaintiff's submissions are dated 3/03/2022 and filed on the even date. The Defendants' submissions are dated 16/03/2022 and filed on 18/03/2022.

Analysis and Determination

47. I have considered the pleadings filed in this matter and the evidence which was adduced in court by both parties as well as submissions by counsel and the cited authorities. The Court finds that the only issue for determination that arises is whether the transfer of the suit property known as L.R. No. 209/9859 situate at Dam Estate Langata was valid.
48. The Jurisdiction of this Court has been called into question by the Defendants who contend that this Court has no jurisdiction as the dispute arises from company law matters. Jurisdiction is everything and without it, a Court of Law has no option but to down its tools. The Court must then first deal with the said issue.
49. This Court's jurisdiction is limited to only those set out in Section 13 of the *Environment and Land Court Act* and Article 162 (2) (b) of *the Constitution* of Kenya.
50. The Court has gone through the pleadings by the parties. The Court does note that indeed the Plaintiff/ Applicant has raised issues of directorship/shareholding of the company, acquisition of assets by a company as well as prayers of winding up of a company making the same a commercial issue. To this end, the Court finds and holds that it does not have jurisdiction to deal with (c) as I cannot pronounce myself on matters that fall under the jurisdiction of the Commercial Division of the High Court i.e., render myself on (c) in the Plaint dated 5/05/2015.



51. However, on the issue whether the transfer of suit property from the Plaintiff to the 1st Defendant was valid and the consequent prayer that the transfer be canceled, it is the Court's considered view that the said prayer falls within the Jurisdiction of the Environment and Land Court.
52. It is not in dispute that the parties herein agreed that the suit property be transferred to the Plaintiff company so that they could secure funding/finances from HCFK. Therefore, this meant that the Plaintiff was the owner of all that property known as L.R. No. 209/9859 situate at Dam Estate in Langata Nairobi.
53. PW1 contended that the 1st Defendant usurped the powers of the Company and by Transfer dated 26/11/2012 illegally and fraudulently transferred the suit property to Maina Mwangi Thegeya. He contended that the Company did not reach the decision to sell the property.
54. DW1 on the hand, contends that there was no evidence as claimed that the transfer was to be the equity for the shares owned by Fintel Limited without any agreement or memorandum or minutes. They submitted that it was trite law that no property can be transferred without any consideration for the registered owner to a transferee. I agree. This cuts both ways as there is no evidence has been adduced to demonstrate that there was consideration paid for the transfer of the suit property to the 1st Defendant.
55. A company can own land. Its claims are similar to those of a natural person. The Articles of Association of the Plaintiff Company provides for transfer of shares. A look at Article 6, a member of the company is required to issue a notice in writing to the company that he desires to transfer the shares. The Court finds that none of the procedures laid out therein were followed by the Defendants when they purported to transfer the suit property. Aside from that there is no evidence adduced in Court that the directors called a meeting regarding the transfer of the suit property, or minutes produced or a board resolution in that matter.
56. From the pleadings, the prayers made in the plaint, the defence and from the submissions I am of the considered opinion that only 2 issues avail themselves for determination, a determination of which will conclude all issues between the parties. These issues are whether the suit land ever passed from the original proprietors to the 1st defendant or any other party and secondly, whether changes to the shareholding of the 2nd defendant said to have been effected was lawful. Determination of these two issues will dispose of the instant suit. On the first issue, it is common ground that L.R No. 209/9859 situate at Dam Estate in Langata Nairobi a leasehold for 99 years from 1/03/1982 was issued on the 11/77/1989 in favour of Hilary Maina Thegeya. The Title was issued under the Registration of Titles Act Cap 281 Laws of Kenya (now repealed) which had a process for acquiring and disposal of land. Section 23(1) of the said Act which is now repealed is similar with Section 26 (1) of the Land Registration Act No. 3 of 2012 which provides as follows;
- “23(1) The certificate of title issued by the Registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive of evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”
57. Although the Registration of Titles Act together with other Acts were repealed following the enactment of the Land Registration Act No. 3 of 2012, Section 107 of the Land Registration Act No. 3 of 2012 provides that any right interest, title power, or obligation acquired, accrued or established under the repealed Acts, would continue to be governed by the Law applicable to it immediately prior



to the commencement of the new Act. To that extent, therefore, the Plaintiff's rights and interests to the suit property having been acquired prior to the coming into force of the Land Registration Act would therefore stand to be construed under the provisions of the repealed Registration of Titles Act Cap 281 Laws of Kenya.

58. The provision of Section 23(1) of the Registration of Titles Act Cap 281 (repealed) is clear that the title of a registered proprietor shall be taken by all courts as conclusive of evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof subject to encumbrances, easements, restrictions and conditions therein or endorsed thereon, and that the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.
59. The land was to be held by the proprietors together with all privileges and appurtenances belonging thereto free from all other interests and claims whatsoever, only subject to leases, charges and other encumbrances and to the conditions and restrictions if any shown in the register.
60. It is not in dispute that the parties herein agreed that the suit property be transferred to the Plaintiff company so that they could secure funding/finances from HCFK. Therefore, this meant that the Plaintiff became the owner of all that property known as L.R. No. 209/9859 situate at Dam Estate in Langata Nairobi. From the exhibits adduced in this Court, the proprietors have never transferred the suit land to any person since the registration on 18/11/2010 and therefore no change of ownership. However, there is also a transfer document before this court demonstrating that the suit property was transferred from the plaintiff to the 1st Defendant.
61. PW1 contended that the 1st Defendant usurped the powers of the Company and by Transfer dated 26/11/2012 illegally and fraudulently transferred the suit property to Maina Mwangi Thegeya. He contended that the Company did not reach the decision to sell the property. DW1 on the hand, contends that there was no evidence as claimed that the transfer was to be the equity for the shares owned by Fintel Limited without any agreement or memorandum or minutes. He submitted that it was trite law that no property can be transferred without any consideration for the registered owner to a transferee. I agree. This cuts both ways as there is no evidence has been adduced to demonstrate that there was consideration paid for the transfer of the suit property to the 1st Defendant.
62. A company can own land. Its claims are similar to those of a natural person.
63. There was a process in the then Registered Titles Act as there is a process today in the Land Registration Act No. 3 of 2012 on ownership and disposition of land. There is no material in court that the necessary steps in law for transfer of land had been followed.
64. The second issue for determination is related to the first. It is not in dispute that DW1 transferred the suit property without issuing a notice to the Plaintiff of the intention to transfer shares.
65. The Articles of Association at clause 5 to 13 is on "transfer and transmission of shares". Under clause 5, shares in the 1st Defendant could freely be transferred by a member to his wife or her husband, children, son or daughter in law or grandchildren, but no share could be transferred to any person who was not a member of 1st Defendant except as was provided so long as any member was willing to purchase the same at its fair value which would be determined. Under clauses 6, 7 and 8:

"Except where the transfer is made pursuant to clause 5 hereof, any person whether a member of the Company or not who proposes to transfer any shares (hereinafter called "proposing transferor") shall give notice in writing (hereinafter called the "transfer notice") to the Company that he desires to transfer the same. Such transfer notice shall specify the number



of shares which he desires to transfer, and the price at which he is willing to sell the same. The transfer notice shall constitute the Directors the agents for the sale of any shares comprised therein at the price specified therein or at the option of the transferee the fair price as certified by the Company's auditors in accordance with Clause 18 hereof. A transfer notice shall be withdrawn except with sanction of the Directors.

If the Directors shall, within the space of thirty - six days after being served with a transfer notice (or if any prospective transferee shall require the auditor's valuation of such shares then within thirty - six days of receipt by the Directors of a copy of such valuation) find a member of the company holding shares (hereinafter called a "purchasing member") willing to purchase any shares comprised in the transfer notice at the price so fixed and shall give notice of transfer to the proposing transferor, he shall be bound to complete the purchase within fourteen days from the expiration of such last - mentioned notice of transfer.

The Directors shall, with a view to finding a purchasing member, offer any shares comprised in a sale notice in the first instance to the existing holders of the shares of the Company (other than the proposed transferor) in proportion as nearly as may be to their holding of shares and shall limit a time within which such offer may be accepted. The Directors shall make such regulations as regarding the finding of purchasing member for any shares not accepted by a member to whom they shall have been so offered within the time so limited as aforesaid as they think just and reasonable".

66. That is to say that under clause 6 of the Articles of Association of the Plaintiff, a member of the Plaintiff or any other person who proposed to transfer any shares was required to give a written notice to the company of his desire to transfer the same. The notice had to give specifications on the number of shares desired to be transferred and the asking price for the same. Such a notice could not be withdrawn except with the approval of the directors.
67. Under the following clause, the directors of the plaintiff were required on receipt of the said notice to find a holder of shares willing to purchase the shares on offer and the proposed transferor was bound to transfer to the purchasing member. It was a requirement under clause 9 of the Articles of Association for the directors to offer the shares of the proposed transferor in the first instance to the existing members of the Plaintiff.
68. We have already seen that the 1st defendant admitted that he did not notify the plaintiff of the transfer. The plaintiff also denied ever being notified of any intention by a member to transfer shares. Aspects of the company's Articles of Association were not complied with when shares were transferred.
69. The Court of Appeal in the case of *Arthi Highway Developers Limited -vs- West End Butchery Ltd. & 6 Others* (2015) eKLR and Section 75 of the *Companies Act* (repealed) held inter alia that "failure to follow procedures set out in Memorandum and Articles of Association on transfer of shares invalidated a transfer."
70. The *Companies Act* Cap 486 Laws of Kenya (repealed) and the Memorandum and Articles of Association of the Plaintiff had specific and definite procedure on how shares in the Plaintiff company could pass from a member to another member or to a new member. Seeing that a corporate body owned the suit premises, there is a process to be followed to acquire shares. Without that, it is flagrant disregard of procedures set out and recognized in law. The long and short of our finding is that the alleged transfer of the suit property to the 1st Defendant was invalid, null and void. The suit land did not at any time pass from the Plaintiff.



71. I agree with the submissions of the Plaintiff that the 1st defendant allegation to have acquired all shares in the 2nd defendant without notice to existing shareholders did not acquire any rights known to law and Lucy Kahata including MN Thegeya Kahata were imposters, and it does not matter that they are shown as shareholders of the company.
72. On the issue of costs, I find that since the plaintiff has been inconvenienced, he is entitled to costs of the suit.
73. In the circumstances, I find that the Plaintiff has proved his case on a balance of probability and proceed to make the following order: -
- a. The Transfer of the suit property L.R. No. 209/9859 situate at Dam Estate Langata to the 1st Defendant Be And Is Hereby cancelled together with all subsequent entries on the title and an appropriate order do issue to the relevant Land Registrar.
 - b. The assets and liabilities of the Company be shared out in proportion to the shareholding as at 15th May 2012 in relation to the dispute of the suit property.
 - c. In relation to prayer (c), parties to abide by the laws on winding up of companies and seek the appropriate forum for this.
 - d. The costs of the suit are awarded to the Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 11th DAY OF MAY 2022

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MOGENI J.

JUDGE

In the presence of

Mr. Owino h/b for Mr. Ojiambo for the Plaintiff

Mr. Kimani for the 1st and 2nd Defendants

Vincent Owuor Court Assistant

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MOGENI J.

JUDGE

