



**Haq (Beneficiary of the Estate of the Late Nusrat Shah) v Westlands Housing Enterprises Limited
(Environment & Land Case 30 of 2019) [2022] KEELC 15632 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 15632 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 30 OF 2019**

LN MBUGUA, J

JUNE 9, 2022

**IN THE MATTER OF AN APPLICATION UNDER ORDER 37 RULE 1
OF THE CIVIL PROCEDURE RULES 1010, SECTION 98 OF THE CIVIL
PROCEDURE ACT CAP 21 OF THE LAWS OF KENYA IN THE MATTER OF
MAISONETTE NO.A5 SITUATED ON L.R. NO.209/71/1/1 WESTLANDS, NAIROBI**

BETWEEN

**RUKHSANA HAQ (BENEFICIARY OF THE ESTATE OF THE LATE NUSRAT
SHAH) APPLICANT**

AND

WESTLANDS HOUSING ENTERPRISES LIMITED RESPONDENT

RULING

1. The Plaintiff filed this suit on 6.2.2019 by way of an Originating Summons claiming inter-alia that she should be declared as the legal owner of Maisonette No. A5 situated on LR No. 209/71/1/1 in Westlands, Nairobi. She averred that one Mohamed Elias Shah had bought 5 shares in Respondents company more than 40 years ago and this entitled him to be the owner of the maisonette. Mohamed passed on and in his place came Nusrat Begum Shah who also died and the Plaintiff acquired a grant in respect of her estate.
2. In a judgment delivered on 16.10.2020, it emerged that Respondent was not objecting to the transfer of the suit land to the Plaintiff. The bone of contention was the failure by the beneficial owners of the suit property to pay the various fees relating to the shares in the company. The final orders in the aforementioned Judgment were;
 - a. Subject to the payment of the current prorated management expenses by the applicant, the respondent shall forthwith execute all instruments necessary for conveying the leasehold interest in Maisonette Number A5 erected on



Land Reference Number 209/71/1/1, Westlands, Nairobi, together with the corresponding Shares in the Management Company, to the beneficial owner thereof.

- b. The beneficial owner thereof shall bear stamp duty together with related conveyance expenses.
 - c. Parties shall bear their respective costs of this suit.
3. The Plaintiff has now filed an application dated 3.2.2022 seeking the following orders:
1. That this application be certified as urgent and service thereof on the respondent be dispensed with in the first instance.
 2. That this honourable court be pleased to issue a mandatory injunction compelling the Respondent to issue the Applicant with prorated management expenses over Land Reference Number 209/71/1/1/, Westlands, Nairobi.
 3. That the Respondent to execute all instruments necessary for conveying the Lease hold interest in Maisonette Number A5 erected on Land Reference Number 209/71/1/1, Westlands, Nairobi together with the corresponding shares in the management Company, to the Applicant.

In The Alternative

4. That the Deputy Registrar to execute all instruments necessary for conveying the lease hold interest in Maisonette Number A5 erected on Land Reference Number 209/71/1/1, Westlands, Nairobi together with the corresponding shares in the management company, to the Applicant.
 5. That costs of this application be borne by the Respondent.
4. The applicant contends that in light of the orders of 16th October 2020 issued by this court, the Respondent was under a mandatory obligation to issue current prorated management expenses over Maisonette Number A5 on LR No. 209/71/1/1, Westlands Nairobi to the Applicant and to execute all instruments necessary for transfer of the interest in the said property Land Reference Number 209/71/1/1 and the shares in the management company to the Applicant. The applicant further contends that their Advocates have written to the respondent's Advocates on various occasions requesting for the prorated expenses for settlement by the Applicant and have even visited the Respondent's Advocates Chambers to discuss the request, but the Respondent has remained adamant to respond to the request.
5. The Applicant avers that the Respondent has continuously and intentionally kept the Applicant out of the use and benefit of the Maisonette.
6. The court has been urged to allow the Application noting that the Respondent did not respond to the same.



7. Can the application be allowed since it is not opposed?. In the Supreme Court of Kenya case of *Tullow Oil PLC & 3 others v PS Ministry of Energy & 15 others* [2020] eKLR, the court had this to say in regard to an application which was not opposed;

“In other circumstances, depending on its nature, where an application is unopposed, and the Court sees merit in it, then it should be granted without much ado. Not the present Motion as the same is fraught with all manner of difficulties”.

8. In paragraph 11 of the Applicant’s supporting affidavit, she has alluded to the efforts made in requesting for the prorated management expenses. To this end, reference has been made to documents marked as RH-7 and RH-8. I have perused the said documents; RH-7 is a letter dated 18.10.2021 from Applicant’s advocate to Respondents advocate making reference to Applicant’s letter of 26.5.2021 and Respondent’s letter of 13.7.2021. RH-8 is the applicants advocate’s letter dated 26.5.2021, which in turn is making reference to their letter of 4.2.2021 and Respondent’s advocates letter of 28.1.2021. The question is, why has the Applicant failed to provide the aforementioned letters of 28.1.2021 and 13.7.2021 emanating from Respondent’s advocates to enable this court discern the responses made by the Respondent.
9. It is quite apparent that the judgment of the court did direct the Applicant to pay the prorated expenses to the Respondent before the transfer. Going by the content of the said judgment, I discern that the prorated management expenses were known as at October 2019 (see paragraph 4 of the Judgment). The amount due from the applicant was 1,036,270.30cents. The Applicant has not demonstrated that they have complied with clause (a) of the Judgment in respect of the known charges before delving into the unknown.
10. Considering that the issue of none payment of the management charges appeared to be the bone of contention for decades, then it behoves the Applicant to demonstrate that they are now ready to at least pay the sum identified in the judgment.
11. There being no tangible evidence from the Applicant to demonstrate that she tried to pay the known figures in compliance with the judgment, and in absence of the correspondences made to the applicant by the respondent in post judgment period, I am inclined to allow prayer 2 only. Thus the application dated 3.2.2022 is partially allowed in the following terms: An order is hereby issued directing the Respondent to issue the Applicant with prorated management expenses over land Reference No. 209/71/1/1 Westlands Nairobi within the next 45 days. The Applicant is to effect service of this order upon the Respondent within 7 days. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JUNE, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/S Masebe holding brief for Mr. Mwabi for the Applicant

Mwangi for M.A Khan for Respondent

Court Assistant: Eddel Barasa

