



Devani & another (Suing as the Legal Administrators of the Estate of Amritlal Purshottam Bhimji Devani aka Amritlal Purshottam Bhimji (Deceased)) v Devani & another (Environment and Land Case E077 of 2025) [2025] KEELC 18354 (KLR) (17 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E077 OF 2025
SM KIBUNJA, J
DECEMBER 17, 2025**

BETWEEN

**SACHIN AMRITLAL PURSHOTTAM BHIMJI DEVANI & REENA AMRITLAL DEVANI [SUING AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF AMRITLAL PURSHOTTAM BHIMJI DEVANI AKA AMRITLAL PURSHOTTAM BHIMJI (DECEASED)] 1ST PLAINTIFF
REENA AMRITLAL DEVANI 2ND PLAINTIFF
SUING AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF AMRITLAL PURSHOTTAM BHIMJI DEVANI AKA AMRITLAL PURSHOTTAM BHIMJI (DECEASED)**

AND

**KISHOR PURSHOTTAM DEVANI 1ST DEFENDANT
SURAJ KANTILAL DEVANI 2ND DEFENDANT**

RULING

[Notice of Motion Dated 2nd July 2025]

1. The plaintiffs moved the court through the motion dated 2nd July 2025 seeking for orders inter alia that:
 - a. All monthly rental income derived from Mombasa/Block 1/276, suit property, be deposited in court or in a joint interest earning account in the names of the parties advocates on record pending the hearing and determination of this suit.
 - b. The defendants be compelled to render a true, full and accurate account of all rent collected from the subject property from the date of the deceased's death, 22nd January 2023, to date.



The application is predicated on the seven (7) grounds on its face and supported by the affidavit of Sachin Amritlal Purshottam Bhimji Devani, the 1st plaintiff, sworn on the 13th June 2025, in which he among others deposed that he is one of the appointed administrators of the deceased's estate; that the deceased was a co-owner of the suit property, that is developed with commercial units, holding 1/6th undivided share, and since his death, the defendants have been collecting rent thereof without him, or remitting the share for the estate; that there is a risk of the funds collected as rent dissipating or being concealed to the detriment of the estate and hence this application.

2. The defendants entered appearance through the memorandum dated 7th July 2025, but have not filed a reply.
3. During the hearing on 15th October 2025, the learned counsel for the plaintiffs made a short submission in support of the application. He adopted the grounds on the application and depositions on the supporting affidavit.
4. The main issue for determinations in the application is whether the plaintiffs have made a reasonable case for the orders that they seek to be issued.
5. The court has carefully considered the grounds on the application and depositions on the supporting affidavit, oral submissions by the plaintiffs' learned counsel and come to the following findings:
 - a. That under Order 51 Rule 14(1) of Civil Procedure Rules, any respondent who wishes to oppose any application may file any one or a combination of a notice of preliminary objection; and or replying affidavit and or a statement of grounds of opposition. The defendants herein though served have not filed any one of the three documents or in any other way intimated their wish to oppose the application. the court therefore takes the application as unopposed.
 - b. The finding in (a) above notwithstanding, the court must on itself analyse the grounds and deposition presented and make a determination on whether the plaintiffs have met the threshold precedent to the granting of the orders sought, as under sections 107 to 109 of the Evidence Act chapter 80 of Laws of Kenya still have the obligation to satisfy the court that they deserve the prayers sought. what prayer(s) may be granted at this stage.
 - c. The court has noted the prayer for the defendants to render full accounts of the rental income collected since the death of the deceased is also appearing as prayer (b) in the plaint dated 13th June 2025, and it cannot be considered for granting at this interlocutory stage, as it will amount to pre-empting the main suit which is yet to be set down for hearing.
 - d. The plaintiffs have clearly established that they were appointed as administrators of the deceased's estate vide High Court Succession Cause No. E024 of 2024, and therefore are with capacity to sue on behalf of the said estate. Their deposition that they have not been involved in the collection and distribution of the rental income from the subject property that the deceased was a part owner has not been disputed or challenged. To safeguard the interest of the deceased's estate, the court find it reasonable that the rental income be deposited as proposed at prayer (3) of the notice of motion.
 - e. Under section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya, costs follow the event, unless where for good reason the court directs differently. In this case, and noting that the defendants did not participate in this application, I am of the view that justice will be better served with an order that costs abide the outcome of the suit.



6. Flowing from the foregoing determinations, the court finds merit in the application dated 2nd July 2025 and orders as follows:
- a. That pending the hearing and determination of this suit, the monthly income from the commercial developments on Mombasa/Block 1/276, suit property, shall forthwith be deposited in an interest earning bank account in the joint names of the parties' counsel on record, to be opened and shared with all the rent payers, within the next thirty (30) days.
 - b. The costs in the application to abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 17TH DAY OF DECEMBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the Presence of:

Plaintiffs : Mr Oloo

Defendants : No Appearance

Kalekye-court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

