



REPUBLIC OF KENYA



**Beach Villas Limited v Mogeni & 3 others (Environment and Land Case
111 of 2012) [2025] KEELC 6529 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6529 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 111 OF 2012
SM KIBUNJA, J
OCTOBER 1, 2025**

BETWEEN

BEACH VILLAS LIMITED PLAINTIFF

AND

KEVIN TOM MOGENI 1ST DEFENDANT

DAVID KINISU SIFUNA 2ND DEFENDANT

THE COMMISSIONER OF LANDS 3RD DEFENDANT

THE REGISTRAR OF TITLES, MOMBASA 4TH DEFENDANT

RULING

Notice of Motion date 13th June 2025

1. Before this court is the 2nd defendant's application dated 13th June 2025 seeking for the following orders:
 1. "Spent.
 2. That the consent judgment entered by the parties and recorded in court on the 25th day of June 2018, together with all other consequential orders arising therefrom, be set aside.
 3. That an order be issued compelling the 4th defendant, the Registrar of Titles, Mombasa, to restore the Applicant's title to Land Parcel No. 414/III/MN and cause its registration in the Applicant's name.
 4. That a temporary injunction be issued restraining the Plaintiff, its agent, servants or assigns from alienating, disposing, selling, transferring, or in



any way dealing with Land Parcel No. 414/III/MN, pending the hearing and determination of this Application.

5. That a permanent injunction be issued restraining the Plaintiff, its agent, servants or assigns from alienating, disposing, selling, transferring, or in any way dealing with Land Parcel No. 414/III/MN.
 6. That an order be issued compelling the Plaintiff, at its own cost, to clear the suit property of all squatters and deliver vacant possession to the Applicant; or, in the alternative.
 7. That the costs of this application be provided for.”
2. The grounds relied on and elucidated in the supporting affidavit sworn by the 2nd defendant on even date are that he has discovered that the plaintiff is an amorphous , illegal and non-existent legal entity which cannot sue or be sued and also cannot hold property; that Mwangemi Constance Wakesho, Nina Dmirievna Mwangemi, Luda Pelageya Mwangemi and the estate of the late Crispus Moses Nashon Mwangemi listed as directors of the plaintiff are imposters; that an official company search dated 29th April 2025, obtained pursuant to court orders issued in Milimani HCJR No. E081 of 2025, confirmed that the plaintiff has been dormant and non-compliant since 1977 and has failed to update statutory records such as annual returns, online filings and declarations of beneficial ownership; that the said consent judgment was obtained through fraud and deception and he was coerced and unduly influenced into entering the said consent; that after the above consent, the plaintiff has already destroyed his title deed and replaced it with a false title; that the plaintiff breached the terms of the consent judgment by initiating a new suit, Malindi ELCC No. 6 of 2020 with the intent of depriving him of the suit parcel; that the said suit is a demonstration of the plaintiff affinity to abuse court process as well as undermining earlier decisions made in this court; that after the Malindi suit was filed, the records at the company registry could not be traced and it took the intervention of Milimani HCJR E081 of 2025 to compel the Registrar of Companies to supply him with a copy of the official search; that the illegal activities of the plaintiff were executed by the aforementioned imposters through Messrs Miller and Company Advocates; that this application was brought without undue delay and unless the court restrains the plaintiff, the same will dispose of the suit property.
 3. Despite service, the plaintiff did not file any response or appear in court during the hearing. When the application came up for hearing on 8th July 2025, the learned counsel for the 1st defendant appeared and informed the court that the consent judgment had already been executed, and would not be filing a reply to the application. The 2nd defendant proceeded to make his oral submissions in support of his application which the court has considered.
 4. The following are the issues for the court’s determinations:
 - a. Whether the 2nd defendant has met the threshold for setting aside the consent judgement, and if so, what orders should ensue.
 - b. Whether the 2nd defendant has met the threshold for the injunction orders sought to be issued.



- c. Who bears the costs of the application?
5. The court has considered the grounds on the application, affidavit evidence, submissions by 2nd defendant, the record and come to the following determinations:
- a. This being an application for review of the consent judgment, the provision of Order 45(1) of the *Civil Procedure Rules* is applicable, and it provides as follows:

“ 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 review of judgment to the court which passed the decree or made the order without unreasonable delay”.

In the case of Evan Bwire versus Andrew Aginda Civil Appeal No. 147 of 2006 cited in the case of *Stephen Githua Kimani versus Nancy Wanjira Waruingi t/a Providence Auctioneers* (2016) eKLR the Court of Appeal held as follows:

“An application for review will only be allowed on strong grounds particularly if its effect will amount to re-opening the application or case afresh. In other words, I find no material before me to demonstrate that the applicant has demonstrated the existence of new evidence which he could not get even after exercising due diligence.”

The 2nd defendant has claimed that he learnt the plaintiff is non-existent after conducting a company search on 29th April 2025, and has annexed the search marked “KDS 2”. He has however failed to show that he could not have obtained that same information at the time of



entering into the consent that he now seeks to be set aside.

- b. The said search confirms the existence of some dispute that is currently going on over the plaintiff. However, the court has to remind itself of the finding in the famous case of *Salomon versus Salomon* 1897 AC 78 which enunciated the salomon principle to the effect that companies are separate entities from its directors and shareholders. And in the case of *Aster Holdings Limited versus City Council of Nairobi & 4 others* [2019] eKLR the court stated that:

“There is no doubt that a company is at law a separate legal entity which is different from its shareholders and subscribers. However, in some instances, the corporate veil of a company can be pierced. The circumstances under which the corporate veil of a company may be pierced were well set out in paragraph 90 of *Halsbury’s Laws of England* 4th Edition Vol 7 (1) which states as follows: -"Notwithstanding the effect of a company's incorporation, in some cases the Court will 'pierce the corporate veil' in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but in all cases where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case the Court will go behind the mere status of the company as a separate legal entity distinct from its shareholders, and will consider who are the persons, as shareholders or even as agents, directing and controlling the activities of the company.”

The disputes over the plaintiff, including the 2nd defendant’s attack at piercing its corporate veil, and the alleged complicity of Miller & Company Advocates are matters to be raised and litigated before the High Court. Probably, should the attack on the plaintiff’s corporate veil be successful, then, the 2nd defendant could decide whether or not to confront the validity of the consent judgment herein.

- c. Notwithstanding the above, the fact remains that the 2nd defendant executed the said consent filed on 4th June 2010. In his submissions, he argues that he was coerced into executing the said consent because of Criminal Case No. 365 of 2018. He has however not laid out the basis of how the said Criminal Case amount to coercive force making him to execute the consent against his will. The consent was filed in court in 2010 while the alleged criminal case was filed in 2018, eight years later. The criminal case could therefore not have influenced the consent in any way. This has left the court in the dark and it cannot engage itself to speculations.



- d. The Court of Appeal stated as follows about setting aside consent judgments in the case of *SMN versus ZMS & 3 Others* [2017] eKLR:

“There is now a dearth of authorities on the law governing the setting aside of consent judgments, or orders, and we are grateful to counsel for citing some of them before us. Generally, a court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties.”

The allegations of fraud, coercion and undue influence raised by the applicant have not been proved to warrant the setting aside of the consent judgment cannot, and that prayer therefore fails.

- e. The other prayers of restoration of the title to the 2nd defendant’s name, injunction, removing of the squatters and delivery of vacant possession could only have been considered had the prayer for setting aside of the consent judgement been granted. In view of the finding in (d) above, those prayers also fails.
- i. Under section 27 of the *Civil Procedure Act*, costs follow the event, unless where there is good reason to direct differently. That though the 2nd defendant has failed in the application, no order as to costs will be issued because no party filed replies in opposition.

6. From the foregoing conclusions on the 2nd defendant’s notice of motion dated 13th June 2025, the court finds and orders as follows:

- a. That the application has no merit and is hereby dismissed.
- b. No order as to costs granted.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 1ST DAY OF OCTOBER, 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Plaintiff : Absent

Defendants: Mr Chacha for 1st Defendant/Respondent and 2nd Defendant/Applicant in person
Shitemi-Court Assistant.

