



**Maina v Kilonzo; Flame Tree (Management) Plc & another (Interested Parties)
(Commercial Case E001 of 2024) [2025] KEHC 6873 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6873 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
COMMERCIAL CASE E001 OF 2024
FN MUCHEMI, J
MAY 15, 2025**

BETWEEN

FRANCISCA NJOKI MAINA PLAINTIFF

AND

RICHARD MUTULE WILLIAM KILONZO DEFENDANT

AND

FLAME TREE (MANAGEMENT) PLC INTERESTED PARTY

THE REGISTRAR OF COMPANIES INTERESTED PARTY

JUDGMENT

1. This Originating Summons dated 27th March 2024 brought under Order 37(4) of the Civil Procedure Rules, Sections 3A and 63(e) of the [Civil Procedure Act](#) and Sections 90(3)(e) and 98 of the [Land Act](#) seeks for orders to direct the respondent to transfer his shares held in Flame Tree (Management) PLC, with respect to the property known as LR. No. Thika Municipality Block 15/100 Bamboo - B01, to the plaintiff. In the alternative, the plaintiff seeks orders for the court to direct the 1st interested party to execute relevant documents for the transfer of the respondent's shares held in Flame Tree (Management) PLC with respect to property LR No. Thika Municipality Block 15/100 Bamboo-B01 to the plaintiff, to cancel the share certificate issued to the respondent and issue a new share certificate to the plaintiff and the 2nd interested party to effect the changes on the register of Flame Tree (Management) PLC.
2. The application was unopposed.

The Applicant's Case.

3. The plaintiff states that she purchased property known as LR. No. Thika Municipality Block 15/100 Bamboo-B01 at a consideration of Kshs. 5 million from African Banking Corporation Ltd through a



private contract in exercise of the bank's statutory power of sale and the property was transferred to her. The plaintiff further states that despite ABC Bank successfully transferring the property to her, the shares held by the defendant in the management company, the 1st interested party, herein were never transferred to her as the share transfer forms were never executed by the respondent.

4. The plaintiff avers that the respondent is not known to her and ABC Bank's attempts to reach him through his last known address have proven futile. The plaintiff further testified that the bank informed her that the previous owner was yet to surrender the share certificate.
5. The plaintiff states that by virtue of purchasing the suit property she became entitled to the respondent's shares in the management company. Thus, she argues that she ought to have been apportioned the respondent's shares in the said management company and issued with a share certificate. The plaintiff further argues that the orders sought are consequential orders as the respondent has no claim over the property and holds no interest in the shares in the management company as the suit property has been transferred to her.
6. The plaintiff states that although the property is registered in her name and she currently enjoys use and possession of the suit property, the 1st interested party through its advocates, Messrs. Omari Obare & Co. Advocates declined to transfer the shares held by the respondent to her in the absence of a duly executed share transfer form.
7. The plaintiff states that no prejudice will be occasioned to the defendant and the interested parties if the orders sought are granted as the said orders are not only consequential orders but are in furtherance of her proprietary rights as envisaged under Article 40 of *the Constitution* of Kenya.
8. The plaintiff did not wish to put in submissions but relied on her affidavits and oral testimony in court.

Issue for determination.

9. The main issue for determination is whether the orders sought should be granted.

The Law

Whether the orders sought should be granted.

10. The plaintiff seeks orders of directing the respondent to transfer his shares held in Flame Tree (Management) PLC, with respect to the property known as LR. No. Thika Municipality Block 15/100 Bamboo- B01, to herself. It is the applicant's case that the defendant had charged the suit property to ABC Bank Limited and defaulted on payment, thus ABC Bank Limited realized its statutory power of sale and sold the suit property to the applicant. The plaintiff has shown that she served the pleadings in the suit to the parties and filed an affidavit of service dated 26th July 2024 as proof of return of service. The interested parties were further served with the mention notice for 24th October 2024 whereas an affidavit of service dated 17th September 2024 was filed. It is my considered view that all the parties were duly served as provided for by the law.
11. Despite being served the respondent did not enter appearance or respond to this suit.
12. That notwithstanding, the plaintiff annexed a copy of CR12 of the 1st interested party which has he legal mandate of managing the suit property. The said company was duly served and copied in the various emails on the progress of the said proceedings. However, no response was filed by the interested party and neither did they attend court. The 1st interested party has not denied that it manages the suit property and further the plaintiff explained that its role is to effect the transfer of the defendant's share in the company to her following an order from the current court. The plaintiff has annexed an



agreement between herself and ABC Bank executed by both parties on 6th March 2017 whereas she is the registered proprietor of Thika Municipality Block 15/100 Bamboo-B01 which is managed by the 1st interested party the plaintiff therefore is entitled to the defendant's shares in the management company which is a legal right for every property owner in the said estate. The said right is normally in an agreement between the vendor and the developer. This right cannot be taken away by the defendant even in a sale of the property by public auction or by private treaty. The defendant was under a duty to effect the transfer of his share in the management company as soon as the property changed hands.

13. It is my finding that the plaintiff has proved her case on the balance of probabilities against the defendant and the interested parties. I hereby enter judgment in favour of the plaintiff against the defendant and the Interested Party in the following terms: -
- a) That the defendant is hereby ordered to transfer the shares held by it in the name of Flame Tree (management) PLC party in respect of LR No. Thika Municipality Block 15/100 Bamboo – B01 to the plaintiff within thirty (30) days.
 - b) That in default, the 1st Interested Party to execute the transfer documents of the defendant's shares in favour of the plaintiff within twenty one 21 days following the expiry of thirty 30 days from the date of this judgment.
 - c) That upon transfer of the said shares, the 2nd Interested Party to issue the requisite certificate in the name of the plaintiff Francisca Njoki Maina.
 - d) That the defendant to meet the costs of the suit.

It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 15TH DAY OF MAY 2025.

F. MUCHEMI

JUDGE

