



**Mayfair Establishment Limited v Athman & another (Environment and Land Case E041 of 2022) [2025] KEELC 7895 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7895 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E041 OF 2022**

**JO OLOLA, J  
NOVEMBER 13, 2025**

**BETWEEN**

**MAYFAIR ESTABLISHMENT LIMITED ..... PLAINTIFF**

**AND**

**ZUBEIDAH OMAR ATHMAN ..... 1<sup>ST</sup> DEFENDANT**

**ALI HASHIM ALIM SALIM JENEBY & KHALAD HASHIM ALIS SALIM  
JENEBY (SUED AS ADMINISTRATORS OF THE ESTATE OF THE LATE  
HASHIM ALI SALIM JENEBY) ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. By a Complaint dated 13<sup>th</sup> April 2022, Mayfair Establishment Limited (the Plaintiff) prays for judgment against the Defendants jointly and severally for the following:
  1. A declaration be and is hereby issued that the Defendants are in breach of the terms and covenants of the Lease granted to the 1<sup>st</sup> Defendant and Hashim Ali Salim Jeneby over the suit property known as Mombasa Block X 92;
  2. The Lease registered in favour of Zubeidah Omar Athman and Hashim Ali Salim Jeneby on property known as Mombasa Block X 92 be hereby revoked and cancelled forthwith;
  3. The Land Registrar Mombasa is hereby directed and ordered to register this Court's order against the Register for Mombasa Block X 92 and to forthwith cancel and revoke the lease registered in favour of Zubeidah Omar Athman and Hashim Ali Salim Jeneby over property known as Mombasa Block X 92 within 14 days of this order;
  4. An order be and is hereby issued directing the defendants, their family members, agents, tenants, assigns or any other person authorized by or acting on their behalf to vacate the suit



property known as Mombasa Block X 92 within 14 days of this order in default of which the plaintiff be at liberty to evict them;

5. An order be and is hereby issued permitting the Plaintiff to immediately enter and take possession of the suit property known as Mombasa Block X 92;
6. The Officer Commanding Station (OCS) Makupa Police Station or any other nearer Police Station to ensure compliance with this Court's orders and that peace, law and order is maintained at all times;
7. Costs of this suit be borne by the Defendants jointly and severally; and

SUBPARAGRAPH 8.

Any other and further relief this Court may deem just to grant.

2. Those prayers arise from the Plaintiff's contention that it is the registered owner of the freehold interest of all that piece of land known as Mombasa Block X 92 measuring 0.60 acres. The Plaintiff avers that the suit property was originally owned by Fazelaabbas Alibhai Dara and Hassanali Alibhai Dara who subsequently sold and transferred the same to Rukiabai ALibhai Dara on or about 26<sup>th</sup> July 1968.
3. It is the Plaintiff's case that on or about 11<sup>th</sup> December 1943, a lease was created over the suit property by the original owners in favour of Charles Eugene Colinaux who then transferred the same to one William Mbatha Kivuvani on 5<sup>th</sup> December 1973. The lease was subsequently transferred to Hashim Ali Salim Jeneby (the deceased) and his wife, Zubeidah Omar Athman (the 1<sup>st</sup> Defendant herein).
4. It is further the Plaintiff's case that upon its acquisition of the freehold title of the suit property, the deceased and the 1<sup>st</sup> defendant were duly notified of the changes but they have since refused to pay rent to the Plaintiff as required by the Lease.
5. The Plaintiff asserts that the Defendant has in addition committed other breaches such as failure to pay land rates and under-letting the property without the Lessor's prior written consent and that as a result thereof, the lease automatically ceased and determined and the Plaintiff is therefore entitled to repossess and re-enter the suit property.
6. Zubeidah Omar Athman (the 1<sup>st</sup> Defendant) and Khalad Hashim Ali and Salim Jeneby, both sued as Administrators of the Estate of the late Hashim Ali Salim Jeneby (the 2<sup>nd</sup> Defendant) are opposed to the suit. In their joint Statement of Defence dated 19<sup>th</sup> May 2022, the Defendants admit that they are Lessees of the suit property having purchased the same in December 2000 from the said William Mbatha Kivuvani but assert that the operative lease document has never been availed to them nor could the same be traced at the Mombasa Land Registry.
7. The Defendants further aver that they were orally notified of the new owner by the agent but no details of the new owner were supplied to them until they received a letter dated 15<sup>th</sup> May 2020 which was dropped at the suit premises with a demand to vacate the same within 30 days.
8. It is the Defendants' case that the Lessor's right of forfeiture of the lease if at all was waived by virtue of the provisions of Section 56 (3) of the Registered *akn ke act 2012 6 Land Act* (now repealed) which was the operative law at the material time. The Defendants aver that mere change of the proprietor of the freehold title will not operate to revive the right in favour of the Plaintiff who has been acquiescent of the state of affairs giving rise to the waiver for a period of 10 years. It is further the Defendant's case that the Plaintiff's actions are malicious and steeped in mala fides with the intent to only secure vacant possession of the premises.



9. At the trial herein, the Plaintiff called 3 witnesses in support of their case. The Defendants on their part relied on the testimony of one witness.

### **Analysis and Determination**

10. I have carefully perused and considered the pleadings filed herein, as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
11. By their suit as filed herein, the Plaintiff prays for a declaration that the Defendants are in breach of the terms and covenants of the Lease granted to them in regard to the parcel of land known as Mombasa Block X 92. Accordingly, the Plaintiff urges the court to revoke and cancel the said lease and for an order to be issued directing the Defendants to vacate the suit premises and to hand over vacant possession to the Plaintiff.
12. It is the Plaintiff's case that it is the registered owner of the freehold interest of the suit property measuring 0.60 acres and that sometime on or about 11<sup>th</sup> December 1943, the original owners of the property created a lease over the same which was to run for a term of 99 years with effect from 1<sup>st</sup> January 1944 at an annual rent of Kshs. 300 =
13. The Plaintiffs aver that it acquired the freehold title of the suit property in the year 2010 and that despite notifying the Defendants who presently hold the leasehold interest, the Defendants had failed to pay rent and rates as required under the terms and conditions of the lease. The Plaintiff further accused the Defendants of under-letting the suit premises without the Lessor's prior written consent. It is the Plaintiff's case that as a result of the said breaches the lease has automatically ceased and determined and that the Plaintiff is therefore entitled to immediately repossess and re-enter the suit premises.
14. On their part, the Defendants do not deny that they are the Lessees to the suit property. While admitting that they did purchase the leasehold interest from one William Mbatha Kivuvani in December 2000, the Defendants assert that at the time of the said purchase, the operative lease document was never availed to them nor have they been able to trace the same at the Mombasa Land Registry to enable them familiarize with the terms thereof.
15. It is the Defendants case that they were orally notified of the new owner of the suit premises and that they were never supplied with the details of the new owner and thus remained unaware of the same until sometime in May 2020 when they received a letter dated 15<sup>th</sup> May 2020 which was dropped by an unknown person on the suit premises demanding that they vacate the same within 30 days of the date of the letter.
16. In support of their case the Plaintiff called three (3) witnesses, the main one being its Director Irfan Azad Kara Badrudin (PW3) who adopted as his evidence-in-chief his written statement dated 13<sup>th</sup> April 2022 and filed in court on 14<sup>th</sup> April 2022.
17. PW3 told the court that the Plaintiff acquired the property in April 2010 after it was sold and transferred to them by the previous Lessor one Rukiabai Alibhai Dara through her representatives. He told the court that upon acquisition of the freehold title, the Defendants were duly notified of the change of ownership by an entity known as Four-ways Accommodation Bureau which was then managing the property on behalf of the previous Lessor.



18. In support of that position, the Plaintiff produced as their exhibit No. 7 a letter dated 13<sup>th</sup> April 2010 signed on behalf of the Bureau stating as follows:

“ To Whom It May Concern

This is to confirm that Mombasa Block X 92, 96 and 97 (tudor) has been sold to M s. Mayfair Establishments Ltd of P.O. Box 84409-80100, Mombasa by owner of above plots Late Rukiyabai Dara care of Four-Ways Accommodation Bureau, Mombasa.”

19. It was the Plaintiff’s case that despite such notification, the Defendants had failed and or neglected to pay the rent due to them as required under the terms of the Lease. Regarding the circumstances leading to the institution of this suit, PW3 stated as follows at paragraphs 13 to 17 of his said statement:

“ 13. On 1<sup>st</sup> December 2017, I in my capacity as the Director of the Plaintiff, visited the suit property and served the Defendants with a letter dated the same date in which the Plaintiff informed the Defendants that it is the new registered owner of the freehold title of the suit property and requested to be paid rent. In the said letter which I personally delivered to the Defendants at the suit property where they live, I clearly gave my email address and telephone number as the Plaintiff’s Director and contact person.

14. The said letter did not elicit any action from the Defendants.

15. Again, on 15<sup>th</sup> May 2020, I wrote another letter to the Defendants in which I informed them that they were in breach of the lease and ought to surrender the lease and vacate the suit property within 30 days. I similarly served the said letter personally upon the Defendants at their home, situate on the suit property. The said letter, like the one dated 1<sup>st</sup> December 2017, clearly contained my mobile number and email address.

16. The Plaintiff’s letter dated 15<sup>th</sup> May 2020 elicited a response from the Defendants through their advocates, Odongo B.O. & Company Advocates who through their letter dated 28<sup>th</sup> May 2020 indicated that there was no leasehold relationship between the Plaintiff and the Defendants; and

17. Vide a letter dated 16<sup>th</sup> March 2021, the Plaintiff informed the Defendants that the lease was terminated for breach of the terms thereof.

20. As it turned out, it would not have been physically possible for the Plaintiff’s Director (PW3) to have served the two Defendants personally on the dates he claims to have visited the Defendants. From the material placed before the court, the two Defendants are respectively a wife and her husband. While Zubeidah Omar Athman (the 1<sup>st</sup> Defendant) is alive, her husband Hashim Ali Salim Jeneby whose two Legal Representatives are sued jointly as the 2<sup>nd</sup> Defendant passed away on 2<sup>nd</sup> October 2015 and could not have been available to meet PW3 in 2017 and to be served personally or on 15<sup>th</sup> May 2020.

21. That realisation is what must have informed the filing of the Plaintiff’s further witness statement filed herein on 6<sup>th</sup> February 2023 wherein PW3 states as follows at paragraph 3 to 5 thereof.

“ 3. In addition to the letters I wrote to the Defendants in 2017 and 2020, I had visited the Late Hashim Ali Salim Jenneby on the suit property on or about



27<sup>th</sup> April 2010 to inform him that the Plaintiff had purchased the freehold interest in the suit property.

4. On the said date, that is on or about 27<sup>th</sup> April 2010, while accompanied by one Fredrick Kudoj whom I invited because he works (as a) Licensed Court Process Server and had a better understanding of service of process, I visited the suit property and found the Late Hashim Ali Salim Jenneby who welcomed us into the house and served us with a drink. The Late Hashim Ali Salim Jenneby was very cordial and friendly and I told him that my company had bought the freehold title of the suit property and even showed him a copy of the Title Deed and a certificate of search.
  5. I gave the Late Hashim Ali Salim Jenneby my contacts written on a piece of paper and told him that he was now required to pay rent to me. I also disclosed to him where my house is located which he confirmed knowing since my house is also in Tudor, not very far from the suit property.”
22. This assertion by PW3 that he had visited the 2<sup>nd</sup> Defendant some 7 years earlier was as interesting as it was intriguing. If the Plaintiff were to be believed, their agent Messrs. Fourways Accommodation Bureau had two weeks earlier vide their letter of 13<sup>th</sup> April 2010 informed the Defendants about the change of ownership of the suit property to the Plaintiff company and unless the Plaintiff was in doubt, there would be no need for such a visit by its director in the company of a Process Server.
23. From the material placed before the Court, I was not persuaded that there was such a visit and or service by the Plaintiff’s director to the 2<sup>nd</sup> Defendant before the 2<sup>nd</sup> Defendant met his death in 2015. That much was clear from a perusal of the letter which PW3 purported to have served upon the deceased on 1<sup>st</sup> December 2017. The said letter addressed only to the 2<sup>nd</sup> Defendant reads as follows:
- “RE: Lease Rent For Plot NO. X 92
- We kindly write to Inform that we are the registered owners of the above captioned property as from 19<sup>th</sup> April, 2010. We therefore kindly request that we have yet to have received your lease rent for the period 2010 to 2017.
- We therefore kindly request that you clear the outstanding lease rent in errors (sic) amounting to Kshs. 2,100 - (Lease Rent P.A @ Kshs. 300 - x 7 years).
- We would also kindly remind you to have your County rates paid up to date.
- For further clarification or assistance kindly please do not hesitate to contact us on 0722828944 or irfkara@yahoo.com: contact person Irfan Kara.
- Kindly please let us have your contact details so that we may update our records.
- Signed...”
24. In my considered view, if indeed PW3 had met the deceased in 2010 and had had the cordial conversation he was referring to in his Further Witness Statement, PW3 would have made reference to the same. It was also clear to me that if the 2<sup>nd</sup> Proprietor of the Lease was already aware of the Plaintiff’s details as purported, there would have been no need for this letter which goes ahead to request for the contact details for the Defendants.
25. It was further interesting to note that the letter dated 1<sup>st</sup> December 2017 does not make reference to an earlier demand the Plaintiff claims to have made upon the Defendants. After the alleged visit on 27<sup>th</sup>



April 2010, the Plaintiff claims to have again sent one Gordon Odhiambo (PW2) to the suit premises on 16<sup>th</sup> August 2012. In his brief recorded statement filed in court on 6<sup>th</sup> February 2023, PW2 avers as follows:

- “ 1. I am a licensed Court process server of the High Court of Kenya;
2. On the 16<sup>th</sup> of August 2012, I received a demand letter dated 16<sup>th</sup> August 2012 from Irfan Kara of Mayfair Establishments Limited with firm instructions to serve the same upon Hashim A. S. Jeneby;
3. On the same day at around 9:15 a.m. while accompanied by the Plaintiff’s agent, I proceeded to Tudor area behind Mombasa Polytechnic where the suit property Plot No X 92 is located;
4. Upon arrival, I met a gentleman who identified himself as Hashim Jeneby; and
5. I gave him the letter dated 16<sup>th</sup> August 2012 which he received but refused to sign on my return copy.”

26. Like the Plaintiff’s second letter said to have been served upon the said Hashim Ali Salim Jenneby, the letter said to have been handed over by PW2 reads as follows:

“RE: Lease Rent For Plot NO. X 92

We kindly write to inform you that we are the registered owners of the above mentioned property as from 19<sup>th</sup> April 2010. We therefore kindly request that we have yet to have received your lease rent for the period 2010 to 2012.

We therefore kindly request that you clear the outstanding rent in arrears amounting to Kshs. 600 - (lease rent P.A. @ Kshs. 300 - x 2 years)

We further also kindly request you to have your County rates paid up to date.

For further clarification or assistance kindly please do not hesitate to contact us on 0722828944 or email: irfkara@yahoo.com

Kindly please let us have your contact details so that we may update our records.

Signed ...”

27. It was notable that even though the said letters were really the replica of each other, word for word, in each of them PW3 introduced himself in a manner suggestive of a first time introductory communication and made the concession that he did not have the Defendants’ personal contact details.
28. Be that as it may, it was clear to me that while all the three witnesses who testified for the Plaintiff purported to have visited the suit premises at various points in time, they all agree that they did not find a female person in the house at any single point in time. Indeed, PW3 confirmed during his cross-examination that they had not served the 1<sup>st</sup> Defendant with any notices.
29. As I understood it, the 1<sup>st</sup> Defendant and her deceased husband held joint proprietorship over the suit premises. With the death of her husband in 2015, his shares automatically passed to her as the surviving



proprietor. In that respect Section 60 of the *akn ke act 2012 3 Land Registration Act*, 2012 provides as follows:

“If any of the joint tenants of any land, lease or charge dies, the registrar shall upon proof of the death, delete the name of the deceased tenant from the register by registering the death certificate.”

30. In the case of *Isabel Chelangat –vs- Samuel Tiro (2012) eKLR*, the principle of survivorship was explained as follows:

“A joint tenancy imparts to the joint owners, with respect to all other persons than themselves, the properties of one single owner. Although as between themselves joint tenants have separate rights, as against everyone else they are in the position of a single owner. Joint tenancy carries with it the right of survivorship and “four unities.” The right of survivorship (jus accrescend) means that when one joint owner dies, his interest in the land passes on to the surviving joint tenant. A joint tenancy cannot pass under will or intestacy of a joint tenant as long as there is a surviving joint tenant as the right of survivorship takes precedence.”

31. That being the case, it was clear to me that any notices issued by the Lessor after the year 2015 ought to have been served solely upon the 1<sup>st</sup> Defendant and that the joinder in this suit of Khalad Hashim Ali Salim Jeneby and Ali Hashim Ali Salim Jeneby as the 2<sup>nd</sup> Defendant on account that they were the Administrators of the Estate of the 1<sup>st</sup> Defendant’s husband was unnecessary and unwarranted.

32. At any rate, it was evident to me that even if the Plaintiff had properly introduced itself to the Defendants, the right of forfeiture could only be exercised in accordance with the law. In that respect, it was common ground that the registration status of the property in question was under the Registered *akn ke act 2012 6 Land Act*, Cap 300 of the Laws of Kenya (now repealed). Section 59 of the said Act provided thus:

“Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a notice –

- a. specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and
- (c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach, and the lessee has failed to remedy the breach within thirty days thereafter, if it is capable of remedy, and to make reasonable compensation in money.”

33. The significance of that procedure can be seen in the fact that even upon repeal of the said Cap 300, the provision was retained at Section 75 of the *akn ke act 2012 3 Land Registration Act* which now provides as follows:

“Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a notice of not less



than thirty days—(a) specifying the particular breach complained of; and (b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and (c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach, and the lessee has failed to remedy the breach within thirty days thereafter, if it is capable of remedy, and to make reasonable compensation in money.”

34. In the matter herein, the Plaintiff asserts that after they wrote the letter dated 1<sup>st</sup> December 2017 to the deceased proprietor, they then served the Defendants with another letter on 15<sup>th</sup> May 2020 informing the Defendants that they ought to surrender the lease and vacate the suit property. The said letter produced as Plaintiff Exhibit 9 reads as follows:

Dear Sir,

RE: Termination Of Lease Over Mombasa Block X 92

As you are aware, we are the holder of the freehold title of the above captioned property which is leased to yourself.

You are in breach of the lease by committing the following acts and omissions:

1. You have subleased the property.
2. You have defaulted in payment of rent to ourselves.
3. You have defaulted in payment of rates to the County Government of Mombasa.

As a result of your said breaches, we hereby terminate your lease. We therefore demand that you surrender the lease and give us vacant possession of the subject property.

Take Notice that if you do not surrender the lease and vacate the said property within THIRTY (30) DAYS from the date you receive this letter, we shall take appropriate legal steps to evict you therefrom.

Be advised accordingly.

Signed.”

35. I was not persuaded that the said letter amounted to the notice before forfeiture required under the law. The letter was not addressed to any particular individual and neither did it give the lessee notice to redeem the alleged breach. It was certainly not served upon the 1<sup>st</sup> Defendant.
36. From the material placed before the court, there was no evidence upon which the court could rely to come to the conclusion that the Defendants had either sub-let the suit property and or that they had failed to pay rates owing to the County Government of Mombasa. There was indeed no evidence adduced to demonstrate that the lease forbade the Defendants from sub-letting the suit premises. From a perusal of the Defendants documents, it was evident that the rates had been paid and that as at 15<sup>th</sup> March 2022, there were no outstanding arrears due to the County Government of Mombasa.
37. While it was indeed true that there were outstanding arrears of rent, it was clear as I have found hereinabove that the Plaintiffs had neither properly introduced themselves to the Defendants nor directed them as to where to make the payments. It was also evident that right from the time the Lease was transferred to the Defendants in the year 2000, they had been paying rent in arrears upon demand.
38. In support of that fact, the Defendants have produced a letter dated 26<sup>th</sup> February 2004 from the then agents Messrs. Fourways Accommodation Bureau demanding rent for the period 2001 to 2004. In response, the Defendants tendered the sum of Kshs. 1,800 - to the said agent on 23<sup>rd</sup> November 2005.



Another payment was made in arrears on 5<sup>th</sup> June 2010 some 2 months after the Plaintiff acquired the freehold title to the suit property.

39. Indeed, from their own evidence, the Plaintiff asserts that they demanded rent in arrears on 16<sup>th</sup> August 2012 when PW2 is said to have presented a demand letter to the deceased proprietor. That was the same case on 1<sup>st</sup> December 2017 when PW3 claimed to have served the deceased proprietor with another demand.
40. In respect of such mode of dealing, Section 56 (3) of the now repealed Registered *akn ke act 2012 6 Land Act* provided as follows:

- “(3) The right of forfeiture shall be taken to have been waived if-
- a. ...
  - b. the lessor accepts rent which has become due since the breach of agreement or condition which entitled the lessor to forfeit the lease or has by any other positive act shown an intention to treat the lease as subsisting; and
  - c. the lessor is, or should by reasonable diligence have become, aware of the commission of the breach:

Provided that the acceptance of rent after the lessor has commenced an action in the court under subsection (2) shall not operate as a waiver.”

41. In the circumstances herein, it was apparent to me that the mode of dealing between the parties as between the year 2000 to 2010 constituted an effective waiver of the right of forfeiture inhering in the Lessor and that it remained so in so far as may relate to the right of forfeiture on account of non-payment of annual rates.
42. In the premises herein, I was not persuaded that there was merit in the Plaintiff’s claim and I hereby dismiss the same.
43. Each party shall bear their own costs.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2025**

..... .

**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No Appearance for the Plaintiffs
- c. Mr. Mwakisha Advocate for the Defendants

