



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**CIVIL CASE NO. 169 OF 2014**

**NAJMUDDIN HASSANALI NOORBHAI**

**Suing as Personal Representative of the estates of**

**a) GULAMHUSSEIN MOHAMEDALI NOORBHAI**

**b) HASSANALI MOHAMEDALI NOORBHAI**

**c) YUSUFALI MOHAMEDALI NOORBHAI**

**d) ALIBHAI MOHAMEDALI NOORBHAI and**

**e) ABDULHUSSEIN MOHAMEDALI NOORBHAI.....1<sup>ST</sup> PLAINTIFF**

**KHURSHID FAROOQ Suing as Personal Representative of the estates of**

**ESMAIL MOHAMEDALI NOORBHAI.....2<sup>ND</sup> PLAINTIFF**

**MOIZ NOORBHAI Suing as Personal Representative of the estates of**

**NOORBHAI MOHAMEDALI NOORBHAI.....3<sup>RD</sup> PLAINTIFF**

**ZEHRA TEHERALI MOHAMEDALI MEHTAWALLA**

**Suing as Personal Representative of the estates of**

**TAHERALI MOHAMEDALI NOORBHAI.....4<sup>TH</sup> PLAINTIFF**

**HAMIDA ALIHUSEIN HASSANALY**

**Suing as Personal Representative of the estates of**

**SAIFUDEAN MOHAMEDALI NOORBHAI.....5<sup>TH</sup> PLAINTIFF**

**= VERSUS =**

**MOBIL OIL KENYA LIMITED.....1<sup>ST</sup> DEFENDANT**

**LIBYA OIL KENYA LIMITED.....2<sup>ND</sup> DEFENDANT**

**J U D G E M E N T**

1. Each of the 5 plaintiffs instituted this suit as personal representative of each of the respective deceased estates. At all material times, Gulamhussein Mohamedali Noorbhai, Hassanali Mohamedali Noorbhai, Esmail Mohamedali Noorbhai, Noorbhai Mohamedali Noorbhai,

Yusufali Mohamedali Noorbhai, Alibhai Mohamedali Noorbhai, Abdulhussein Mohamedali Noorbhai, Taherali Mohamedali Noorbhai and Saifudean Mohamedali Noorbhai (hereafter referred to as Lessors which expression shall where applicable include their respective Personal Representatives) were the owners of the properties known as Mombasa/Block XII/17, Mombasa/Block XII/18 and Mombasa/block XII/19 (the Suit Properties) and that the Plaintiffs as their Personal Representatives are entitled to the possession of the Suit Properties.

2. It is pleaded that by a lease made on 22<sup>nd</sup> September 1961, the Lessors leased the suit properties to Standard-Vacuum Oil Company (East Africa) Limited as “the Lessee” which expression included the respective companies whose names were from time to time substituted in place of Standard-Vacuum Oil Company Limited for a term of 99 years from 1/6/1961 at annual rent of Kshs.18,000. That the name of the Lessee was variously changed and all the changes were made without the consent or notification to the Lessors. Further that the lease was not varied to reflect the said changes.

3. The plaintiffs plead that the companies whose names were substituted in place of Standard-Vacuum Oil Limited were totally different entities and that every change of name was a breach of covenant under Clause 2(8) of the lease. The plaintiffs proceeded to give the names of directors and shareholders of Mobil Oil Limited prior 2006 in paragraphs 16 – 18 of the plaint. The plaintiffs aver that under the guise of changes in names, the Lessee unlawfully purported to circumvent Clause 2(8) of the lease which required written consent of the Lessor before the Lessee could assign the properties or any part thereof.

4. That on or about 30/6/2011, the Lessor served a notice on the 1<sup>st</sup> defendant to remedy the breach and make compensation or face legal proceedings for possession. The defendants did not comply with the notice. The plaintiffs contends they have suffered loss and damage by reason of the breach. Reasons wherefore the plaintiffs prays for judgment against the defendants jointly and severally for;

**(a) A declaration that on the true construction of the Lease and of the events that have happened, the Plaintiffs are entitled to terminate the lease in respect of Mombasa/Block XII/17, Mombasa/Block XII/18 and Mombasa/Block XII/19 and repossess and enjoy the Properties.**

**(b) Possession of the Suit Properties.**

**(c) Mesne profits at the rate of Kshs.100,000 per annum from 1<sup>st</sup> June, 2008 until possession is delivered up.**

**(d) Damages for breach of contract.**

**(e) Costs of this suit.**

5. The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a joint statement of defence to deny the claim. The defendants pleaded that the lease executed between the Lessors and Standard-Vacuum Oil Company (East Africa) Limited neither required consent of the Lessors nor notification to the Lessors prior to change in name of Standard-Vacuum Limited. The defendants aver that there was no variation in the lease or at all to occasion registration against the title of the suit properties and they put the plaintiffs to strict proof thereof. The defendants further pleaded that the law allows a company to change its name and any such change does not in any way affect any rights or obligations of the company.

6. It is the defendants case that there was no transfer or rights and obligations under the lease nor deed of assignment transferring the unexpired remainder of the lease term. The defendants denied breaching any provision of the lease as alleged as they neither assigned nor parted with possession of the suit properties. They admitted receiving the letter dated 30/6/2011 but deny it constituted forfeiture notice as contemplated under the Registered Land Act (now repealed) for failing to:

*a) Specify the particular breach complained of*

*b) Grant reasonable period of time to allow the defendants as Lessees to remedy the alleged breach.*

*c) Require the defendants as Lessees to make compensation in money for the alleged breach.*

7. The defendants further pleaded that the plaintiffs are estopped from relying on the alleged breached of the lease as indeed Standard-Vacuum Oil changed its name to Esso Standard (East Africa) Limited on 3/1/1967 and the plaintiffs continued to receive rent pursuant to the lease after 3/1/1967. Further that by a variation of the lease on 25/11/2002, the plaintiffs duly acknowledged and were aware of the change from Standard-Vacuum to Esso Kenya Limited and finally to Mobil Oil Kenya Limited. The defendants urged the Court to dismiss the suit with costs.

8. After the close of the pleadings, parties called evidence of one witness each. Najmuddin Hassanali Noorbhai the 1<sup>st</sup> plaintiff gave evidence on his behalf and on behalf of his co-plaintiffs. The 1<sup>st</sup> plaintiff stated that they obtained letters of administration for each of the deceased owners of the suit properties before filing this suit. That by a lease dated 22/9/1961 the deceased persons demised the premises to Standard-Vacuum Oil (East Africa) Limited for a period of 99 years from 1/6/1961 at Kshs.18,000 per annum. The lease was produced in evidence. **PW** further stated that Clause 2(8) of the lease required seeking prior written consent of the Lessors to assign the demised properties or any part thereof and that Clause 4(1) contained proviso for re-entry in the event of a breach.

9. The witness said that they obtained documents from the Registrar of Companies showing the changes in the name of Standard-Vacuum Limited as follows;

*(a) Certificate of Incorporation of Standard-Vacuum Oil dated 15/6/1952 No. 2318.*

*(b) Certificate of change of name from Esso Standard (E.A) Limited to Esso Standard Kenya Limited.*

*(c) Certificate of change of name from Esso Kenya Limited to Mobil Oil Kenya Limited.*

*(d) Certificate of change of Name from Tamoil Kenya Limited to Libya Oil Kenya Limited.*

10. Mr. Najmuddin continued that they did not get the certificate of change of Name from Mobil Oil Kenya Limited to Tamoil Kenya Limited. That all these changes were made without the consent or notification to the Lessor and that the lease was not varied to reflect these changes. According to the plaintiffs, every change of name was a breach of Clause 2(8) of the lease as the companies were totally different entities from Standard-Vacuum Oil Company (East Africa) Limited.

11. The plaintiffs contend that on each change of name, the shares of the old company were transferred to the new shareholders and new directors were appointed i.e. it was a new takeover. **PW** averred that the variation of lease made on 25/11/2002 only changed the annual rent to Kshs.100,000 per annum with effect from 1/6/2001 but the remainder of the terms of the principal lease remained in full force and effect.

12. That before the acquisition which were disguised as name changes, a lot of correspondences was entered between the parties and their respective advocates (**documents Nos 61 – 70**). That on 4/6/2014, the Lessors served on the defendants a notice requiring the 1<sup>st</sup> defendant to remedy the breach and to make compensation to the plaintiffs or face legal proceedings for possession; Neither defendant complied hence this suit. The plaintiffs thus pray for judgment to be entered in their favour as prayed in the plaint.

13. The witness was cross-examined by Mr. Ohaga learned counsel for the defendants. **PW** said that they had no problem with Standard-Vacuum but the problem started when this company changed its name to Esso Standard vide special resolution dated March 1962. Then Esso Standard changed to Mobil Oil in 1997. **PW** conceded that between 1962-1997 they continued receiving rent in accordance with the 1961 lease. That Mobil Oil changed to Tamoil in 1996 and Tamoil to Libya Oil in 1997. According to the witness, the 1<sup>st</sup> and 2<sup>nd</sup> defendants are different because they wrote a letter saying Libya Oil was purchasing Mobil Oil. The witness who is a Certified Public Secretary admitted he knows Companies are identified by their number. That plaintiffs documents at page 67, 68 and 69 all give the same No. C.2318. That the documents at pages 4 and 5 of the defence list also bears the number C.2318. In reply to the Lessors not being notified, the witness was referred to the letter dated 24/3/1997 which stated that Mobil had taken over the rights and obligations of Esso.

14. **PW** was also aware of the contents of the letter dated 20/12/1996 which also mentioned taking over rights/obligations. According to Mr. Najmuddin, the variation of the lease in 2002 was a compromise. He admitted they were notified of the change in name of the defendants. That the events in the plaint are transitions from 1962. In re-examination the witness stated that they were not given the underlying reasons for the changes. That Mobil Africa does not appear anywhere and the letter was not addressed to them as required under the lease. This marked the close of the plaintiffs Case.

15. The defendants gave evidence through Agnes Achieng Abade who said she is their company secretary. She said that the defendants are successors of the Lessee and the Lessee changed its name to Esso Standard E.A Limited; then to Esso Standard Kenya Limited; then to Esso Kenya Limited; then to Mobil Oil Kenya Limited; then to Tamoil Kenya Limited and lastly to Libya Oil Kenya Limited who is the 2<sup>nd</sup> defendant herein. The witness evidence is that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are one and the same entity. That the changes were entered into the register of companies and certificates of change of name issued produced herein as exhibits. It is the defendants' case that they neither required the consent of the Lessor nor notification to the Lessor prior to change of name.

16. **DW** avers that there was no transfer of the Lessees' rights and obligations under the lease and the Lessees did not part with possession of the suit properties or sign any deed transferring the unexpired remainder of the lease term to another person. The witness continued that the Lessor continued to receive/accept rent. Ms Abade was aware of the letter dated 30/6/2011 written to Libya Oil Kenya Limited purporting to terminate the lease alleging that the 2<sup>nd</sup> defendant was a different entity. This letter according to the witness did not constitute forfeiture and that the defendants are not in any breach of the lease.

17. That the plaintiffs' execution of the variation of the lease on 25/11/2002 treated the lease as subsisting and accordingly waived their right to forfeiture if any. Further that by executing the variation, the plaintiffs were made aware of the change of name of Standard-Vacuum Oil Co. (East Africa) to Esso Kenya Limited and finally to Mobil Oil Kenya Limited. The defendants contend that the claim set out in the plaint is without merit and ought to be dismissed with costs to the defendants.

18. In cross-examination; **DW** said she joined 2<sup>nd</sup> defendants in 2012. That Standard-vacuum and Libya Oil is the same save for name changes over time. That various resolutions were passed and registered with Companies registry. That there has been no change in directorship. Showed document at page 4 of defendants bundle and page 145 of plaintiff's bundle which showed the numbers are different. That limited liability company is distinct from its holding company. **Pex 3** is a press release which the witness said may not include all details and structures but she agreed that Tamoil Africa Holdings Limited is separate from Tamoil Kenya Limited. That Tamoil Africa Holdings Limited has headquarters in Malta while Exxon has headquarters in U.S.A. **DW** said transfer of shares can also involve sale of a business. That Mobil to Tamoil took place in 2006 and to Libya Oil in 2007.

19. **DW** concede the lease document provided for a forfeiture if there is a breach. That the acquisition agreements were not shared with the landlords. In re-examination, **DW** said the description of parties provided that the Lessee included successors and assigns irrespective of what was going on behind the scenes. That the certificate number 63102 at page 145 is the same entity at page 143 as it changed its name to Mobil Services Limited which was later wound up voluntarily on 22/11/2006. That Mobil Services Limited ceased to exist and so it cannot be the 1<sup>st</sup> defendant herein. That the transitions were not illegal. This marked the close of defence case.

20. The parties filed closing submissions which I have read and will critique in the course of this judgement. The question for determination are;

(i) Whether or not the plaintiffs are entitled to vacant possession on account of breach of Clause 2(8) of the lease by the defendants.

OR

(ii) Whether or not the plaintiffs are estopped from claiming breach of the lease.

21. Clause 2(8) provided thus;

**“Not to assign the demised premises or part possession with any part thereof without the consent of the Lessor which consent shall not be unreasonably withheld.”**

Clause 4(1) provided that;

**“If there shall be any breach, non-performance or non-observance by the Lessee of any of the covenants provisions and conditions herein contained or implied and on its part to be performed and observed or if the Lessee or other person in whom for the time being the term created hereby shall be vested shall enter into liquidation whether compulsory or voluntary (not being a voluntary liquidation merely for the purpose of reconstruction) or enter into any agreement or make any arrangement with or for the benefit of their creditors within the provisions of any Bankruptcy Ordinance for the time being in force in the Protectorate of Kenya or otherwise suffer and execution to be levied against its or their goods or property then and in every such case it shall and may be lawful for the Lessors although they may not have taken advantage of some previous default of a like nature to re-enter into and upon the demised premises or any part thereof in the name of the whole and the same to have again repossess and enjoy as in their former estate anything herein contained to the contrary in anywise notwithstanding but without prejudice to the right of section by the Lessors in respect of any antecedent breach of the Lessee’s covenants herein contained.”**

22. The plaintiffs relied on the two Clauses for their Cause of action. The lease was effective from 1/6/1961. From the plaintiffs documents from page 14 the first change took place on 14/3/1962 from Standard-Vacuum Oil Company (East Africa) Limited to Esso Standard (East Africa) Limited. The second change from Esso Standard (East Africa) to Esso Standard Kenya limited was on 3/1/1967 Esso Kenya Limited changed to Mobil Oil Kenya Limited on 2/1/1997. The change to Mobil Oil to Tamoil was on 19/12/2006. Then Tamoil Kenya Limited changed to Libya Oil Kenya Limited on 29/6/2007. The certificate number given inspite of all these changes remained the same i.e. C.2318.

23. The defendants’ evidence is that it was only change of name which is allowed in law and they did not need to notify the Lessor. The plaintiff argues that for every change of name, the defendants were breaching Clause 2(8) of the lease. To expound that the entities were different, the plaintiffs annexed the documents showing the changes in the shareholdings and directorships of the new entities. They also relied on a press release dated 18/8/2007 which stated *that Libya Oil is a subsidiary of Tamoil Africa Holdings Limited. That Tamoil Africa Holdings Limited acquired the Mobil Oil Kenya Limited business and all its assets across the Country including the entire network of 64 retail service stations.* The plaintiffs therefore required the defendants to produce the transaction clauses as relates to the acquisition of the target companies if at all there was no change in directorship. It is their argument that the action amounted to assignment of the lease.

24. In support of their Case, the plaintiffs went ahead to rely on the decisions where the corporate veil was pierced. The cases included;

*VTB Capital Plc Vs Nutritek International Corp (2013) 1 All ER 1296* where the Court said thus;

**“First that it is not necessary to pierce the corporate veil unless there are no other remedies available against the wrongdoer; and**

**Secondly, it is not enough to show that there has been wrongdoing. ‘The relevant wrongdoing must be in the nature of an independent wrong that involves the fraudulent or dishonest misuse of the corporate personality of the company for the purpose of concealing the true facts.’**

*Jones Vs Lipman (1962) I.W.L.R* where the Court held that; **“Where a Company is formed with intent to defeat the legal obligations it owes to a third party, the Court has the powers to enforce such obligations notwithstanding that in so doing, the settled doctrine of corporate veil will be breached.”**

And in *Ben Hasham Vs Al Shayif (2008) EWHC 23 80 (Fam)* where the Judge said that the corporate veil can be lifted;

**“Only if there is some impropriety .... The impropriety in question must be linked to the use of the company structure to avoid or conceal liability”; There must be ‘both control of the company by the wrongdoer(s) and impropriety, that is, misuse of the company by them as a divide or façade to conceal their wrongdoing.’**

25. In essence, the plaintiffs are asking the Court to lift the corporate veil so as to find that the name change meant the acquiring company was distinct from the original Lessee. The press release referred to seems to have been made one year after the acquisition had taken place because Mobil Oil Kenya changed to Tamoil on 19/12/2006. In cross-examination the plaintiffs’ witness admitted that Tamoil and Tamoil Africa Holding Limited are different entities. The plaintiffs’ reliance on the press release without supporting documents from the Registrar of Companies to link Tamoil Africa Holdings Limited and the defendants cannot lie. They cannot shift that burden on the defendants who maintained there was only a name change as the company number remained the same i.e. C.2318.

26. The defendants had pleaded in paragraph 22 of their defence that the plaintiffs are estopped from relying on the alleged breach arising from the name change. The defendants contend that the change of name neither affected the business entity or its rights. The defendants further submitted that the change of name did not constitute an assignment of the lease. That an assignment denotes that the Lessee transfers the entire unexpired remainder of the lease term as distinguished from sublease transferring only a portion of the remaining term. That the plaintiffs did not produce any agreement in writing in which the defendants assigned its rights under the lease.

27. In response to the plaintiffs referring to the difference in shareholding/directorship brought by the changes in name, the defendants submitted that a legal entity is distinct from its members. They cited the Case of *Salomon Vs Salomon & Co. Limited (1895-9) All ER 33* at page 30 where Lord Halsbury L. C. stated thus;

***It seems to me impossible to dispute that once the company is legally incorporated it must be treated like any independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are.***

And Lord MacNaghten at page 50 held that;

***“The company is at law a different person altogether from the subscribers ...; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers, as members, liable in any shape or form, except to the extent and in the manner provided by the Act.”***

28. The defendants also relied on the Court of Appeal decision in *Charles Ray Makuto Vs Almakony Limited and Another (2016) eKLR* where the Court of Appeal quoted its decision in *Victor Mabachi & Ano Vs Nurnturn Bates Limited (2013) eKLR* where it held thus,

***“As a body corporate is a persona juridica, with separate independent identity in law, distinct from its shareholders, directors and agents unless there are factors warranting a lifting of the veil.” For example, where there is fraud or improper conduct, the corporate veil may be lifted. Whether factors or circumstances exist for warranting the lifting of the veil is a question of fact in each case. (Emphasis theirs).***

29. Be that as it may the defendants concluded on the matter of lifting the corporate veil that the same was not pleaded and the plaintiff did not adduce evidence to show that there was fraud or improper conduct on the part of the defendants to warrant lifting of the veil. That the entire case of the plaintiffs’ submission for lifting the veil is purely on inference. That despite the name changes, the defendant diligently discharged their obligations under the lease and no claim has been made for non-payment of rent.

30. On the defence of estoppel, the defendants stated that by a variation of lease executed on 25/11/2002, which had recitals as follows;

***“Whereas by an indenture of lease dated the 22<sup>nd</sup> September One thousand Nine Hundred and Sixty-one made between the Lessors of the one part and Standard-Vacuum Oil Company (East Africa) Limited of the other part, the Lessors leased to the Standard-Vacuum Oil Company (East Africa) Limited the land comprised the above mentioned titles for a term of Ninety-Nine years from the first day of June One Thousand Nine Hundred and Sixty one yielding and paying therefor during the said term the annual rental of Kshs.18,000.***

***AND whereas Standard-Vacuum Oil Company (East Africa) Limited changed its name to Esso Kenya Limited and finally to Mobil Oil Kenya Limited ... (emphasis theirs).***

31. That when the plaintiff signed the variation which reviewed the annual rent from Kshs.18,000 to Kshs.100,000 they knew that Standard-Vacuum Oil Company had changed its name and was at the material time known as Mobil Oil Kenya Limited. That notwithstanding this knowledge the plaintiff only filed this suit after eleven (11) years had lapsed. Further that the plaintiffs continued to receive rents. It is the defence case that the recitals that there was a name change were mutually agreed by parties as true hence the plaintiffs are estopped from alleging they were not aware of these changes.

32. In response to the defendants’ submissions, the plaintiffs filed supplementary submissions on 9<sup>th</sup> May 2019. On whether the name changes amounted to assignment, the plaintiffs submitted that the press release was explicit that Tamoil Africa Holdings Limited was acquiring the business assets of Mobil Oil Kenya Limited which included acquisition of the 64 service stations. On estoppel, they state that the same cannot arise where facts relied upon were not true.

33. It is not in dispute that there were several name changes from the Original Lessee Standard-Vacuum Oil Company (East Africa) Limited. There was no dispute that there has been no default in payment of rent to the plaintiffs. In the plaint filed the plaintiffs at paragraph 13 pleaded that the companies whose names were substituted in place of Standard-Vacuum were totally different entities and were not part of Standard-Vacuum Oil Company (East Africa) Limited. The plaintiffs urged the Court to lift the veil to see the difference in the shareholding. The defendants object to the lifting of the veil because the same was not pleaded. The plaintiffs however urged the Court to do so because it came up during the hearing and supported their averment by citing the Case of *Odd Jobs Vs Mobia (1970) E.A 476*.

34. I have considered the cases cited for and against lifting of the corporate veil. Indeed, the claim herein was not about lifting of the corporate veil because if it were so, this Court’s jurisdiction would have been ousted by the provisions of the Companies Act. The plaintiffs have argued that the issue of the corporate veil arose during the hearing. The defendant’s witness both in chief and in cross-examination maintained that the changes from Standard-Vacuum Oil Company to Libya Oil is one and the same save for the name changes overtime. This evidence is corroborated by the fact that inspite of the name changes, the company No. 2318 remained the same.

35. The plaintiffs' witness who is a Certified Public Secretary (CPS) admitted during cross-exam that a company is identified by its number. Although the defendants witness admitted the shareholding changed but the obligations and rights of company number did not change. She also agreed that Tamoil Africa Holdings Limited is separate and distinct from Tamoil Kenya Limited. Since the certificate of name change on record is between Mobil Oil Kenya Limited to Tamoil Limited, the plaintiffs' argument that Tamoil Africa Holdings Limited which is a distinct holding company is the one which acquired Mobil Oil Limited is unsupported by evidence as required under the Companies Law.

36. The lifting of the veil in any event should have been for entities that changed from Mobil Oil Limited to Tamoil Limited and subsequently to Libya Oil Limited. From the pleadings in paragraph 15 – 18 of the plaint, the shareholders of Mobil Oil Kenya Limited and Tamoil Kenya Limited are given as *Mobil Kenya Holdings Limited and Mobil International Petroleum Corporation*. *The shareholders of Libya Oil Kenya Limited is given as Tamoil Kenya Holdings Limited and Tamoil Africa Holdings Limited*. It is this difference in shareholdings that the plaintiffs are asking the Court to find as constituting a breach of the lease.

37. This Court cannot go into the details of shareholding of a Company without lifting the corporate veil. It is trite law that there makes a distinction between a company and its subscribers/shareholders as was explained in the case of *Salomon Vs Salomon & Company Limited supra*. Further, the grounds upon which the veil can be lifted were stated to include where the members use the company to commit fraud, illegalities or for improper purpose. See the Case of *Githunguri Dairy Farmers Co-operative Society Vs Errie Campbell & Company Limited & Ano (2018) eKLR*.

38. In the instant case, the evidence adduced show that defendants have always discharged their obligation of paying rent to the plaintiffs. No fraud or illegal activity was pleaded or proved to have been committed against the plaintiffs. The introduction of new issues not pleaded that the name change may have been used to escape the liabilities of paying taxes to the government does not lie as it would open a Pandora's Box to determine matters touching on parties who were not joined to this suit. I therefore will not delve into lifting of the corporate veil for two reasons; first on the question of want of jurisdiction and secondly and without prejudice no particulars of fraud were pleaded and proved to have been committed against the plaintiffs. This Court is persuaded to go by the evidence that the companies remained the same as its registration number C.2318 did not change inspite of the name changes.

39. The second issue raised is whether or not the plaintiffs are entitled to vacant possession for breach or in the alternative if they are estopped from claiming breach based on name change. The pleadings of both parties reveal that the changes took place from 1962 to 2007. The plaintiffs pleaded that they were never notified of all these changes. Between 1962 – 2002 five name changes had occurred and by 2002, the Lessee was Mobil Oil Kenya Limited. All these period, the plaintiffs were receiving annual rent of Kshs.18,000. On 25/11/2002 the 1961 lease was varied. The variation of the lease document referred to Mobil Oil Kenya Limited as the Lessee. The variation of lease had this Clause; **“And WHEREAS Standard-Vacuum Oil Company (East Africa) Limited changed its name to Esso Kenya Limited and finally to Mobil Oil Kenya Limited, NOW THIS variation of lease witnesseth as follows. It is HEREBY MUTUALLY COVENANTED AND DECLARED by the parties subject to the modifications and alternations herein written the terms of the said lease are hereby confirmed and shall remain in force and effect.”**

40. The plaintiffs having signed a variation of the lease in 2002 recognising Mobil Oil as the Lessee, can they challenge name changes prior the variation of the lease or after? They have pleaded that even these earlier changes their consent was not sought neither were they notified. In my opinion they acquiesced to the name changes by the Lessee. Having acquiesced to the first 3 changes, they definitely made the defendants/Lessee to believe they had no objection to the same. Nothing has been shown that the subsequent name changes were different from the previous ones. Consequently, I do agree with the defendants that the plaintiffs are estopped from claiming that the recent name change from Mobil Oil to Tamoil and subsequently to Libya Oil amounted to breach of Clause 2(8) of the Lease.

41. The plaintiffs submitted that the facts relied upon were not true and not wholly disclosed in material aspect for the doctrine of estoppel to apply. However, what they considered as untrue is not specified. By signing the variation of the lease in the year 2002, they were made aware of the name change by virtue of the name of Mobil Oil appearing in the document. They did not take any steps to terminate the lease from 25/11/2002 assuming it's the first time they were made aware of the changes until in 2014 when this suit was filed. The plaintiffs became guilty of the principle of equity which states that; *Equity aids the vigilant not the indolent*.

42. From my analysis of the evidence and submissions rendered, it is my finding that the plaintiffs have failed to demonstrate that the name changes resulted into assignment of the lease contrary to the provisions of Clause 2(8) of the lease. Further it is my finding that even if there was breach (which is not the case), the plaintiffs are estopped from relying on the name change having acquiesced to the same by executing the variation of the lease on 25/11/2002. The plaintiffs are thus not entitled to vacant possession based on the claim for breach of Clause 2(8) of the Lease. The plaintiffs are also not entitled to mesne profits of Kshs.100,000 per annum because there was no plea and no proof made that there was any rent in arrears. Equally the plaintiff is not entitled to damages because there is no finding on breach of lease.

43. In conclusion, I find that the plaintiffs' suit is not proved within the required standards. The same is dismissed with costs to the defendants.

**Dated and signed at Busia this 4<sup>th</sup> day of June, 2020.**

**A. OMOLLO**

**JUDGE**

**Judgment delivered electronically by email this 9<sup>th</sup> day of June, 2020 due to ongoing Covid-19 pandemic.**

**A. OMOLLO**

**JUDGE**