

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**  
**ELCLC. NO. E112 OF 2023**

**SBS DUNHILL GROUP  
(EAST AFRICA) LIMITED.....PLAINTIFF**

**VERSUS**

**AJEETKUMAR C. SHAH & OTHERS.....1<sup>ST</sup>  
DEFENDANT**

**PANKAJ CHHAGANLAL SHAH.....2<sup>ND</sup>  
DEFENDANT**

**KAMALKUMAR CHHAGANLAL SHAH.....3<sup>RD</sup>  
DEFENDANT**

**LAND REGISTRAR, NAIROBI.....4<sup>TH</sup>  
DEFENDANT**

**JUDGMENT**

**1.** The plaintiff filed the amended plaint dated 22<sup>nd</sup> May, 2024 seeking that judgment be entered against the defendants jointly and severally for:-

***a. A permanent injunction preventing the defendant and/or their agents from evicting the plaintiff from the property, hindering the plaintiff from conducting business there, and preventing the plaintiff's clients and customers from entering the property;***

***A1. A declaration that the certified true copy of the resolution passed at the meeting of the Board of Directors of SBS Dunhill Group Corp and SBS Meriton Group Holdings held at the Registered Office at North Orange, 111 North Orange Avenue- Orlando Florida on Monday, June 12<sup>th</sup> 2017 at 10.00 hours Orlando Florida time USA) forms part of both***

***lease agreements dated 1<sup>st</sup> day of October 2017 and the leave and license agreement dated 13<sup>th</sup> day of July 2020.***

- A2. A declaration that the plaintiff had legitimate expectation to purchase the suit property being LR No. 1/373 at the current market value less the plaintiff's investments into it upon expiry of the six-year lease term.***
- A3. A declaration that the Change of User and Amalgamation on LR Nos. 1/989 & 1/990 giving rise to LR. No. 1/374 while the suit was pending in court was irregular, null and void as it was fraudulently done with the intention of defeating the plaintiff's claim and rights over the suit property.***
- A4. A mandatory order do issue directed at the 5<sup>th</sup> defendant compelling him/ her to cancel the disposition in respect of the suit property being LR No. 1/374 in terms of the Change of User & Amalgamation on LR. Nos. 1/989 & 1/990 giving rise to LR No. 1/374 and to consequently revert the suit property back to its previous position by reinstating the property known as LR No. 1/373 to its status prior to Change of User & Amalgamation.***
- b. An order of specific performance compelling the defendants to honour the terms of the Binding Board Resolution of 12<sup>th</sup> June, 2017.***
- c. An order for the defendants to pay general damages to the plaintiff for the losses suffered as a result of the defendants breach of promise.***

***d. Costs of the suit and interest thereon.***

***e. Such further and other relief as this honourable court deems just and equitable in the circumstances of this case.***

2. The gist of the plaint is that on 12<sup>th</sup> June, 2017, the plaintiff's international board of directors in a meeting held in Orlando Florida, resolved to set up an office in Nairobi, and that the prospective landlord be informed that if they agree and in good faith, they would sell off Senteu Plaza to the plaintiff upon the expiry of the anticipated 6 year lease term.
3. The minutes of the said meeting would be shared with the Landlord who if agreeable, would be legally bound to annex the minutes to the leave and license agreement and the same would form part of the terms of the agreement. The plaintiff stated that pursuant to the resolution, the plaintiff wrote to the 2<sup>nd</sup> defendant who is a director of the 1<sup>st</sup> defendant, and the said directors did not raise any objections to the conditions outlined in the minutes and resolutions. Further, that the plaintiff's two directors and their advocate signed the lease agreement on 24<sup>th</sup> August, 2017 and sent the same to the defendants for their execution. However, the

defendants failed to execute the lease agreement within reasonable time, and the plaintiff's local director was forced to forward KShs.1, 698,840/- for the rent of the premises occupied as it awaited execution of the lease agreement.

4. The plaintiff further stated that after repeated demands, the defendants agreed to lease to the plaintiff space on the first floor of Senteu Plaza for a total of three years from 1<sup>st</sup> October, 2017 to 31<sup>st</sup> August, 2020. That the space occupied has since increased, and that he dutifully paid rent and other charges that arose as a result of the lease agreement. Further, that upon the expiry of the lease, the same was extended for the period 2020 to 2023, and that with full knowledge that the plaintiff was keen on purchasing the building at the end of the six years, permitted the plaintiff to make improvements/developments within the building.
5. The plaintiff stated that its conduct was interpreted to mean that the defendants were aware and had agreed that it would purchase the building at the end of the lease term, having relied on the conditions upon which the lease agreement was founded. That as a result, the plaintiff has massively invested in improving the standards of the building including the street lighting system along Lenana/Galana Road to the tune of Kshs.177,600,00/-.

6. Further, that Mr. Ajeetkumar Chhaganlal Shah died on 18<sup>th</sup> March, 2018 and Mr. Chandulal Chhanganlal Shah died on 30<sup>th</sup> April, 2022 leaving the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in charge of the affairs of the 1<sup>st</sup> defendant. That since the 2<sup>nd</sup> and 3<sup>rd</sup> defendants took over the management of the 1<sup>st</sup> defendant, the plaintiff has received hostile treatment from them which has affected its business. Further, that following its interest to purchase the property, the same was declined and in a letter dated 18<sup>th</sup> November, 2022 by the 2<sup>nd</sup> defendant, it had hoped that there was chance that the defendants would reverse their earlier decision not to sell the building thus abiding by the terms of the board resolution.
7. That in a letter dated 31<sup>st</sup> July, 2023, the plaintiffs were informed that the defendants were not selling the building, and while the 2<sup>nd</sup> defendant acknowledged receipt of the excess sum of Kshs.216,816.35/-, he did not make any inquiry for the excess amounts deposited. Further, that on 11<sup>th</sup> September, 2023, the defendants' advocate wrote to the plaintiff informing them of the lease set to expire on 31<sup>st</sup> August, 2023 and the need to give vacant possession of the premises by 15<sup>th</sup> September, 2023.
8. The plaintiff pleaded that the defendants had jointly conspired to defraud the plaintiff from the onset and it was discovered that the lease agreement was executed by the late Ajeetkumar Chhandulal

Shah five months after his death and the subsequent lease was signed two years after his death. Further, that the lease agreement alluded to LR. No. 1/373 was amalgamated a new number generated as LR. No. 1/374 which alters the particulars of the suit property thus incapable of being enforced against the said title. Further, that the plaintiff had legitimate expectation that the defendants would keep their word and act in good faith in all their dealings. For this reason, they are estopped from denouncing that they had acquiesced to the plaintiff buying off the building at the expiry of the lease term.

9. The plaintiff pleaded that with the vacation notice issued, it is impossible to get similar premises to set up its business and it will have to undertake financially demanding and intricate processes. The plaintiff pleaded particulars of breach of agreement, fraud and misrepresentation as follows:-

***a. Failing to engage the plaintiff in negotiations regarding the purchase price of Senteu Plaza contrary to the terms of the lease agreements as read with the minutes and resolutions of the board of directors of the plaintiff.***

***b. Failing to facilitate the sale of Senteu Plaza to the plaintiff contrary to the terms of the minutes and resolutions of the Board of Directors of the plaintiff which was an annexure to the main leave and license agreement.***

- c. Seeking to evict the plaintiff from the premises contrary to the minutes and resolutions of the board of directors of the plaintiff as approved by the directors of the 1<sup>st</sup> defendant.**
- d. Impeding access to the plaintiff's business by clients thereby causing substantial loss of commercial income by the plaintiff.**
- e. Entering into the lease agreement on 1<sup>st</sup> October 2017 in anticipation of purchase of the suit property in bad faith and with the sole intention of swindling the plaintiff.**
- f. Forging the signatures of deceased directors- Ajeet Kumar Chhaganlal Shah in the lease agreement dated 1<sup>st</sup> October 2017 and, in the leave and license agreement dated 13<sup>th</sup> July, 2020.**
- g. Conspiring with their Advocate-PJ Kakad to defraud the plaintiffs by forging deceased directors- Ajeet Kumar Chhaganlal Shah's signature in the lease agreements and uttering them to the land registry and their subsequent conduct in carrying out an amalgamation and change of user of the suit property-LR Nos. 1/989 & 990 giving rise to LR. No. 1/374.**
- h. Failing to remit the Two Hundred Thousand US Dollars (\$200,000) deposit paid in September 2017 to the Kenya Power and Lighting Company (KPLC) six years down the line, the same has not**

***been paid to KPLC, neither has it been refunded to the plaintiff.***

- i. Forcing the plaintiff to pay for Stamp Duty over documents that are and were fraudulent.***
- j. Forcing the plaintiff to pay for legal fees to the defendants Advocate PJ Kakad for the registration of lease and payment of Stamp Duty at Lands Registry and yet the supporting documents are and were fraudulent.***
- k. Using a different land reference number to prepare lease documents to tenants by quoting a non-existing L.R. Number and causing the same to be used to pay the rent(and in our case) place purchase deposit with the defendants, which they acknowledged.***
- l. Permitting and authorizing heavy investment in Senteu Plaza including upgrading of the building-an investmenet that made the plaintiff spend over 10 million US Dollars on that alone. The same will be demonstrated during the hearing of the suit.***
- m. Receiving funds in cash from the plaintiff while fraudulently stating that the same will be deducted from the final purchase price which never came to light.***

***n. Shutting down water that was supplying the VVIP SPA and Wellness Center thus causing the facility to temporarily stop operations. Luckily, the Business Premises Tribunal issued directive to the parties to the effect that there should be non-interference as the Tribunal directed status quo.***

**10.** The defendants filed their amended defence and counterclaim dated 9<sup>th</sup> July, 2024. In their amended statement of defence, the defendants stated that they are not parties to the internal deliberations made by the plaintiff. They stated that they were not aware of the existence of the minutes and resolutions by the plaintiff seeking to lease their property. They denied that they were supplied with the alleged minutes and the resolution. They stated that they have since established that the plaintiff forged the defendants' signature and stamp into the said minutes which they have reported to the police for investigations.

**11.** The defendants further denied that the plaintiff offered to purchase the 1<sup>st</sup> defendant's property or that it was discussed at all. Further, that the plaintiff executed the lease improperly and sent it to the 1<sup>st</sup> defendant's advocates on 23<sup>rd</sup> August, 2017 and the same was properly executed and sent back on 9<sup>th</sup> October, 2017. Further, they pleaded that the plaintiff's chairman claim that he

financed the plaintiff's obligation is without basis and the same is denied. They stated that the plaintiff was given a copy of the lease that was duly executed by all parties dated 1<sup>st</sup> October, 2017 upon registration at the Lands registry in November, 2017.

- 12.** They denied that they were shown and read the minutes and resolution to lease their property on condition that they would sell the same to the plaintiff. Further, that they allowed the plaintiff to furnish the leased premises to enable it carry out its business, and upon request, it was allowed to put appropriate signage for marketing purposes. They further stated that the lease dated 1<sup>st</sup> October, 2017 was for a term of six years and the same expired on 31<sup>st</sup> August, 2023. Further, that the plaintiff had a tenancy relationship with the 1<sup>st</sup> defendant and not the individual partners, and all of the 1<sup>st</sup> defendant's partners participated in the affairs of the 1<sup>st</sup> defendant.
- 13.** Further, the defendants denied that the plaintiff dutifully paid rents and other charges as it consistently cited various reasons including freezing of its bank accounts. Further, that all the renovations were at the plaintiff's own request and expense, and it is required to remove all its items and investments in the property and deliver vacant possession. They denied that they abided by the plaintiff's

instructions not to lease part of the 1<sup>st</sup> floor, and that they are aware of the value of investments made by the plaintiff in its commercial businesses. They also denied that the plaintiff has improved the value of the 1<sup>st</sup> defendant's property as stated. That save for the renovation of the street lights and road outside the property, the work done is the responsibility of the County Government of Nairobi. Further, that save that Mr. Chandulal Chhaganlal died on 30<sup>th</sup> April, 2022, they denied paragraphs 22, 23, 24, 25, 52, 53, 54 and 55 of the amended plaint.

- 14.** With regard to the letter dated 21<sup>st</sup> June, 2023, the defendants stated that the plaintiffs were asked to confirm whether it intended to renew the lease and, in a letter dated 31<sup>st</sup> July, 2023, the plaintiff's advocate was informed that the building was not for sale but a consideration was made on any offer regarding renewal of the lease. That since the letter was not responded, the plaintiff was asked to hand over vacant possession in a letter dated 11<sup>th</sup> September, 2023.
- 15.** That pursuant to clause 1 of the lease agreement, the plaintiff had defaulted in rent payment in the sum of Kshs.10, 837,309.75/- as at August, 2023. Further, that they denied invoice from Glo-JET International USA Corp of USD 79,600 as they did not have a lease with the said corporation. Having paid the rent arrears, the sum of

Kshs.216,816.35/- was a gain on forex exchange and not a deliberate overpayment of rent.

- 16.** The defendants denied the allegations of fraud, unjust enrichment and that they made dispositions against the title suit property, and instead, the same was done in accordance with the law. They denied the particulars of breach and fraud as particularized, and stated that the doctrine of estoppel does not apply in this matter.
- 17.** In their counterclaim, the defendants stated that the 1<sup>st</sup> defendant is the registered owner of the suit property known as LR. No. 1/373 which it has erected Senteu Plaza. Further, that they leased the suit premises to the plaintiff for a term of six years wherein the plaintiff agreed to deliver the premises with vacant possession in compliance with the provisions of the agreement. That following the expiry of the lease, the plaintiff has not expressed interest in renewing the same, and in disregard to the notices issued, the plaintiff continues to trespass on their property which has occasioned them loss and damage. Further, that they have demanded mesne profits in the sum of Kshs.4,660,043.20 which is yet to be paid and while the court dismissed the plaintiff's application for injunction, the plaintiff moved to the Business Premises Rent Tribunal which shows an act of bad faith and ill attempt to deny them of the vacant possession of the suit property.

**18.** The defendants in the counterclaim pray that the plaintiff's suit be dismissed with costs and judgment be entered in the counterclaim for:-

- a. A declaration that the plaintiff's continued unlawful occupation of the defendants' premises is a breach of the lease dated 1<sup>st</sup> October 201, leave and license agreement dated 13<sup>th</sup> July, 2020, leave ad license agreement dated 2<sup>nd</sup> March, 2021 and leave and license agreement dated 14<sup>th</sup> July, 2021.***
- b. An order of vacant possession of all that property leased by the plaintiff pursuant to the lease dated 1<sup>st</sup> October 201, leave and license agreement dated 13<sup>th</sup> July 2020, leave and license agreement dated 2<sup>nd</sup> March 2021 and leave and license agreement dated 14<sup>th</sup> July, 2021 situated on first floor of the building known as Senteu Plaza situate on Nairobi LR. No. 1/373 (Original Number 1/989/990) failing which an eviction order should issue.***
- c. The sum of Kshs.19,339,237.60/- being the rent outstanding from 1<sup>st</sup> September 2023 to 5<sup>th</sup> July 2024.***
- d. Mesne profits at the amounts below per month from 1<sup>st</sup> September 2023(escalating at the rate of 2% per annum as per clause 6(g) of the lease) until delivery of vacant possession;***

***i. Lease dated 1<sup>st</sup> October 2017 - Kshs.350,578/.***

***ii. Leave and licence agreement dated 13<sup>th</sup> July 2020 - Kshs.375,578/-.***

***iii. Leave and licence agreement dated 2<sup>nd</sup> March 2021 - Kshs.748,533.75/-.***

***iv. Leave and licence agreement dated 14<sup>th</sup> July 2021-Kshs.288,906.25/-.***

***e. An order that the plaintiff pays accumulated service charge as at the date of granting vacant possession.***

***f. Interest on (b) and (c) above at commercial rates; and***

***g. Costs of the suit.***

**19.** The plaintiff filed its reply to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant's amended statement of defence and defence to counterclaim dated 5<sup>th</sup> February, 2025. While reiterating the contents of their reply to defence and defence to the counter claim dated 7<sup>th</sup> December, 2023 and the amended plaint, the plaintiff stated that it is a stranger to the allegations levelled which are serious, weighty and grave. In its defence to the counterclaim, the plaintiff reiterated the contents of its amended plaint, and its reply to the amended statement of

defence. The plaintiff stated that during the pendency of the suit, the 1<sup>st</sup> defendant instructed auctioneers to levy distress which prompted it to approach the Business Premises Rent Tribunal, and while stay of distress was pending, the defendants sought orders of eviction from the said Tribunal and obtained the same while concealing material facts. That by the conduct of the defendants, they are estopped from claiming there was nothing more than a tenant landlord relationship between the parties.

- 20.** The plaintiff stated that the orders sought in the counter-claim are not available to the defendants in law and should be dismissed forthwith. Further, that the court is a place of equity in law and that it should strive to apply principles of fairness and justice to reach a just outcome.
- 21.** This matter proceeded for hearing on 17<sup>th</sup> March, 2025. Chris Philip Obure (PW1) introduced himself as the chairman of Meriton Group of Companies, a conglomerate of seven companies including the plaintiff that was registered in 2015 vide certificate no. 2015/183684. He adopted his witness statement dated 5<sup>th</sup> February, 2025 as his evidence in chief and the documents contained in the supplementary list of documents dated 12<sup>th</sup> March, 2025 as P. Exhibits 1 to 21 respectively. PW1 informed the court that he met the defendants on 7<sup>th</sup> June, 2021 when he was mandated by the

international board to look for land for the headquarters. PW1 testified that he identified the suit property and called Mr. Chhaganlal Shah who invited him to his office at CVS Plaza.

- 22.** On cross- examination, PW1 acknowledged the charge sheet in the defendants' bundle of documents. He stated that the plaintiff occupies an office at the suit property, and informed the court that he was seeking to rent the premises and not to buy. PW1 testified that he was granted 1900 square feet on the first floor which would be a quarter of the floor and there were various correspondences culminating into the lease. He testified that there were no minutes referred to, and the lease does not allow him to buy the premises. PW1 acknowledged the terms of the lease including the period ending on 31<sup>st</sup> August, 2023 and the break-down of payment.
- 23.** PW1 testified that he approached the defendants and took up more space and he signed more documents to that effect i.e. the license agreement and ended up occupying more than three quarters of the first floor at Senteu Plaza. He stated that the agreement does not provide any clause for selling the building or the first floor of the building. He agreed that the minutes are also not referenced in any of the lease and license agreements.
- 24.** PW1 testified that he agreed to pay rent as usual and whereas the defendants have showed that he was in arrears, in reality that is

not the case as there is a schedule indicating the same. He was not aware that there was rent due of Kshs.10,000,000/- and whether the same was paid. PW1 further acknowledged the freezing of the accounts and the monies deposited in excess into the account of the defendants and stated that the difference of the amount was the deposit for the purchase of the building.

25. In particular, he stated that Kshs.11,300,000/- was paid by Cullinan Private Jets indicating payment of rent owing. He admitted that he received a letter from the defendants informing him of the lease that was about to expire and if he needed to renew the same. According to him, the instruction they had given to his former counsel was to either buy the plot or the building pursuant to the minutes of the meeting. That following a response from the defendants' advocate, he was informed that the building was not available for sale. While acknowledging the letter by the plaintiff at page 127 of its bundle, PW1 testified that the binding resolutions were done internally, and the members present were that of the plaintiff. He admitted that the defendants were not present and that there was no letter forwarding the minutes/resolutions to the said defendants. However, PW1 informed the court that he shared a copy of the letter with the defendants and there are stamps and signature to show that Mr. Chandu received it.

- 26.** With regard to falsification of the stamp and signature of Mr. Chandu Shah, PW1 testified that he made a complaint to the DCI and the complaint was that the defendants had received part of the purchase price and they had refused to sell the building to him. He said that the letters were prepared by the Director of Legal of the plaintiff in the USA and the letter to the DCI was prepared by Prof. PLO Lumumba.
- 27.** PW1 testified that he continues to occupy the premises and that he has no rent to pay since the defendants owe him money from 1<sup>st</sup> September, 2023 to 17<sup>th</sup> March, 2025. He admitted that he has not paid for water and service charge during the period yet stating that the plaintiff continues to run their business from the premises.
- 28.** On re-examination, PW1 testified that the board resolution is binding as it contains his signature and the acknowledgment by the defendants including the signature by the managing partner who is deceased. He stated that the board wanted to purchase the property, and that the defendants informed him that they could only sell the same after the period of the lease. While referring to the letter dated 7<sup>th</sup> November, 2022 signed by Mr. Gates, PW1 informed the court that the plaintiff wanted a sale agreement of the building. Further, that the letter dated 16<sup>th</sup> November, 2022 by Mr. Pankaj Shah shows that the defendants had not decided to sell

Senteu Plaza. Further reference was made to the email dated 18<sup>th</sup> November, 2022 which Mr. Pankaj promised to communicate later regarding the sale. PW1 testified that while he complained to the DCI through his advocate, he ended up being charged with a complaint having been made by Mr. Pankaj. He stated that the criminal case is yet to be concluded. With the testimony of PW1, the plaintiff rested its case.

- 29.** Emmanuel Karisa Kenga (DW1) introduced himself as a forensic examiner and referred to the report dated 16<sup>th</sup> November, 2023. He testified that he was asked to examine known signatures, and based on his findings, he could not find any agreement with the signatures, and that there were no similarities on the same to conclude that they were from a common origin. He further testified that he could not find any agreement on the stamp impressions. He produced his report dated 16<sup>th</sup> November, 2023 as D. Exhibit no. 1.
- 30.** On cross-examination, DW1 testified that he did not attach any credentials to his report, and stated that signatures from the same author can vary. That while he did not get known signatures of Mr. Kumar, he stated that a photocopy of a signature cannot be different from the signed one and neither should it affect the original.

- 31.** On re-examination, DW1 testified that the differences in the stamps were the style and movement of the pen from the start of the signature, midway and ending and he stated that a photocopy of a document cannot affect the style and the font.
- 32.** On 9<sup>th</sup> July, 2025, Pankaj Chhaganlal Shah, (DW2) adopted his witness statement dated 24<sup>th</sup> November, 2023 as his evidence in chief. He produced the bundle in the list of documents dated 24<sup>th</sup> November, 2023 as D. Exhibits Nos. 2 to 28 respectively. He also produced the supplementary list of documents dated 9<sup>th</sup> July, 2024 as D. Exhibits Nos. 29 to 32. DW2 testified that the plaintiff vacated the suit premises on 16<sup>th</sup> May, 2025 and as at this date, it had not paid the rent claiming from 1<sup>st</sup> September, 2023 to 16<sup>th</sup> May, 2025 and neither has it paid the service charge.
- 33.** On cross examination, DW2 reiterated that the tenant is no longer on the suit property as at 16<sup>th</sup> May, 2025 as auctioneers were sent to levy distress. That while they obtained orders to be stayed in BPRT 178/2025, he did not know if the order to vacate was contested in court. He also did not know if the matter is concluded. He further stated that there are rent and service charge which remain unpaid since 2023. DW2 admitted that the payment to Ajeet was from the Plaintiff and the last payment made was Kshs.981,150,158.38/-, and that from September, 2017 to

September 2023, they would have received an estimate of Kshs.160,000,000/-. He further testified that on 21<sup>st</sup> August, 2017 Kshs.980,000/- was remitted, on 19<sup>th</sup> August, 2017 Kshs.980,000/- with similar amounts being made on 17<sup>th</sup> and 18<sup>th</sup> August, 2017 totalling to Kshs.5,000,000/-. He stated that they could not release the lease documents since the plaintiff had not made payments. According to the agreement by P.J. Kakad & Co. Advocates dated 1<sup>st</sup> October, 2018, he stated the documents was delayed because of the stamp duty.

- 34.** DW2 further testified that it only delivered the signed lease to the plaintiff on 2<sup>nd</sup> October, 2023 but he did not have the evidence of the said delivery. He further stated that at the beginning of the lease, the plaintiff occupied 1900 square feet, and that by 2023 there was one client who exited afterwards. With regard to the lease document on the land reference number, DW2 testified that the main title was lost, but they did not inform the plaintiff, and that they did not realize that it affected the lease but that they were in the process of informing him. Further, that he first met the tenant in May or June of 2017 and that he wanted to lease an office space. He stated that PW1 had a meeting with his brother and in reference to the letter from the plaintiff, the same was signed by the tenant.

- 35.** DW2 further stated that the documents in the defendants' bundle contains a signature by Chandu Shah and the same has a binding resolution of the board. Further, that there is the ACS stamp which has a signature that resembles that of his brother. He could not remember if Ajeet was in the meeting, and according to him, the stamp and the signatures were forged and the allegations of fraud were reported to the authorities. On being shown the lease agreement signed on 1<sup>st</sup> October 2018, he testified that the signatures are by AjeetKumar Chhaganlal Shah, Pankaj Shah and Kamalkumar Shah. With regard to the lease signed on 9<sup>th</sup> July, 2020 in front of PJ Kakad, he stated that there are signatures for leave and license agreement.
- 36.** DW2 further identified the certificate of death of Ajeet Kumar Shah whose date of death was 24<sup>th</sup> April, 2018, and Chandulal Shah who passed on 30<sup>th</sup> April, 2022. He stated that while the lease was signed in 2018 before P.J. Kakad Advocate, there was already a certificate of death. Further, that while Chandulal passed on April, 2022, there was a letter bearing his signature, as he was the one dealing with the plaintiff, and they did not inform the tenant of Chandulal's demise.
- 37.** He further testified that there was a letter by the plaintiff expressing interest to purchase the suit property but through his

email, they decided not to sell the same. He admitted the emails dated 16<sup>th</sup> and 18<sup>th</sup> November, 2022 informing the plaintiff that they would let him know later, and as at the time the letter was being written by Pankaj Shah, Chandulal Shah was already deceased.

- 38.** With regards to the lease agreement, DW2 testified that there was no written consent when the plaintiff made the changes to the building, and that there was no written consent to restrict the changes. Further, and with regards to the letter from the firm of Gitobu Imanyara & Advocates, DW2 testified that while he was aware of the court order issued, he did not reply to the same, and he admitted that the auctioneer was sent to the plaintiff seeking a decretal sum of Kshs.30,944,332.40/-. He stated that Kshs.981,150,158.38/- had been already been credited to the defendants, and despite receiving the notice from the plaintiff's advocate, they went ahead and evicted the plaintiff. He denied that the plaintiff will suffer loss.
- 39.** On re-examination, DW2 testified that the document prepared by SBS Group does not have a title and the rent was paid to Ajeet Kumar Shah (1<sup>st</sup> defendant) and others. He stated that between the years 2017 and 2023, their account received Kshs.980,000,000/- and the said document is just a statement without attachment to

prove any payment. With regard to the letter dated 9<sup>th</sup> April, 2018, DW2 testified that the plaintiff confirmed that it was in rent arrears. He stated that there is correspondence between Mili and Susan on the same and the plaintiff was requesting to make the payment of the rent arrears. He stated that the money was never finally received by the defendants.

- 40.** He reiterated that they had not given any consent to the renovations, and they asked the plaintiff to write the same but they refused. He stated that the repairs were being done during the weekends. DW2 stated that in August, 2017, three months rent was paid in advance when they signed the lease. Further, that when the lease was signed by the tenant, the same was taken for stamp duty assessment which takes time to process. DW2 testified that he did not appear before Mr. Kakad on the date indicated in the lease, and that the letter from Gitobu Imanyara has no receiving stamp. Further, that there is no evidence of service upon Makori Advocate.
- 41.** Following the conclusion of the hearing, the plaintiff filed its written submissions dated 4<sup>th</sup> August, 2025. The defendants filed their written submissions dated 29<sup>th</sup> August, 2025.

42. I have considered the pleadings, the testimonies of the witnesses and the evidence tendered. The issues for determination are as follows: -

- i. Whether the board resolution of the meeting held on 12<sup>th</sup> June, 2017 were binding on the defendants.***
- ii. Whether the plaintiff is entitled to the orders sought in it's amended plaint.***
- iii. Whether the defendants are entitled to the orders sought in their counter claim.***

43. The plaintiff expressed interest to rent office space at the 1<sup>st</sup> defendant's premises vide the letter dated 12<sup>th</sup> July, 2017. The said letter was signed by PW1 and Somoni Birundu Geoffrey. Prior to that and in an email dated 13<sup>th</sup> July, 2017 by Chandu, the 1<sup>st</sup> defendant confirmed availability of the space and stated that it would be glad to prepare a six-year lease, and sought confirmation to prepare a formal letter of offer for acceptance by the plaintiff. The defendants gave the plaintiff an offer vide the letter dated 17<sup>th</sup> July, 2017 for tenancy of the office space which was to commence on 1<sup>st</sup> September, 2017. The same was accepted by the plaintiff in a letter dated 24<sup>th</sup> July, 2017. It follows that rent payments were made on diverse dates in the year 2018, 2020, and 2021.

**44.** More importantly is the lease dated 1<sup>st</sup> October, 2017 which cemented the relationship between the parties. The same provides for leasing of 1900 square feet situate on the first floor of Senteu Plaza for a term of six years. It is signed by Ajeet Kumar, Chandulal, Pankaj and Kamalkumar Chhaganlal Shah, and the directors of the plaintiff. There is discrepancy in the dates as appearing on the first page of the lease which indicates 1<sup>st</sup> October, 2017. The lessors appeared to have signed the same on 1<sup>st</sup> October, 2018, and the plaintiffs appeared to have signed the same on 24<sup>th</sup> August, 2017. There is also the leave and license agreement dated 13<sup>th</sup> July, 2020. This agreement is executed by the parties herein. It is worthy to note that at the time of execution of the lease, Ajeet Kumar was deceased having passed on 24<sup>th</sup> April, 2018. The plaintiff argued that it had a legitimate expectation to purchase the suit property upon expiry of the lease, and its expectation was tied to a board resolution of the plaintiff following a meeting held on 12<sup>th</sup> June, 2017 whose terms it claims was accepted by one of the Directors of the defendants.

**45.** I have carefully read the lease dated 1<sup>st</sup> October, 2017, and there is no reference whatsoever to the board resolution. Ideally, and as it is common practice with agreements, parties through their legal representatives draft and exchange agreements for perusal and review before adoption of the same as legally binding documents. It

follows that if say, the board resolution was to find expression in the lease, the same would have expressly stated so, and in fact, as a preliminary issue. While it is not clear to the court which party prepared the lease, in my view, the plaintiff would have sought for inclusion of this clause in the agreement or in any case, it would have annexed a variation to include the said terms. The lease, as it is, was clear that it was for a period of six years, and no intention of purchase was provided.

- 46.** Further, and in a letter dated 7<sup>th</sup> November, 2022, the plaintiff expressed interest to purchasing Senteu Plaza. Part of the letter noted that monies had been spent towards the improvement of the surrounding areas including proper lighting, CCTVs and beautification. In an email dated 16<sup>th</sup> November, 2022, by Pankaj, regarding the purchase of Senteu Plaza, the plaintiff was informed that they had decided not to sell the same. Also, in an email dated 18<sup>th</sup> November, 2022, Pankaj informed the plaintiff that they would inform them later.
- 47.** The letter dated 14<sup>th</sup> July, 2023 by Chris Hakan provides further information on the intention of Cullinan Private Jets Corporation to purchase the building noting the investments so far made to the building. A careful analysis of this letter points to the fact that the plaintiff was interested to purchase the suit property albeit subject

to the decision by the defendants. The same having referred to a previous discussion with one of the defendants, was not strictly seeking implementation of a previous agreement. In fact, the letter stated that if the building was not available for sale, a consideration should be made on the first floor where the business of the plaintiff was located. This goes to say that the plaintiff's board resolution was not binding on the defendants.

**48.** While it is clear that the board resolution was not binding on the defendants, and there was no express provision for the sale of the suit property. Equally so, and noting the varying dates in the lease agreement and following the death of Ajeet Kumar who is said to have signed the lease, it is clear that the plaintiff cannot seek to further enforce the terms of an agreement where it cannot be understood how one of the lessors signed an agreement following his demise. In my view, his signature, if any, was fraudulent. It follows, therefore, that the plaintiff on a balance of probabilities is not entitled to the orders sought.

**49.** Turning to the counterclaim, it is not in dispute that the plaintiff before its eviction from the suit property was in rent arrears. The lease was for a period of six years and as stated above, it has not

been explained how the signature of a deceased person was procured following his demise. The question is, would the defendants seek enforcements of sums owing arising out of a lease that is fraudulent? I think not. It is trite law that the court can only enforce legally binding agreements. Any claim arising out of an agreement such as this one cannot be considered as legally enforceable to enable a party benefit from the same. In my view, the counterclaim thus fails.

- 50.** From the above, and on a balance of probabilities, the plaintiffs and the defendants have not established a case to warrant the grant of the orders sought. The amended plaint dated 22<sup>nd</sup> May, 2024 and the amended counterclaim dated 9<sup>th</sup> July, 2024 are both dismissed. Each party to bear their own costs.  
Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.  
JUDGE  
11/12/2025.**

***In the presence of:***

*Mr. Benson Agungo - Court assistant*

*Mr. Makori together with Mr. Andiwo for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>*

*Defendants*

*Ms. Nkonge for the Plaintiff*

ORIGINAL