



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

HIGH COURT CIVIL CASE NO. 19 OF 2014(OS)

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

ZUBEIR MOHAMED AL-AMINPLAINTIFF

VERSUS

MOHAMED MOHAMED AL-AMIN.....DEFENDANT

RULING

(1)The plaintiff by originating summons dated 11th February 2014, in this matter seeks determination the following:

- 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/XXXIV/74 sums of money equivalent to their shares from the rent received from 2005 todote.
- Whether future rent should be collected 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.

The plaintiff sought by the application dated 11th March 2014 for an order to restrain the defendant from collecting rent over the property MOMBASA/BLOCK XXIV/74. This court by its ruling dated 5th March 2015 ordered the defendant be restrained from collecting rent as prayed and ordered that the plaintiff and defendant do open a joint account where that rent shall be deposited and until such account is opened the rent to be deposited into court.

(2) There is now an application by Notice of Motion dated 25th December 2015 brought by interested parties seeking review of that Ruling.

(3) From the outset I wish to state when this court ruled on 5th March 2014 it was not informed that the subject property was the subject of litigation before the Kadhi court and a decree was issued on 23rd December 2008. By virtue of that decreed each beneficiaries, which include the parties in this case, and the interested parties amongst others had their share over that property determined. For this court to have ordered by its Ruling of 5th March 2015 that the rent of the subject property be deposited in court or in the joint account of the plaintiff and defendant certainly goes against the distribution made by Kadhi of the estate Mohamed Mohamed Al-amin (Deceased).

(4) Order 45 Rule 1 of the Civil Procedure Rule is the appropriate rule that permits the court to review its orders. That rule provides as follows;

1. ***(I) Any person considering himself aggrieved-***

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(5) The applicants in seeking this court to review the order of 5th March 2015 have shown that the said order was made on account of mistake or error, that beneficiaries shares over the subject property had not been determined. The correct position is that their share had been determined as stated before by the Kadhi court.

(6) This is how I understand this matter. That each of the beneficiaries know their entitlement over the rental income of the subject property in view of the decree issued by the Kadhi court. That being so it was not correct for the court to order the whole rental income to be deposited into the plaintiff's and defendant's joint account. To do so would deny other beneficiaries their entitlement. It is because of that finding that I am of the view that the application for review is merited.

Accordingly I make the following orders.

(a) The orders made by the Ruling dated 5.3.2015 is hereby set aside and vacated.

(b) The tenants on MOMBASA/BLOCK XXIV/74 shall pay their rent to MOHAMED MOHAMED AL-AMIN.

(c) MOHAMED MOHAMED AL-AMIN shall retain the plaintiff's share of that rent until the plaintiff shall give written notice of where that rent shall be deposited.

(d) The costs of the Notice of Motion dated 25.3.2015 shall be in the cause.

DATED AND DELIVERED AT MOMBASA THIS 14TH DAY OF MAY 2015.

MARY KASANGO

JUDGE

14th May 2015

Coram

Before Justice Mary Kasango

C/Assistant – Kavuku

Present for:

Plaintiff :

For defendant:

For Interested parties:

Court

Ruling delivered in their presence in open court.

MARY KASANGO

JUDGE