



**Shah & another v Karia & another (Environmental and Land Originating
Summons 340 of 2021) [2025] KEELC 8578 (KLR) (9 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8578 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 340 OF 2021**

JG KEMEI, J

DECEMBER 9, 2025

BETWEEN

JITENDRAKUMAR L SHAH 1ST PLAINTIFF

RAJNIKANT L SHAH 2ND PLAINTIFF

AND

DHANLAXMI A KARIA 1ST DEFENDANT

PARINA A KARIA 2ND DEFENDANT

RULING

(The Plaintiffs'/Applicants' Notice of Motion dated 4/11/24)

1. Vide the application dated 4/11/2024, the applicants sought orders that, in accordance with the orders made by this court on 16/6/22, the Plaintiffs/applicants be granted the mandate to dispose of the suit property without the respondents executing the sale agreement and/or transfer documents and/or, alternatively, that the Deputy Registrar execute the same on behalf of the Respondents.
2. It was averred that, despite the presence of the decree, the defendants have refused to cooperate with the applicants in the sale of the property, and that their actions are ill-motivated and deliberately aimed at frustrating the Plaintiffs, considering they are collecting rent from the premises without accounting to the Plaintiffs. It is submitted that justice will be served if the orders sought are granted.
3. The application is supported by an affidavit sworn by Jitendrakumar L. Shah, the 1st Plaintiff, in which he states that after the issuance of the orders on 16/6/22, they sourced potential buyers for the property. The defendants have taken no steps to show interest in purchasing the land or to find buyers; when buyers were sourced, they did not respond to the letters concerning the matter. Due to the defendant's co-owner's lack of response, the sales collapsed upon discovering that the defendant's co-owner is unresponsive to the sales deal. He cited an example of the latest instance where an offer



of Kshs 40 Million was made, and efforts to involve the defendants failed. This is despite the property being valued at the plaintiffs' costs, despite the court's orders to share the same between the parties.

4. On 10/3/2025, the defendants filed grounds of opposition on the basis that the application has concealed material facts; they have not refused to cooperate with the applicants in managing the property; the details of the offers for the purchase of the property have not been provided; as co-owners, they have the right to purchase the co-owners' share of the property; and the court was urged to allow the defendants to pay off the plaintiffs at a value determined by a valuer appointed by the plaintiffs, as they are willing and able to deposit the purchase money according to the valuer's assessment.
5. Based on the Replying Affidavit sworn on 10/3/25, the Defendant stated that he admits that, following the court's orders of 16/6/22, both parties have been seeking buyers for the property. He refuted the Plaintiffs' claim that he and his co-defendant have refused to account for rent to the Plaintiffs and attached Exhibit No DAKH1 to show annual rent collected as well as the share of the rent paid to the Plaintiffs. He also stated that the application was made in bad faith. Additionally, he has not been privy to the offer that the Plaintiff received. He added that they are willing to comply with the court's orders and purchase the appellant's share in the property. He urged the court to order the Plaintiffs to sign off their share of the property to the defendants at the valuation rate given by their valuer.
6. After several failed attempts to settle the matter out of court, the parties elected to canvass the application by way of written submissions. By the time of writing the ruling, it was only the Plaintiff who had complied.
7. I have read and considered the written submissions of the Plaintiff.
8. For emphasis's sake, the orders issued by the court on 16/6/22 are as follows;

“The property known as LR NO 209/2237 (IR108458), jointly owned by the parties herein as tenants in common, shall be sold following valuation by a professionally registered land valuer, and the net proceeds shall be divided equally between the co-owners. Either party has the right to purchase the other's share at the valuation set by the registered land valuer”.
9. It is not disputed that the orders of the court issued on 16/6/22 have not been complied with by the parties, each providing their reasons for non-compliance. According to the Plaintiff, the defendants are failing to cooperate despite serious offers having been sourced, including one for Kshs 40 Million. The Plaintiffs believe that the defendants are frustrating the sale process because they are enjoying control and management of the property, including collecting rent and failing to account to the co-owner, the Plaintiffs.
10. The defendants, on the other hand, insist that they have duly accounted for the rent and refuted allegations to the contrary. They contend that they, too, have been sourcing a buyer and are ready and willing to purchase the Plaintiffs' share of the property at the valuation given by the Plaintiffs' valuer.
11. Evidently, as pointed out by the Plaintiffs, the compliance with the said orders was delayed. However, I cannot say the delay is inordinate given that none of the parties are in control of the supply and demand forces in the property market.
12. That said, it has not been explained by the Defendants why the sale has not gone through if they are ready and willing to buy the property at the value assessed by the Plaintiffs' valuer.



13. Section 98 of the *Civil procedure Act* provides as follows;

“Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it”.

14. To remove the current stalemate, the court orders the Deputy Registrar to execute the documents necessary to effectuate the orders of the court. Courts do not issue orders in vain. The court cannot wriggle its hands in the air and watch helplessly if one party frustrates the execution of its orders.

15. Having said that, I have noted the summation by the Defendant that they are ready and willing to purchase the Plaintiff's share. As a gesture of goodwill, the court is prepared to allow 120 [one Hundred and Twenty] days during which the Defendants may exercise their pre-emptive rights, as averred.

16. To serve the ends of justice in this matter, I allow the application as follows;

- a. After a period of One Hundred and Twenty [120] days from the date of this Ruling, the Plaintiff/applicants shall have the mandate to dispose of the suit property without the respondents executing the sale agreement and/or transfer documents in terms of the court orders issued by this court on 16/6/22, and/or, alternatively, that the Deputy execute the same on behalf of the Respondents.
- b. Each party to bear their own costs.

17. It is so ordered.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF DECEMBER 2025 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered in the presence of;

1. Ms Wachanga HB for Mr Njenga Jeremy for the Plaintiffs
2. Mr Ochieng for the Defendants
3. Ms Yvette - CA

