

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**  
**ELCC. NO. E052 OF 2023**

**LEONARD MUTUKU SESI.....**  
**.....PLAINTIFF**

**VERSUS**

**PUBLIC TRUSTEE .....**  
**DEFENDANT**

**JUDGMENT**

1. The plaintiff filed the plaint dated 14<sup>th</sup> February, 2023 seeking judgment against the defendant for:-

*a. An order and declaration that the plaintiff is the lawful owner of the plot No. B7/2D PUMWANI NAIROBI and that the same be handed over to him.*

*b. Costs of the suit.*

2. The plaintiff averred that at all material times, he was the owner of the suit property known as plot no. B7/2D having acquired the same by purchase from the lawful beneficiaries and administrators of the estate of Mohammed Bilali. Further, that the said sellers were the lawful beneficiaries and administrators vide Succession Cause No. 66 of 1998 at Machakos. The plaintiff pleaded that the grant with regard to the estate of Mohammed Bilali was confirmed on 21<sup>st</sup> July, 2000.

3. The plaintiff averred that he duly paid all the requisite land rates before the same was duly transferred to him, and that he later

learnt that an order had been issued in a separate cause no. 11/2007 for the defendant to manage the estate. He averred that an order was made in his absence and without his knowledge or participation thereof. Further, that the defendant has been managing the said estate since the order was made, and that he was directed to make an application before this court for the transfer of the suit property.

4. The defendant filed its defence dated 1<sup>st</sup> March, 2023. While denying the contents of the plaint, the defendant averred that the suit property known as 36/VII/581 Flat B7/2D belongs to the estate of Mohamed Bilali which estate is under its administration following the court order issued on 7<sup>th</sup> October, 2009 and affirmed by the ruling delivered on 12<sup>th</sup> May, 2022 in Succession Cause No. 111 of 2007 as consolidated with Succession Cause No. 66 of 1998 of the High Court in Machakos.
5. The defendant averred that a similar matter is ongoing in the succession cause before the Machakos High Court seeking similar reliefs. That despite the grants in the two causes having been confirmed, the High Court is yet to establish the identity of the deceased and the beneficiaries of the said estate. Further, that the sale agreement attached to the plaint refers to sale of Plot No.

87/2D Pumwani as opposed to LR No. 36/VII/581 Plot No. B7/2 (D) Pumwani Redevelopment Estate.

6. The defendant further averred that the confirmation of grant is overtaken by events by the court order issued on 16<sup>th</sup> December, 2009 and the ruling delivered on 12<sup>th</sup> May, 2022. In conclusion, it was averred that the suit is misconceived and an abuse of the court process since a similar matter is ongoing in the Machakos High Court.
7. The plaintiff filed his reply to the defence dated 24<sup>th</sup> May, 2023. He averred that there is no petition that is pending in respect to the estate of the deceased, and that the petitioners in Succession Cause No. 111 of 2007 withdrew their claim vide an affidavit sworn by the petitioners. Further, that the allegation that another succession cause is pending is an afterthought and a delaying tactic as Succession Cause No. 66 of 1998 was concluded and the grant confirmed. He averred that the grant is valid to date and it has never been challenged before any court of law.
8. The plaintiff's case proceeded for hearing on 23<sup>rd</sup> July, 2025. The plaintiff, PW1 stated that he is a business man residing in Tala, Kangundo. He adopted his witness statement dated 11<sup>th</sup> March, 2025 as his evidence in chief, and produced the list of documents dated 14<sup>th</sup> February, 2023 as P. Exhibits Nos. 1 to 12 respectively,

and the list of documents dated 11<sup>th</sup> March, 2025 as P. Exhibits Nos. 13 to 21 respectively.

- 9.** On cross-examination, PW1 informed the court that he purchased the suit property from the family of the late Bilali, and that while plot number reads B7/2D Pumwani Estate, the said property is plot no. 87/2D, Pumwani Estate. He further stated that a certificate of confirmation of grant was issued by the court on 21<sup>st</sup> July, 2000, and that the said schedule has the name of Mwawawa. He agreed that the sale agreement was between himself and Mwawawa Mohamed of P.O. Box 107 Tala.
- 10.** He identified the second agreement dated 18<sup>th</sup> May, 1995 between himself and Mwawawa Mohamed and the affidavit sworn by Mwawawa Mohamed on 13<sup>th</sup> April, 1999. He stated that the city council approved the transfer of property to him on 14<sup>th</sup> March, 2001 with the subject letter of the plot being no. B7/2D Pumwani Estate account number 31014.
- 11.** With regard to the succession, PW1 stated that he was not aware that Succession No. 68 of 1998 and Petition No. 111 of 2007 had been consolidated as he was not a party to the two cases. Neither was he aware of the ruling that was delivered in respect of the two cases.

- 12.** On re-examination, PW1 testified that he entered into a sale agreement with Mwawawa Mohamed, but he knew the person as Mwanahawa. He stated that the property that is the subject of this suit is B7/2D, Pumwani Estate, and that the number 87 is a clerical error. With the testimony of PW1, the plaintiff rested his case.
- 13.** Farouk Mungai (DW1) adopted his witness statement dated 7<sup>th</sup> February, 2025 as his evidence in chief. He produced the documents contained in the list of documents dated 1<sup>st</sup> March, 2023 as D. Exhibits Nos. 1 to 7 respectively. Further, he stated that he is aware of the Succession Cause No. 66 of 1998 and Petition No. 111 of 2007 which are still pending in court. He further stated that there was a ruling delivered in court on 12<sup>th</sup> May, 2022.
- 14.** DW1 further testified that the plaintiff is an interested party in the succession cause, and that the court could not determine the real beneficiary in both cases. He stated that the court directed that the matter be investigated by the DCI.
- 15.** On cross-examination, DW1 testified that he did not have the outcome of the investigations by the DCI, and the orders directing

so. With regard to Succession Cause No. 66 of 1998 and Petition No. 111 of 2007, DW1 testified that there is a confirmation of grant in Petition No. 111 of 2007, but the same is not in their bundle of documents. He stated that he has seen the confirmation of grant in Succession Cause No. 66 of 1998. Interestingly, DW1 was not an employee of the defendant, neither is he a son of Mohamed Bilali, nor is he the petitioner in the Succession Cause No. 66 of 1998, and Petition No. 111 of 2007. He also did not have a letter from the chief to indicate his relationship with the deceased.

- 16.** DW1 further stated that he is aware that Asha Swaleh withdrew from the petition, however, Salim Kiprono remained in the petition but he did not know if Salim Kiprono was aware of this suit. DW1 did not have a list of beneficiaries, and he informed the court that his interest in the matter is the preservation of the estate, as he is married to the niece of Mohamed Bilali, and thus assisting the real beneficiaries. He further informed the court that he was aware of the application by the defendant requesting the DCI to help in identify the whereabouts of the beneficiaries of the estate for the reason that Asha Swaleh and Salim Kiprono tried to steal the property from the genuine beneficiaries.

17. In re-examination, DW1 testified that in the ruling delivered on 12<sup>th</sup> May 2022, the court could not identify the correct person of the deceased and the true beneficiaries of the estate.
18. With the testimony of DW1, the defendant rested its case. The parties filed their respective submissions. The plaintiff filed his written submissions dated 6<sup>th</sup> August, 2025. The defendant filed its written submissions undated on 19<sup>th</sup> September, 2025.
19. I have considered the pleadings, the testimonies of the witnesses, the evidence tendered and the written submissions filed by both parties. The issue for determination is *whether the suit has merit*.
20. I have carefully perused the documentary evidence relied on by the parties in this matter. The plaintiff contended that he purchased the suit property from the lawful beneficiaries of the estate of the late Bilali through an agreement of sale. He stated that he has been paying rates, and while he was not aware that the court had placed the suit property in the administration of the defendant, a valid certificate of confirmation of grant dated 21<sup>st</sup> July, 2000 was issued, and he was asked to approach this court for the necessary orders.

**21.** The plaintiff produced a copy of the certificate of confirmation of grant dated 21<sup>st</sup> July, 2000 wherein the suit property was allocated to Mwawawa Mohamed. Further, he produced a copy of the agreement dated 13<sup>th</sup> May, 1995 between himself and Mwawawa Mohamed with regard to four listed properties i.e. the suit property which reads as Plot No. 87/2D Pumwani Estate, Matungulu/Kyaume 1620, Kawathei/Mulingana 164 and Katine/Manza 136. The plaintiff further provided copies of receipts of payments to the City Council of Nairobi, and letters from the council approving his transfer of ownership of the said property. Succession cause no. 111 of 2007 was further filed with regards to the estate of the deceased. The petitioners in that case swore affidavits deponing that they were misinformed and led to state that they were beneficiaries of the said estate, with the intention to defraud them. The testimony of PW1 was substantiated by the production of these documents.

**22.** On the other hand, the defendant argued that the certificate of confirmation of grant was overtaken by events vide the ruling of the court delivered on 12<sup>th</sup> May, 2022. The defendant further casted doubt as to the registration of the suit property referring the same to LR No. 36/VII/ 581 Plot No. B7/2(D) which is different from what is claimed by the Plaintiff. However, the defendant's witness did little to help with the defence to the extent that he had

no interest or claim in the suit property, and neither was his relationship with the said estate proved. In my view, his participation in this suit is suspect, and with no probative value at all.

23. DW1 produced a copy of the orders of the court issued on 7<sup>th</sup> October, 2009 in Succession Cause No. 111 of 2007, the ruling of the court delivered on 12<sup>th</sup> May, 2022. I have read the said ruling and I find it necessary to reproduce the following paragraphs:-

**“1. This cause revolves around property described as Plot No 36/VII/5XX Flat b7/2d Pumwani Redevelopment the ‘suit property’ listed as a property of the deceased in this instant cause and in P & A Cause No 66 of 1998. In both causes the grants were confirmed on different dates.**

**2.What is intriguing in the two succession causes is that the deceased names are not the same. In this cause, the deceased is Mohamed Bilali while in P & A No 66 of 1998 the deceased is Mohamed Ndolo alias Mohamed Bilali alias Mzee Mohamed. Death certificates differ as follows; the cause of death is different and the date of demise is different. In this cause, the deceased death occurred on September 15, 1978 while in P & A No 66 of 1998 death occurred on 20<sup>th</sup> October, 1988. The cause of death in this**

**Cause was shortness of breath and swelling of legs while in P & A No 66 of 1998 the cause was a head injury.**

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**46. The court record confirms that the same issue was ventilated before hon DK. Kemei J vide rulings delivered on January 23, 2020 and September 21, 2020 as follows:-“Ruling of January 23, 2020”It is my considered view that the parties herein should be given an opportunity to present their rival claims via viva voce evidence so as to enable the court to establish the genuine persons to administer the estate and also to establish whether there are any creditors to the estate.” Ruling of September 21, 2020“It is also not in dispute that this court on the December 16, 2009 ordered that the estate herein be administered by the Public Trustee pending further orders in a bid to safeguard the estate as the court dealt with the rival claims placed before it”**

**47. The administration of the estate had been vested and remain in the Public Trustee on December 16, 2009 and shall be vested in the Public Trustee.**

**48. It follows that the order of preference set out in section 66 of the Law of Succession Act is**

*not binding to the court. It is discretionary. Section 66 refers to it as 'a general guide.' The court can appoint administrators without following the order of preference. Priority is given to surviving spouses, followed by the other beneficiaries entitled in intestacy as set out in part V of the Act, then the Public Trustee and creditors. The persons entitled in intestacy according to part V, in their order of preference, include children (and grandchildren where their own parents are dead), parents, siblings, half-siblings and other relatives who are in the nearest degree of consanguinity up to and including the sixth degree.*

*49. In this case PW1, PW2 and PW3 stated that the only surviving child of Mohamed Bilali may be Zuhura Mohamed who resides in Shimba Hills but cannot be traced. It is not in dispute that Yusuf Mohamed is the son of Zuhura Mohamed. According to PW2, the deceased wife was Mwendwa Ngira but PW2 has not informed court on the whether she is alive or dead. PW1 stated that her mother Fatuma Hamisi died in 1997. According to P & A No. 66 of 1998, Mwawawa Mohamed who PW1 stated was the wife of the deceased Mohamed Bilali died.*

#### ***Disposition***

*a. In the premises, the court finds that from evidence on record, Mohamed Bilali,*

***Mohamed Ndolo and Mzee Mohamed are not conclusively determined to be one and the same person with different names or are different persons.***

***b. Administrators are appointed from beneficiaries of the deceased's estate in the ensuing circumstances the beneficiaries are not determined at this stage. Therefore, the Public Trustee is appointed administrator of the estate (s) and/or remains administrator in both matters and may file any relevant application to aid determination of the deceased and beneficiaries."***

24. From the above ruling, it is clear that the High Court needed to ascertain the administrators and beneficiaries of the estate to enable it properly administer the said estate. The court further recognized that there were grants confirmed in the two causes, and that there was need to identify the deceased. In paragraphs 47 of the ruling, the court directed that the estate to remain vested in the defendant. I believe this order was made in good faith and to ensure that the estate is not wasted.
25. Being an interested party in the consolidated matters before the High Court in Machakos, the plaintiff knew very well of the existence of these orders, and instead sought to circumvent the same by filing the plaint. If say for example that the court was to determine the ownership of the suit property. What would be left

of the succession proceedings? The suit property having been owned by the late Mohamed Bilali who died intestate, it only follows that the estate of the deceased is administered in accordance with the law. Let me also state that the documents produced by the plaintiff were not controverted by the defendant, and neither was evidence adduced to the contrary that the plaintiff did not purchase the suit property from Mwawawa. His claim as against the said estate is still intact, and can be litigated upon determination of the consolidated succession causes before the High Court.

26. Having said the above, this court will refrain from determining the present dispute to avoid any potential conflicting decision arising from therefrom. The plaint dated 14<sup>th</sup> February, 2023 is hereby dismissed. Each party to bear its own costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 18<sup>TH</sup> DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.  
JUDGE  
18/12/2025.**

***In the presence of:***

*Mr. Benson Agunga - Court assistant*

*Mr. Tamata for the Plaintiff*

*No appearance for the Defendant*