



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELCL (OS) CASE NO. E003 OF 2024**

**JITESH VEKARIA.....1ST**  
**PLAINTIFF**

**PUSHPA JITESH.....2ND**  
**PLAINTIFF**

**=VERSUS=**

**LEE KIMATHI NJUE.....**  
**DEFENDANT**

**JUDGMENT**

**Introduction**

1. The key issue to be determined in this originating summons is whether a proper case has been made to warrant grant of orders compelling the defendant to process and cause issuance of a sectional title to the plaintiffs under **Section 5** of the **Sectional Properties Act (the Act)** and cause to be constituted and operationalized a corporation under **Section 17** of the said Act to manage the common areas in the premises in which the plaintiffs' apartment is located.

The said apartment is located on the second floor of **Building No. 1** on land parcel number **Ntima/Igoki/5402** in Meru Municipality. There are common grounds on many aspects of the dispute. I will outline the parties' respective cases and submissions before I analyse and dispose the issue.

### **Plaintiffs' Case**

2. On or about 27/3/2024, **Jitesh Vekaria [1st plaintiff]** and **Pushpa Jitesh [2nd plaintiff]** took out an originating summons dated 22/3/2024 against **Lee Kimathi Njue [defendant]** under **Order 37 rule 3** of the **Civil Procedure Rules**. They invited the court to determine the following questions:

1. ***Whether the defendant and the plaintiffs entered into an agreement for sale of an apartment dated 24/2/2012 (off plan).***

2. ***Whether the plaintiffs paid in full all the consideration price to the defendant.***

3. ***Whether the plaintiffs took occupation of the apartment sold.***

4. ***Whether the defendant is a trustee holding the purchased apartment in trust for the plaintiffs under the doctrine of constructive trust?***

5. ***Whether the defendant has failed to prepare, process and complete the sectional properties title in favour of the Plaintiffs in breach of the***

**Sectional Properties Act (repealed) and the Sectional Properties Act No.21 of 2020.**

**6. Whether the defendant has failed to incorporate or form and register a corporation within Section 17 of the Sectional Properties Act No. 21 of 2020.**

**7. Whether the defendant ought to be compelled to conclude all the requisite steps for issuance of a sectional property title in respect of the plaintiff's apartment No. 3 and also to establish a corporation pursuant to Section 17 of the Sectional Properties Act No. 21 of 2020.**

**8. Whether the plaintiffs are entitled to the reliefs sought in this originating summons plus costs.**

**3.** Through the originating summons, the plaintiffs sought the following reliefs against the defendant:

**(a) A declaration that the plaintiffs are the owners of apartment No. 3 on 2nd floor in Building No. 1 of floor area measuring 150 sq metres, on LR No. NTIMA/IGOKI/5402, through the doctrine of constructive trust.**

**(b) That the defendant be compelled to subdivide the building on LR No. NTIMA/IGOKI/5402 into units in terms of**

**Section 4(1) of the Sectional Properties Act No. 21 of 2020.**

**(c) That the defendant be compelled to prepare a sectional plan of the building constructed on LR NO NTIMA/IGOKI/5402 and to register the said sectional plan with the Registrar, Meru Central Lands Office.**

**(d) That the defendant be compelled to facilitate and pay for the issuance of a sectional property title for apartment No. 3 on the 2nd floor on the building constructed on LR No. NTIIMA /IGOKI/5402.**

**(e) That the defendant be compelled to establish a corporation of the owners of the units in the sectional plan registered under Section 5 of the Sectional Properties Act No. 21 of 2020.**

**(f) That the defendant be compelled to complete all the actions and processes and steps required to issue a sectional property title in the name of the plaintiff within sixty (60) days of the issuance of a judgment in this case.**

**(g) That in the alternative and in default of the defendant complying with orders (a) - (f) above, the Honourable Court do direct the Surveyor and Land Registrar to prepare and**

***register all instruments necessary for the issuance of a sectional property title for apartment No. 3, 2nd floor, on LR NO. NTIMA/IGOKI/5402 and the Deputy Registrar be empowered to execute all necessary documents for issuance of the said title.***

***(h) That the defendant do pay the costs of this suit.***

- 4.** The originating summons was premised on the grounds outlined in the summons and in the supporting affidavit sworn on 22/3/2024 by **Jitesh Vekaria**. The originating summons was heard through viva voce evidence on 30/6/2025. The 1st plaintiff testified on his own behalf and on behalf of the 2nd plaintiff. He testified as **PW1**. He adopted the contents of his affidavit sworn on 22/3/2024 and his written statement dated 19/8/2024 as part of his sworn evidence-in-chief. He produced ten (10) documents as exhibits.
- 5.** In summary, the plaintiffs' case is that, they are husband and wife. Vide a sale agreement dated 24/2/2012, they purchased from the defendant, as proprietor and developer, Apartment No. 3 located on the 2nd Floor of Building No. 1. The Building was to be erected on land parcel number **Ntima/Igoki/5402**, located in Madaraka Estate, Meru Municipality. The sale was through an off-shore arrangement. The defendant subsequently erected the said apartment and gave them vacant possession of the apartment in January 2014, though outside the agreed

contractual timelines by 12 months. They fully paid the agreed purchase price.

6. The plaintiffs contend that despite meeting all their contractual obligations, and whereas the defendant gave them vacant possession of the apartment, the defendant has failed to process and convey to them a sectional title for the apartment under **Section 5** of the **Sectional Properties Act**. They further state that the defendant has failed to constitute and operationalize a corporation to manage the premises under **Section 17** of the Act. They add that the defendant has consistently ignored their formal requests to him to discharge the above obligations. They urge the court to grant the reliefs sought in the originating summons.

#### **Defendant's Case**

7. The defendant opposed the originating summons through his replying affidavit sworn on 5/10/2024 and written submissions dated 31/7/2025. During trial, he testified as **DW1**. He adopted the contents of his replying affidavit and witness statement as part of his sworn evidence-in-chief. He produced 5 exhibits.
8. In summary, the case of the defendant is that on 24/2/2012, he entered into an agreement with the plaintiffs for sale of apartment No. 3 in a building constructed on land parcel number **Ntima/Igoki/5402** under the repealed **Sectional Properties Act 1987**. He constructed the apartment and put the plaintiffs in possession of the apartment. The envisaged management company was duly incorporated

under the name **Penthouse Suites Apartments Management Ltd**, with every unit holder being entitled to one (1) share in the said management company.

9. The defendant adds that, as at the time of entering into the agreement, the processing of sectional titles was a new phenomenon in Meru Land Registry and there were challenges in processing the sectional titles, a fact which was duly explained to the plaintiffs, adding that the plaintiffs have always been updated through copies of correspondence on all the undertaken processes. He reiterates that he has been in constant communication with the plaintiffs and their advocates on the steps taken and the progress made. He adds that the processing of the plaintiffs' sectional title and those of other unit holders is at an advanced stage. He urges the court to answer questions number 5, 6, 7 and 8 in the negative, contending that they are pre-mature.

#### **Plaintiff's Submissions**

10. The plaintiffs filed written submissions dated 14/7/2025, through **M/s Mwirigi Kaburu & Co Advocates**. Counsel for the plaintiff identified the following as the three issues that fell for determination in the originating summons: (i) Whether the defendant has processed the sectional property title for apartment No. 3 in favour of the plaintiffs; (ii) Whether the management company was incorporated pursuant to the provisions of the Sectional Properties Act; and (iii) Whether the plaintiffs are entitled to the prayers sought.

- 11.** On whether the defendant has processed the sectional title relating to the sold apartment, counsel cited Sections 4 and 5 of the Sectional Properties Act and submitted that the defendant was required to cause a sectional plan to be prepared by a registered surveyor and cause the sectional plan to be registered in the Land Registry, whereupon the mother land register would be closed and sectional registers opened for each apartment. Counsel emphasized that as soon as the sectional plan is registered, titles to the sectional units are deemed as issued. Counsel argued that the defendant failed to prove that he adhered to the above requirements, adding that the defendant failed to tender evidence of registration of any sectional plan. Counsel emphasized that the obligation of processing a sectional title was that of the developer or the owner of the mother title. Counsel faulted the defendant for blaming third parties yet the obligation was his. Counsel submitted that the defendant was in breach of **Section 43** of the **Sectional Properties Act**. Counsel urged the court to compel the defendant to process the sectional title within a specified timeframe to be set by the court.
- 12.** On whether the management company was incorporated pursuant to the provisions of the Sectional Properties Act, counsel cited **Section 17** of the Act and submitted that, on registration of a sectional plan, a management company is supposed to be incorporated having all the owners of units as shareholders. Counsel added that **Penthouse Suites Apartment Management Limited** which the defendant alleged was the management company that was

incorporated under Section 17 of the Act had the defendant and the defendant's mother as the only directors and shareholders, adding that this was contrary to the framework in Section 17 of the Act. Counsel submitted that the defendant had failed to comply with Section 17 of the Act and urged the court to compel him to comply.

- 13.** On whether the plaintiffs are entitled to the reliefs sought in the originating summons, counsel submitted that the reliefs are necessary. Counsel added that the plaintiffs having paid full purchase price and having been given possession of the apartment, there was a constructive trust.
- 14.** On costs of the suit, counsel submitted that costs follow the event, adding that the plaintiffs were forced to file this case because the defendant was not interested in processing the sectional title in favour of the plaintiffs. Counsel urged the court to award the plaintiffs costs of the suit.

#### **Defendant's Submissions**

- 15.** The defendant filed written submissions dated 341/7/2025 through ***M/s Steve Muriira & Co Advocates***. Counsel for the defendant emphasized that there was no dispute whatsoever as to the beneficial ownership of apartment No. 3 by the plaintiffs pursuant to the sale agreement dated 24/2/2012. Counsel added that the issue for determination is whether this court should grant coercive reliefs against the defendant notwithstanding that he has acted in good faith; he has complied with the applicable statutory provisions; and that the delay in issuance of the sectional

titles lies within the Land Registry, a matter beyond the defendant's control.

- 16.** Citing Section 17 of the Sectional Properties Act, counsel submitted that, upon registration of a sectional plan, a management corporation is automatically constituted, with the membership being all the units owners. Making reference to the pronouncement in ***Kenyariri v Double Win Company Limited & 2 others 2023 eKLR***, counsel submitted that the developer is required to submit the sectional plan, incorporate the management corporation, and surrender the mother title for closure and for opening of sectional title registers. Counsel argued that the defendant had duly incorporated the management company and had engaged a surveyor.
- 17.** Counsel further submitted that **Sections 4, 5, and 7** of the Act provided that a sectional plan would be prepared by a registered surveyor based on approved building plans and would be lodged at the Land Registry with an application for registration, adding that once a sectional plan is registered, separate sectional title registers are opened for each unit. Counsel argued that where the developer has taken steps to comply but the Land Registry has delayed the processing, courts have held that such faults cannot be attributed to the developer. Counsel cited the decision of the Environment and Land Court in ***Republic v National Housing Corporation (2021)***. Citing the decision in ***Kenyariri v Double Win Company Limited & 2 others (2023)***, counsel submitted that the courts have in the past declined to issue coercive orders where the developer had already

commenced statutory processes but delays persisted at the Land Registry. Counsel submitted that the defendant had initiated all requisite processes, adding that “registration is imminent”.

- 18.** Counsel argued that the defendant had discharged all his obligations as a developer, observing that the defendant had incorporated a management company as required under Section 17 of the Act and had caused the preparation of a sectional plan and a surveyor’s report. Counsel contended that the defendant was in continuous communication and was “transparent with the plaintiffs”. Counsel argued that the remaining steps lay with the Land Registry which was beyond the defendant’s control.
- 19.** Counsel submitted that “an order of mandamus” was inappropriate where compliance is ongoing. Counsel added that a declaration of ownership is unnecessary because the defendant has never disputed the plaintiffs’ rights. Counsel urged the court to decline to grant the reliefs sought in the originating summons and “declare” that the defendant has complied with his obligations under the Sectional Properties Act and that the subdivision and registration process is actively progressing in the Land Registry. Counsel urged that parties be decreed to bear their respective costs.

### **Analysis and Determination**

- 20.** The court has considered the originating summons; the response to the originating summons; and the parties’ respective evidence and submissions. The court has also considered the legal frameworks and the jurisprudence

relevant to the key issue in this dispute. As pointed out in the opening paragraph of this judgment, the key issue to be determined in this suit is whether a proper case has been made to warrant grant of orders compelling the defendant to process and cause issuance to the plaintiffs, of a sectional title under **Sections 4 and 5** of the **Sectional Properties Act** and further cause to be constituted and operationalized a corporation under **Section 17** of the Act, to manage the premises in which the plaintiffs' apartment is located.

- 21.** As pointed out in the opening paragraph, there are common grounds on many aspects of this dispute. All the parties agree that the plaintiffs purchased apartment number 3, paid purchase price in full and were given possession of the apartment. There is also common ground that the plaintiffs' beneficial ownership of apartment number 3 is not contested by the defendant. Further, there is common ground that the sale transaction and the ownership arrangement was governed by the **Sectional Properties Act 1987** (now repealed) and is currently governed by the **Sectional Properties Act 2020**. Lastly, there is agreement that the defendant was both the registered proprietor of the land and the developer of the premises.
- 22.** The plaintiffs contend that the defendant has failed to discharge his obligations under Sections 5 and 17 of the Act. On his part, the defendant contends that he has dutifully initiated all the requisite statutory processes but delays have persisted at the Land Registry. He contends that the processing of the plaintiffs' sectional title and those

of other unit holders is at an advanced stage. Has the defendant discharged his obligations under Sections 4 and 5 of the Act?

- 23.** Parties entered into the sale agreement on 24/2/2012. Clause 3 of the sale agreement provided that the defendant was to obtain completion and occupation certificate and deliver possession of the apartment to the purchasers on or before 30/4/2013. Clauses 6 and 7 required the defendant to comply with the provisions of the **Sectional Properties Act 1987** by registering the sectional plan and convey titles to the sectional units to each purchaser. The agreement did not, however, specify the contractual timelines within which the defendant was required to procure preparation and registration of the sectional plan. The sale agreement did not also specify the timelines within which the defendant was to procure incorporation and operationalization of the corporation. Clause 18 merely provided that the sale was to be governed by the provisions of the Sectional Properties Act and the latest edition of the Law Society Conditions in so far as they were not inconsistent with the express terms of the sale agreement.
- 24.** Sections 4 and 5 of the repealed Act dealt with preparation and registration of sectional plans. Sections 4 and 5 of the current Act similarly deal with the preparation and registration of sectional plans. Section 4 of the current Act is, however, more detailed and specifies that the sectional plan should be prepared by a surveyor.

- 25.** This suit was filed in March 2024, a period of more than 12 years from the date when the parties entered into the transaction. It was not contested that by January 2014, when the defendant handed over the apartment to the plaintiffs, the purchase price together with legal and utility costs had been paid by the plaintiffs in full. The defendant relied on his surveyor's report dated June 2024 as evidence of his performance of the obligation to prepare and cause to be registered a sectional plan. The court record shows that the defendant was served with summons to enter appearance, alongside the originating summons, on 9/4/2024. It is therefore clear that service of the suit papers on the defendant is what prompted him to engage a surveyor to prepare a sectional plan. From 2012 to April 2024, he had not bothered to cause the preparation and registration of a sectional plan as envisaged under Sections 4 and 5 of both the repealed and the current Sectional Prosperities Act.
- 26.** It does emerge from the surveyor's report that the surveyor was unable to prepare a sectional plan due to the fact that a section of the permanent developments on the land had encroached onto the abutting road. To resolve the issue, the surveyor opined that there was need for a resurvey of parcel numbers **Ntima/Igoki/5402, 5395** and **5404** to achieve a realignment of the 12 metre road without affecting the developments. The surveyor further advised on realignment of the building plans to conform with the existing building.

- 27.** As at the time of trial hearing in June 2025, there was no evidence to suggest that the defendant had acted on the professional advice of his surveyor with a view to progressing the process of procuring and registering a sectional plan. From the evidence on record, other than engaging a surveyor upon being served with suit papers relating to this case, there is nothing to suggest that the defendant was or is undertaking his obligations under Sections 4 and 5 of the Sectional Properties Act. The 13-year delay is, without doubt, inordinate.
- 28.** Has the defendant discharged his obligations under Section 17 of the Act? Sections 17 of the repealed Act contained the framework on constitution of a corporation to manage the common property within the premises. Section 17 of the current Act contains a similar framework. The corporation envisaged under the Act is not a company registered under the Companies Act. In fact the Act expressly precludes the provisions of the Companies Act from being applied to the corporation contemplated under Section 17 of the Act. The corporation contemplated under Section 17 of the Act stands automatically constituted upon registration of a sectional plan. The registration number of the corporation is the number assigned to the sectional plan on registration. My understanding of the framework in Section 17 of the Act is that, on registration of a sectional plan, the Land Registrar is required to issue a corporation certificate relating to the constituted corporation.
- 29.** The defendant waved and relied on a certificate of incorporation relating to **Penthouse Suites Apartments**

**Management Limited** issued under the Companies Act on 23/6/2014. The two shareholders and directors of the company are the defendant and his mother. By dint of the provisions of **Section 17** of the **Sectional Prosperities Act**, this cannot be and is not the corporation contemplated under that Section. The corporation contemplated under Section 17 of the Act will be constituted on registration of the sectional plan and will have the owners of the sectional units as its members. Reliance on the exhibited certificate is a misinterpretation or ignorance of the requirements of Section 17 of the Act.

- 30.** Suffice it to state that, based on the evidence before court, the defendant has not caused to be constituted and operationalized the corporation contemplated under Section 17 of the Act.
- 31.** The defendant has had 13 years to deliver on his contractual obligations. He has not. He blames the Land Registry. However, there is no evidence to suggest that any registrable instrument has been lodged at the Land Registry and has been pending registration. The sectional plan contemplated under Sections 4 and 5 of the Act has neither been procured nor been presented for registration. The defendant presented to the court a totally false narrative. Consequently, the finding of the court on the single issue in this dispute is in the affirmative.
- 32.** What are the answers to the questions that were outlined in the originating summons? Based on the pleadings and evidence, and in light of the above finding, the answers to

questions number 1 to 7 are all in the affirmative. The answer to question number 8 is in the affirmative save that the period within which the defendant is to complete the actions and processes will be enhanced to 180 days from the date of this judgment to give the defendant sufficient time to discharge his obligations.

- 33.** On costs, this dispute arose because both parties overlooked the important aspect of defining the contractual timelines within which the defendant was to discharge his obligations under **Sections 4, 5 and 17** of the repealed and the current **Sectional Properties Act**. Only for this reason, parties will bear their respective costs of the suit.

#### **Disposal Orders**

- 34.** In light of the above findings, the court is satisfied that the plaintiffs have proved their case on a balance of probabilities and enters judgment in their favour and against the defendant as follows:

***a) Prayers (a), (b), (c), (d) and (e) are granted as prayed.***

***b) The defendant is hereby decreed to complete all the actions, processes and steps required to procure issuance of a sectional property title in the name of the plaintiffs, relating to Apartment No 3, 2<sup>nd</sup> Floor, Building No 1, LR No Ntima/Igoki/5402 within 180 days from the date of this judgment.***

***c) In default of the defendant procuring the sectional title, the Deputy Registrar of this Court shall execute all the relevant***

***instruments and the plaintiffs shall undertake the said processes, actions and steps, including the processes recommended by the surveyor, and procure the sectional title, all at the cost of the defendant.***

***d) Parties will bear their respective costs of this suit.***

**DATED, SIGNED AND DELIVERED AT MERU THIS 24TH DAY OF OCTOBER, 2025.**

**B M EBOSO [MR]  
ELC JUDGE**

**In the Presence of:**

Mr. Otieno holding brief for Mr. Mwirigi Kaburu for the Plaintiffs

Defendant - Absent

Court Assistant - Tupet