

**REPUBLIC OF KENYA**

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

**ELC CASE NO 9 OF 2013**

**MASJID KAIRAT (MOSQUE) & 21  
OTHERS.....PLANTIFFS**

**VERSUS**

**MUNICIPAL COUNCIL OF MOMBASA.....1<sup>ST</sup>  
DEFENDANT**

**THUREYA BAKARI.....2<sup>ND</sup>  
DEFENDANT**

**JIBILI BAKARI.....3<sup>RD</sup>  
DEFENDANT**

**SAADA AMRA BAKARI.....4<sup>TH</sup>  
DEFENDANT**

**JUDGEMENT**

**A. Plaintiffs' case**

1. By a plaint dated 17.01.2013 the plaintiffs sued the defendants seeking the following reliefs;

a) *A permanent injunction restraining the Defendants jointly and severally from taking possession, alienating, demolishing, interfering with and or in any other way disturbing the quiet enjoyment of property composed in Plot No. 76/Sec. II/MN.*

b) *A mandatory injunction directing the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants jointly and severally to transfer a portions of Plot No. 76/MN/II to the Plaintiffs.*

- c) *A declaration that the plaintiffs can only pay proportionate, determinable rates without any penalty.*
- d) *Any other relief the court deems fit to grant in the interest of justice.*
- e) *Costs of the suit.*

2. The plaintiffs pleaded that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs had purchased a portions of Plot No. 76 Section I/MN in Mombasa (the suit property) measuring 60 x 90 feet from the late Bakari Yunis (the deceased) who was the registered owner. It was further pleaded that thereafter the 3<sup>rd</sup> - 22<sup>nd</sup> plaintiffs bought other portions of land from the 2<sup>nd</sup> defendant who was the daughter of the deceased and who appeared to be the ostensible owner of the suit property.
3. The plaintiffs pleaded that the deceased died before transferring the portions he had sold to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and that the 2<sup>nd</sup> defendant had failed to transfer the other portions to the 3<sup>rd</sup> - 22<sup>nd</sup> plaintiffs. The plaintiffs further pleaded that the 1<sup>st</sup> defendant had threatened to auction the entire suit property on account of outstanding rates which the 2<sup>nd</sup>- 4<sup>th</sup> defendants had failed to pay. They averred that they were willing to pay their proportionate share of rates.

The 3<sup>rd</sup> and 4<sup>th</sup> defendants were sued on the basis that they were heirs “apparent” to the estate of the deceased.

**B. 1<sup>st</sup> defendant’s defence**

4. The 1<sup>st</sup> defendant filed a statement of defence dated 25.02.2013 denying the plaintiffs’ claim in its entirety. It pleaded that according to its records the deceased was the registered owner of the suit property and therefore the rateable owner under the *Rating Act (Cap 267) (now repealed)*. It was further pleaded that the 1<sup>st</sup> defendant was acting squarely within its statutory authority under the law in demanding rates from the rateable owner and the plaintiffs had no legal capacity to interfere with the process. As a result, it urged the court to dismiss the plaintiffs’ claim with costs and that it be allowed to proceed with the intended auction.

**C. 2<sup>nd</sup> defendant’s defence**

5. The 2<sup>nd</sup> defendant filed a statement of defence dated 08.02.2013. She admitted that she was the daughter of the

deceased and that she had dealt with the plaintiffs except the 1<sup>st</sup> and 9<sup>th</sup> and another person named Douglas Dzuya who does not appear to be a party to the suit. She pleaded that the suit was a nullity and an abuse of the court process as the defendants had no letters of administration for the estate of the deceased hence they had legal capacity to transfer any portions of the suit property. It was also her defence that the plaintiffs should produce all documents in proof of their claims and pay the requisite transfer fee, consent fee and rates.

**D. 3<sup>rd</sup> defendant's defence**

6. The 3<sup>rd</sup> defendant filed a statement of defence dated 20.07.2023 denying liability for the plaintiffs' claim in its entirety. The 3<sup>rd</sup> defendant admitted that some rates were owed to the 1<sup>st</sup> defendant but denied the existence of any dealings with the 1<sup>st</sup> and 9<sup>th</sup> plaintiffs as well as Douglas Dzuya. It was also pleaded that the suit was a nullity in law since it was filed against persons who had no legal capacity to represent the estate of the deceased at the material time. It was contended that the 2<sup>nd</sup> - 4<sup>th</sup> defendants were later on

appointed as administrators by the Kadhi's court in *KCC NO. 82 of 2011*.

**E. 4<sup>th</sup> defendant's defence**

7. The 4<sup>th</sup> defendant filed a defence dated 08.02.2013 in person denying the plaintiffs' claim in its entirety. She denied that the plaintiffs had purchased any portions of the suit property from the deceased during his lifetime. The 4<sup>th</sup> defendant disputed the genuineness of the plaintiffs' claim and pleaded that there was a succession case for the estate of the deceased which was still pending before the Kadhi's court at Mombasa.

**F. Trial of the action**

8. At the trial hereof, the plaintiffs called 4 witnesses, that is, plaintiff Nos. 7, 12, 19 and 21 to testify on their behalf. The plaintiffs' witnesses adopted the contents of their respective witness statements as their evidence in chief and produced the documents in their list of documents as exhibits. Their evidence essentially mirrored what they had pleaded in their pleadings. In addition to the transfer of the various portions

of land they had purchased they also wanted the rates payable to the 1<sup>st</sup> defendant to be apportioned accordingly.

9. The 1<sup>st</sup> defendant did not tender any evidence at the trial but the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants testified personally at the trial. The 2<sup>nd</sup> defendant conceded that she was aware of the sale transactions and that there was a group which bought plots directly from the deceased whereas she sold the rest of the plots to the other plaintiffs directly. She also conceded that she was aware of the outstanding rates due to the 1<sup>st</sup> defendant.

**G. Directions on submissions**

10. Upon conclusion of the trial the parties were given timelines within which to file and exchange their respective submissions. The record shows that the plaintiffs filed written submissions dated 03.09.2025 whereas the 2<sup>nd</sup> and 3<sup>rd</sup> defendants filed theirs dated 09.07. 2025. On her part, the 4<sup>th</sup> defendant filed submissions dated 05.08.2025. The 1<sup>st</sup> defendant, however, did not file any submissions.

## **H. Issues for determination**

11. The court has noted that the parties did not file an agreed statement of issues for determination. In the event, the court shall frame the issues as stipulated under *Order 15 rule 2 of the Civil Procedure Rules*. Under the said rule, a court may frame issues from any of the following;

- a) The allegations contained in the pleadings or answers to interrogatories.*
- b) The allegations contained in statements sworn by or on behalf of the parties.*
- c) The contents of documents produced by the parties.*

12. The court has perused the pleadings, evidence and documents in this matter. The court is of the view that the following are the key issues which arise for determination herein;

- a) Whether the plaintiffs' suit is a nullity.*
- b) Whether the plaintiffs had valid sale agreements for sale of the suit property.*
- c) Whether the plaintiffs have proved their claim against the defendants.*
- d) Whether the plaintiffs are entitled to the reliefs sought in the suit.*

## **I. Analysis and determination**

### **a) Whether the plaintiffs' suit is a nullity**

13. The court has considered the material and submissions on record. The 2<sup>nd</sup> to 4<sup>th</sup> defendants contended that the suit against them was a nullity because they were not the legal representatives of the deceased at the time they were sued. It was their case that the suit property was registered in the name of the deceased and that they could not validity be sued on behalf of the estate before a formal appointment as administrators.
14. A perusal of the plaint makes it clear that the 2<sup>nd</sup> - 4<sup>th</sup> defendants were not sued as legal representatives of the estate of the deceased. The plaintiffs pleaded in paragraph 7 of the plaint that they sued the 2<sup>nd</sup> defendant because she was the “ostensible owner” of the suit property by virtue of being the daughter of the deceased who had dealt with them. The 3<sup>rd</sup> and 4<sup>th</sup> defendants were sued as “heirs apparent” according to paragraph 11 of the plaint.
15. The court takes the view that a cause of action against an estate of a deceased person can only lie against a personal representative duly appointed pursuant to the *Law of Succession Act* or another recognized legal regime. The plaintiffs conceded in their own plaint that the 2<sup>nd</sup> to 4<sup>th</sup>

defendants were not the legal representatives of the estate of the deceased. The court is further of the view that the plaintiffs' suit against the 2<sup>nd</sup> to 4<sup>th</sup> defendants was incompetent from inception hence a nullity and that any subsequent appointment of administrators by the Kadhi's court could not revive a suit which was a nullity in the first instance. See *Trouistik Union International & Another vs Jane Mbeyu & Another* [1993] KECA 89 (KLR)

**b) Whether the plaintiffs had valid sale agreements for the sale of the suit property**

16. Although the 2<sup>nd</sup> defendant is the one who sold most of the plots to the plaintiffs, the 3<sup>rd</sup> and 4<sup>th</sup> defendants contended that she had no legal capacity to do so at the material time since she was not an administrator of the estate of the deceased. It was further contended that in the absence of letters of administration and confirmation thereof the 2<sup>nd</sup> defendant could not validly sell or agree to sell portions of the suit property.
17. There is no doubt from the material on record that apart from the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs who appeared to have bought their portions from the deceased during his lifetime, the rest

of the plaintiffs purported to buy their respective portions from the 2<sup>nd</sup> defendant whom they described as ostensible owner because she was a daughter of the deceased. The 3<sup>rd</sup>-22<sup>nd</sup> plaintiffs knew pretty well that the owner of the suit property was deceased and that they were dealing with his daughter.

18. In the case of the *Estate of John Gikunga Njoroge (deceased)* [2015] eKLR it was held, *inter alia*, that;

*"For the transactions between the Applicants and the beneficiaries of the estate of the deceased entered into before the Grant of Letters of Administration to them and before the confirmed Grant, the contracts of sale are invalid and offending the provisions of Section 45 and 82 of the Law of Succession Act. Even if the sale transactions were by the administrators, the dealings with immovable property of the Estate is restricted by the provisions on the powers, duties of the personal representatives under Section 82 (b) proviso (ii) which provides that;*

*(ii) no immovable property shall be sold before confirmation of Grant.*

19. The court is of the view that all the sale agreements between the 2<sup>nd</sup> defendant and the 3<sup>rd</sup> - 22<sup>nd</sup> plaintiffs were null and void since the 2<sup>nd</sup> defendant had no legal capacity to

deal with the assets of the deceased contrary to the provisions of the *Law of Succession Act (Cap 160)*. The court is thus of the view that apart from the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs' agreements, the rest of the sale agreements involving the 3<sup>rd</sup> - 22<sup>nd</sup> plaintiffs are invalid, null and void.

**c) Whether the plaintiffs have proved their claim against the defendants**

20. The court has found that the plaintiffs' suit against the 2<sup>nd</sup>-4<sup>th</sup> defendants is null and void because they were not the duly appointed administrators of the estate of the deceased at the material time. The court has also found that the sale agreements of the 3<sup>rd</sup>- 22<sup>nd</sup> plaintiffs are null and void. It would thus follow that the plaintiffs' claim against the 2<sup>nd</sup> to 4<sup>th</sup> defendants cannot be proved to the required standard.
21. The only claim which falls for consideration is the plaintiffs' claim against the 1<sup>st</sup> defendant to restrain it from auctioning the suit property to recover the outstanding rates. The court is unable to find any merit in the plaintiffs' claim against the 1<sup>st</sup> defendant for at least two reasons. First, thus far the plaintiffs have not demonstrated any valid claim against the suit property or the estate of the deceased for reasons given

earlier in the judgment. Secondly, under the National Rating Act the 1<sup>st</sup> defendant is only obligated to deal with the rateable owner of the property and not any other persons who may have had any unregistered dealings with the owner. Section 8 of the said Act states as follows;

*“(1)For the purposes of this Act, a rateable owner means—*

- (a) in relation to property in land, a person who holds leasehold where the unexpired residue of the term is not less than twenty-one years and there is an intention to confer ownership;*
- (b) in relation to an interest in the rateable property registered in favor of another, means the name of the person registered against that interest;*
- (c) in case of succession, the executor, executrix or appointed administrator in accordance to the Law of Succession Act ([Cap. 160](#));*
- (d) in the case of the trust property, the appointed and registered trustees including the public trustee in accordance to the Trustees Act ([Cap. 167](#)), Trustees (Perpetual succession) Act ([Cap. 164](#)), or the Public Trustees Act ([Cap. 168](#));*
- (e) in case of bankruptcy or insolvency, the person appointed as administrator or liquidator in accordance with the Insolvency Act ([Cap. 53](#));*
- (f) in relation to sectional properties, a holder of a sectional property under the Sectional Properties Act ([Cap. 286](#));*

(g) an occupier of the rateable property; or(h)a beneficial owner who is receiving profits and rent from the rateable property;

(2) A rateable owner shall —

(a) provide accurate, reliable and sufficient information on the rateable property for purposes of valuation upon request by the County Executive Committee member or a designate of the County Executive Committee member appointed in writing;

(b) promptly pay land rates as they fall due; and

(c) where rateable property is jointly owned, jointly and severally with the other registered proprietors be liable to pay rates when they fall due.

**d) Whether the plaintiffs are entitled to the reliefs sought in the suit**

22. The court has found that the plaintiffs have failed to prove their claim against all the defendants. It would thus follow that the plaintiffs are not entitled to the reliefs sought, or any one of them. The plaintiffs' claim against the 2<sup>nd</sup> to 4<sup>th</sup> defendants are for striking out whereas the claim against the 1<sup>st</sup> defendant is for dismissal.

**e) Who shall bear costs of the suit**

23. Although 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 costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. In this case, however, the court finds that the conduct of the 2<sup>nd</sup> to 4<sup>th</sup> defendants is such that they are not deserving of costs. They appear to have misled the plaintiffs, or most of them, in their dealings with the suit property. Although the 2<sup>nd</sup> defendant was the prime actor, the 3<sup>rd</sup> and 4<sup>th</sup> defendants did not move expeditiously to obtain a grant for the purpose of protecting the assets of the estate of the deceased. The court is further of the view that the 1<sup>st</sup> defendant is not entitled to costs since it did not participate in the hearing and did not file any submissions in the matter.

**J. Conclusion and disposal orders**

24. The upshot of the foregoing is that the court finds and holds that the plaintiffs have failed to prove their case against the defendants to the required standard. The court finds that the claim against the 1<sup>st</sup> defendant was not proved whereas the claim against the 2<sup>nd</sup> to 4<sup>th</sup> defendants was incompetent, null

and void. As a consequence, the court makes the following disposal orders;

***a) The plaintiffs' suit against the 1<sup>st</sup> defendant is hereby dismissed with not order as to costs.***

***b) The plaintiffs' suit against the 2<sup>nd</sup> to 4<sup>th</sup> defendants is hereby struck out with no order as to costs.***

It is so decided.

**Judgment dated and signed at Mombasa and delivered** virtually via Microsoft Teams on this **27<sup>th</sup> day of November, 2025.**

.....  
**Y. M. ANGIMA**  
**JUDGE**

In the presence

Gillian - Court Assistant

No appearance for the plaintiffs

No appearance for the 1<sup>st</sup> defendant

Mr. Akanga for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants

Mr. Oduor for the 4<sup>th</sup> defendant.