

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MOMBASA
ELC MISC. APPL. NO. E005 OF 2024

JASUMATI DHIRAJLAL SAVANI
PETITIONER

VERSUS

TRUSTEE OF THE WAKF OF SOUD BIN ALI BIN SALIM
RESPONDENT

RULING

[ORIGINATING SUMMONS DATED 4TH APRIL 2024]

1. The petitioner moved the court through the originating summons dated 4th April 2024, seeking for:
 - a. *An order compelling the respondent to provide a full account of the payments received as ground rent in respect of Mombasa Block XV111/268 & 269, suit properties.*
 - b. *An order that any amount of ground rent found payable de deposited in court.*
 - c. *There be no order as to costs.*

The application is based on the grounds inter alia that the respondent holds reversionary interest over the suit properties, and the petitioner is a registered lessee of the

said properties for 99 years from 1st December 1947; that the respondent has not responded to the petitioner's requests to acknowledge the ground rent that he has paid; that as the petitioner is obligated to pay the ground rent and the respondent has declined to acknowledge payment, the petitioner prays for it to be paid through the court, and hence this application. The application is supported by the affidavits of Jai Dhirajlal Savani, holder of power of attorney donated by the petitioner dated 29th February 2020 and registered as No. 20667, sworn on 4th April 2025 and 11th July 2025, inter alia deposing that the petitioner inherited a leasehold interest over the suit properties from her late husband, Dhirajlal Savani; that the petitioner has been paying ground rent for the suit properties and on 19th October 2018, was issued with a receipt by the respondent; that his advocates wrote letters dated 27th August 2018 to the respondent requesting for ground rent statement so as to regularize any outstanding payment.

2. In opposition to the originating summons, the respondent filed the replying and further replying affidavits of Sound Salim Soud, sworn on 9th April 2025 and 15th September

respectively, deposing inter alia that the registered lessee of Mombasa/Block XV111/268 for 99 years from 1st December 1947 is Mohan Singh Kandari, and not the petitioner; that the more than eight transactions, including that in favour of the petitioner, on the proprietorship section of the suit property's green card were done without the lessor's consent, and they raise significant concerns on their validity and legitimacy; that the lessee for Mombasa/Block XV111/269 for 99 years from 1st December 1947 is Beant Singh Obhrai, and not the petitioner; that the lessees of the suit properties have not paid rent since 1947 contrary to the terms of the lease, and the petitioner should not be allowed to collect rent accruing.

3. The learned counsel for the petitioner and respondent filed their submissions dated the 3rd October 2025 and 4th November 2025 *respectively*, which the court has considered.

4. From the originating summons, affidavit evidence, submissions by the learned counsel, the following are the issues arising for the court's determinations:

- a. *Whether the petitioner holds a valid lease over the suit properties, and if so whether the respondent is obligated to share the ground rent payment statement with her.*
- b. *Whether the petitioner has made a reasonable case for the orders sought to be granted.*

5. The court has carefully considered the originating summons, affidavit evidence by the parties, submissions by the learned counsel, superior court decisions cited thereon, and come to the following determinations:

- a. the originating summons is brought *under Order 37 Rule 1 & 8 of Civil Procedure Rules*. Going by the margin notes, *Rule 1 sets out persons “who may take out originating summons and in respect of what matters”*, while *Rule 8 provides that “An application under the Registered Land Act other than under sections 120, 128, 133, 138, 143 and 150 thereof shall be made by originating summons unless there is pending a suit involving the same lands when the application may be made in that suit.”* The Registered Land Act is one of the Acts repealed under *section 109 of the Land Registration Act No. 3 of 2012*. The reference in *Rule 8*

to the repealed Act should therefore be substituted with the Land Registration Act and the Land Act No. 6 of 2012. The medium of originating summons is best for applications without serious contestations on the issues of facts. Where the claim is over ownership or title to immovable property, like in this instance, and there are likely contestations on the facts, such a claim should preferably be commenced through a plaint to allow parties present their averments, including particulars of for instance, alleged fraud and illegalities, file documents, witness statements and be heard and call witnesses, before a decision on merit is made.

- b. The respondent has through their depositions challenged the petitioner's title to the suit properties positing that the lessees to the suit properties are Mohan Singh Kandari & Beant Singh Obhrai and that it did not give consent to any of the transactions leading to the petitioner's registration as lessee. That as the petitioner's claim of title or root of title to the suit properties is challenged, then this is not a proper matter to be initiated and prosecuted through originating

summons. The respondent has submitted inter alia that until the legality of the petitioner's claim as a lessee to the suit properties is settled through a substantive suit, then the application by way of originating summons is premature, misconceived and should be dismissed with costs. The fact that the respondent had not complied with the petitioner's written demand was obviously a tell-tale or indicator that they were averse to sharing the information sought, and the court cannot order the respondent to share account details or to receive rent payment before the status of the petitioner as a lessee and from when is first settled. That cannot be done through this application due to the limiting nature of the pleadings and evidence that can be presented through an originating summons. Therefore, so as not to prejudice the petitioner by dismissing the application, the court will instead strike it out.

- c. That under *section 27* of the Civil Procedure Act chapter 21 of Laws of Kenya, costs follow the event unless where otherwise ordered on good grounds. As the originating summons is for striking out, and the

respondent instructed counsel, filed replies and submissions, the petitioner will pay the costs.

6. Flowing from the above determinations, the court finds and orders as follows”

a. That the petitioner’s originating summons dated 4th April 2024 is struck out.

b. That the petitioner will pay the respondent’s costs.

It is so ordered.

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

Kibunja, J.

S. M.

MOMBASA.

ELC

IN THE PRESENCE OF:

PETITIONER : Mr Barasa for Khagram

RESPONDENT : M/s Mbala for Mitei

KALEKYE-COURT ASSISTANT.

Kibunja, J.

S. M.

MOMBASA.

ELC