



**Nahdy v Omar (Environment & Land Case 237 of 2010)
[2023] KEELC 20529 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20529 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 237 OF 2010
SM KIBUNJA, J
OCTOBER 11, 2023**

BETWEEN

NASSOR MOHAMED NAHDY PLAINTIFF

AND

ABDALLA AHMED OMAR DEFENDANT

RULING

1. This matter came before today the October 9, 2023 pursuant to the orders of the Deputy Registrar issued on the September 27, 2023. The learned counsel for the plaintiff and the defendant addressed the court on their position post the filing of the auditor's report. For the plaintiff, counsel submitted that the court should direct the appointment of a valuer for the two remaining units so as to get guidance on the rent payable. He indicated that the exercise could be done in seven days to bring closure to this matter. The counsel for the defendant was of a different view. He submitted that the matter should be referred back to the Deputy Registrar to complete the inquiry by according the Defendant an opportunity to cross examine the auditor on the filed report. That what counsel for the plaintiff was seeking should also be heard by the Deputy Registrar. That it was only then that the Deputy Registrar will have completed the inquiry directed by this court earlier. In response the counsel for the plaintiff submitted that the defendant has been reluctant to avail documents. That the building belonged to the plaintiff while the defendant was only a tenant. That the easiest way to complete the issue outstanding is to be guided by the auditor's report in establishing the value of the two units so as to get the rent payable for them.
2. The record confirms that in the judgement dated the September 16, 2020 and delivered on the September 21, 2020, the court entered judgement for the plaintiff in the following terms:
 - a. A declaration be and is hereby made that the defendant holds the building and the benefits accruing there from in rent and mesne profits in trust for the



plaintiff subject to recovery of the sum of Kshs.9 million by the defendant (less outstanding rents and value of the demolished daub & wattle house).

- b. An order is issued that the plaintiff shall have possession of the said land and premises and or eviction of the defendant from the suit premises once after the defendant has fully recovered the amounts expended in putting up the structure as stated in (a) above.
 - c. Each party to meet their respective costs of the suit.”
3. The record further shows that the court pronounced itself on the application dated the April 23, 2021 vide its ruling of July 27, 2022 where it directed as follows:
- “(i) That the respondent has 30 days to present full accounts of the rents and mesne profits of the suit premises from April 2009 to date.
 - (ii) If the applicant has any dispute on the same, the applicant is at liberty to apply for inquiry.
 - (iii) If the respondent does not present any accounts at all within 30 days given as directed in (i) above, the applicant’s quantification of Kshs 72,500,000 as rent collected up to April 2021 be deemed as the amount of rents and mesne profits so received up to that period, and thereafter the rent received be deemed to be Kshs 500,000 per month.
 - (iv) The amounts after settlement in (i) and (ii) above or if assumed under (iii) above be deemed to be part of the judgement and decree of the court and may be executed.”

The applicant was also granted costs of the application.

4. That the defendant filed his Statement of Accounts dated the August 25, 2022 indicating the gross rent received from 2009 to 2021 as Kshs 19,100,000. The plaintiff filed his notice of objection to the said Statement of Accounts dated the September 23, 2023 and Financial Statement prepared by Faud Rashid & Co dated August 22, 2023 indicating the gross rent for 2009 to 2023 was Kshs 55,000,000. The suit came before me on the November 25, 2022 and after hearing the learned counsel for the parties I referred the matter to the Deputy Registrar. The record confirms that the parties’ counsel have severally appeared before the Deputy Registrar since February 22, 2023 culminating with the September 27, 2023 when the matter was referred back to this court. During that period, the Deputy Registrar had ordered for an exercise to be carried out to determine the proper books of accounts related to the property in dispute, pursuant to which the Auditors Report by Irungu Macharia Associates was filed.
5. I have perused the reports herein and submissions by the learned counsel, and in obedience to the dictates under article 159(2)(b) of the *Constitution*, sections 1A and 1B of the *Civil Procedure Act* chapter 21 of Laws of Kenya that justice shall not be delayed, the overriding objective and duty of the court, I find the proposal that the rentable area of the suit premises be measured or ascertained to enable the rent payable be calculated, to be a reasonable one and capable of finally resolving the outstanding issues.
6. Accordingly, I direct as follows:



- a. That this matter is referred back to the Deputy Registrar to urgently appoint a licensed valuer to carry out the exercise and file the report with the court within the time to be specified by the Deputy Registrar as recommended in the Auditors' Report by Irungu Macharia Associates.
- b. That a copy of valuer's report to be presented to the auditors, Irungu Macharia Associates, to consider and file a further Report with the court within the time to be specified by the Deputy Registrar.
- c. The parties be at liberty to within thirty (30) days after receipt of copies of the aforementioned reports to agree on the outstanding issues and file a consent with the court and in default the Deputy Registrar to make a determination.

It is so ordered.

DATED AND VIRTUALLY DELIVERED ON THIS 11th DAY OF OCTOBER 2023.

S. M. Kibunja, J.

ELC MOMBASA.

