



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 19 OF 2014(O.S)

**IN THE MATTER OF: ACCOUNTING FOR RENT RECEIVED FROM TENANTS IN
RESPECT OF PROPERTY KNOWN AS MSA/BLOCK XXIV/74 FROM 2005 TODATE**

ZUBEIR MOHAMED AL-AMIN APPLICANT

V E R S U S

MOHAMED MOHAMED AL-AMIN RESPONDENT

RULING

1. **ZUBEIR MOHAMED AL-AMIN** the Plaintiff filed this suit by way of Originating Summons seeking determination of the following questions-

- **Whether the Defendant should be compelled to account for all rent and or proceeds received from tenants in respect of property known as MOMBASA/BLOCK XXIV/74 within fifteen (15) days from the date of the order.**
- **Whether the Defendant should be ordered to pay other registered owners and heirs of property known as MOMBASA/BLOCK XXIV/74 sums of money equivalent to their shares from the rent received from 2005 todate.**
- **Whether future rent should be collected by an agent agreed upon by the parties or as directed by this Honourable Court and the manner in which the said rent should be distributed to the heirs and co-registered owners and beneficiaries of the Estate of the Late Mohamed Al-Amin.**

2. By an interlocutory application of Notice of Motion dated 14th March 2014 Plaintiff seeks an order to restrain Mohamed Mohamed Al-Amin, the Defendant from collecting rent on the property MOMBASA/BLOCK XXIV/74; and that an order be made that the rent proceed of that property be deposited in joint interest earning account of both Plaintiff's and Defendant's name.

3. The Plaintiff and Defendant are heirs of Mohamed Mohamed Al-Amin (Deceased). In his life time the property was purchased which was registered in the names **Mohamed Mohamed Al-Amin (Deceased), Teba Mohamed Al-Amin, Fatuma Mohamed Al-Amin, Halima Mohamed Al-Amin and Hadija Mohamed.**

4. Following an application before the Kadhi's Court that property was declared to be held in trust for the family of Mohamed Mohamed Al-Amin (Deceased) and hence the Respondent became entitled to its rental income.

5. In the affidavit in support of the application under consideration Plaintiff alleges that Defendant has been collecting rent of the property since 2005 but has failed to account for it.

6. In simple response Defendant stated that prior to 2005 the Plaintiff was collecting rent and that he had not himself account for that rent.

7. My simple response to that is that two wrongs do not make it right. The Defendant was obligated to respond to the allegation of failure to account which he did not. It is also not a defence to the application that the other beneficiaries are not complaining about the non-accounting.

8. In my view the Plaintiff has on prima facie basis shown that Defendant has failed to account. The prayers sought will therefore be granted.

9. In the end I grant the following orders-

(a) MOHAMED MOHAMED AL-AMIN, the Defendant herein is restrained until further order of this Court from collecting rent of property MOMBASA/BLOCK XXIV/74.

(b) The Court orders the tenants on property MOMBASA/BLOCK XXIV/74 to deposit their rent henceforth in this Court under this file.

(c) The Plaintiff and Defendant shall open a joint interest earning account into which the rental income of property MOMBASA/BLOCK XXIV/74 will be deposited. On opening such account either party may move the Court for orders for rental income to be deposited into that account.

(d) The Plaintiff is awarded costs of Notice of Motion dated 14th March 2014.

DATED and DELIVERED at MOMBASA this 5TH day of MARCH, 2015.

MARY KASANGO

JUDGE