



**Abdula & another (Suing as joint representatives of the Estate of Ali Abdalla Ali) v Bakari  
(Environment and Land Case 23 of 2011) [2025] KEELC 7205 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7205 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 23 OF 2011**

**YM ANGIMA, J  
OCTOBER 23, 2025**

**BETWEEN**

**FATUMA ABDULRAHIM ABDULA & ABDALLA ALI ABDALLA (SUING  
AS JOINT REPRESENTATIVES OF THE ESTATE OF ALI ABDALLA  
ALI) ..... PLAINTIFF**

**AND**

**FATUMA BAKARI ..... DEFENDANT**

**RULING**

**A. Plaintiff's Application**

1. By a notice of motion dated 07.04.2025 filed pursuant to Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, and 3A of the Civil Procedure Act (the Act), Section 152F of the Land Act and Article 159 (2) (b) of the Constitution of Kenya and all other enabling provisions of the law, the applicants sought the following orders:
  - i. Spent.
  - ii. That this honourable court be pleased to issue an order evicting the defendant, her servants, agents and/or any other persons whatsoever in occupation thereon from the suit property known as Plot No. 9091/I/MN within Mombasa County and vacant possession be handled over to the plaintiffs.
  - iii. That this honourable court be pleased to issue an order that the OCS Nyali police station do supervise the eviction of the defendant, her servants, agents and/or any other persons whatsoever in occupation thereon from the suit property known as Plot No. 9091/I/MN within Mombasa County.
  - iv. That costs of this application be provided for.



2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Fatuma Abdulrahim Abdula dated 07.04.2025. It was contended that there was a consent entered and adopted as a judgment on 06.06.2024 whereby the suit was settled on condition that the defendant would purchase the suit property from the plaintiff for Kshs 7,000,000/= payable within 120 days. The plaintiffs claimed that despite constant reminders to the defendant to pay the agreed sum of Kshs 7,000,000 on or before 06.10.2024, the defendant had failed to pay the sum and had continued to illegally occupy the suit property. The plaintiffs maintained that they had rejected the defendant's proposal to sell the suit property to a third party for Kshs 12,000,000/= and retain the balance of Kshs 5,000,000/= and urged the court to allow the application for eviction as prayed.

#### **B. The respondent's response**

3. The respondent responded to the application vide a replying affidavit sworn by Fatuma Bakari dated 02.05.2025 and contended that there were willing buyers interested in purchasing the suit property for a sum over and above Kshs 7,000,000/=. She argued that it was a win-win situation since she would pay the plaintiffs their amount of Kshs 7,000,000/= and have a surplus to compensate her for the loss of her home. She urged the court to dismiss the application and allow her proposal which she stated did not violate the consent judgment.

#### **C. The plaintiffs' rejoinder**

4. The plaintiffs responded to the defendant's replying affidavit through a further affidavit sworn by Fatuma Abdulrahim Abdula dated 14.05.2025. She contended that the defendant had breached the consent order when she failed to pay Kshs 7,000,000/= within 120 days as agreed. The deponent maintained that the suggestion by the defendant to sell the suit property to a third party for a higher price was a way for the defendant to enrich herself from the suit property while having no proprietary rights to the same. It was stated that the consent was entered into voluntarily and the court cannot rewrite a contract for parties by compelling the plaintiff to sell the suit property to a third party for the benefit of the defendant.

#### **D. Directions on submissions**

5. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The plaintiffs filed submissions in support of their application dated 14.05.2025 while the defendant filed submissions dated 26.05.2025.

#### **E. Issues for determination**

6. The court has perused the application, the response thereto and the material on record as well as the submissions made by all counsel. The court is of the view that the following key issues arise for determination herein:
  - a. Whether the court ought to enforce the consent order dated 06.06.2024.
  - b. Whether the court should evict the defendant from the suit property.
  - c. Who shall bear the costs of the application.

#### **F. Analysis and determination**

- a. Whether the court ought to enforce the consent order dated 06.06.2024



7. The record shows that on 06.06.2024, in the presence of both counsel for the plaintiffs and defendant, the court recorded a consent in the following terms:
  1. That the proceedings in Msa Elc No. 23 Of 2011 Fatuma Abdulrahim Abdula & Abdalla Ali Abdalla(suing as joint representatives for the estate of Ali Abdalla Ali (deceased) V Fatuma Bakaribe and are hereby settled on the following grounds:
    - a. That the suit property PlotNo 9091/I/MN is hereby sold to the defendant by the plaintiff (who is the registered owner of the suit property) for a purchase price of Kshs 7,000,000.00 payable within 120 days from the date hereof.
    - b. That the plaintiff shall transfer Plot No. 9091/I/MN to the defendant or the defendant's appointed nominee upon completion of payment of the purchase price.
    - c. That in default, each party shall be at liberty to apply.
  2. That each party shall bear its own costs.
8. It is the plaintiffs' case that since the consent was entered the 120-day grace period lapsed on 06.10.2024 before the defendant could pay Kshs 7,000,000/= as agreed upon. The defendant has argued that she has secured a buyer who is willing to pay Kshs 12,000,000 for the suit property, an offer that has been rejected by the plaintiff, who now seeks vacant possession. In Kenya Commercial Bank Ltd v Specialized Engineering Company Ltd [1980] eKLR it was held that;

“The marking by the court of a consent order is not an exercise to be done otherwise than on the basis that the parties fully understand the meaning of the order either personally or through their advocates, and, when made, such an order is not lightly to be set aside or varied save by consent or on one or other of the recognized grounds.”
9. In the same case, the court further held that;

“...the former Court of Appeal for East African in Brook Bond Liebig (T) Ltd v Mallya [1975] EA 266, where, in declining to set aside a consent judgment, the court cited with approval a passage from volume 1 of the 7th Edition of Seton on Judgments and Orders page 124 to the effect that, prima facie any order made in the presence and with the consent of counsel is binding on all parties to the proceedings and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court or if the consent was given without sufficient materials or in misapprehension or ignorance of material facts in general for a reason which would enable the court to set aside an agreement.”
10. It is trite law that a consent entered into and adopted by the court is binding on the parties who are bound by its terms and obligations. In this case, the defendant was bound to pay the plaintiffs Kshs 7,000,000/= as purchase price for Plot No. 9091/I/MN within 120 days from 06.06.2024. The defendant has not offered any lawful justification or excuse on why she should vary, alter or repudiate the consent judgement.
  - b. Whether the court should evict the defendant from the suit property
11. The defendant has not challenged the consent order, nor has she sought to have it set aside, discharged, or varied. However, she claims to have found a third party willing to buy the suit property for Kshs 12,000,000/=. It is, however, apparent that the defendant is out to vary the terms of the consent judgment through the back door. She has introduced additional terms that were not part of the original



consent. The plaintiffs are within their rights to seek the eviction of the defendant from the suit property since they are the registered proprietors. The plaintiffs are entitled to vacant possession from the defendant who has failed to abide by the consent judgment.

c. Who shall bear the costs of the application

12. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. The court finds no good reason why the plaintiffs should not be awarded costs of the application. Accordingly, the plaintiffs shall be awarded the costs of the application.

### **G. Conclusion and disposal order**

13. The upshot of the foregoing is that the court finds the plaintiffs' application merited and allowed. As a consequence, the court makes the following orders for disposal thereof:

- a. That an order be and is hereby made for the eviction of the defendant, her servants, agents and/or any other persons whatsoever in occupation from the suit property known as Plot No. 9091/I/MN.
- b. That the Officer Commanding Station Nyali Police Station shall provide security to court bailiffs to facilitate the eviction of the defendant from the suit property.
- c. Costs of the application be borne by the defendant.

It is so ordered.

**THE RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Ms Kabole and Ms Choni for the plaintiffs

Mr. Akanga for the defendant

