

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCLC. NO. E394 OF 2024

ALICE MUNGE.....1ST
PLAINTIFF
HIGHWAY DYNAMICS LIMITED.....2ND
PLAINTIFF

VERSUS

DELAMARE FLATS LIMITED.....1ST
DEFENDANT
SAMEG MANAGEMENT LIMITED.....2ND
DEFENDANT

JUDGMENT

1. The plaintiffs filed the amended plaint dated 22nd November, 2024 seeking judgment and orders against the defendants for:-
 - a. *A declaration that the 1st plaintiff is the legal and registered owner of the flat no. J31 located at Delamere Flats and the 1st defendant has no right to transfer and or sale the interest to the 2nd defendant and or any other party.*
 - b. *An order of permanent injunction prohibiting the defendant whether by itself or through its servants, agents or otherwise from interfering with the 1st plaintiff's ownership and quiet enjoyment of flat no. J31 and her access, occupation and/or other rights to the said premises.*

c. Costs of the suit and interest thereon.

d. Any such and further orders that this court may deem fit to grant in the circumstances of this case.

2. The gist of the amended plaint is that the 1st plaintiff is the registered owner of flat no. J31 located at Delamere Flats having purchased the same from Graeme Howard George Hughes vide a sale agreement dated 26th August, 1997. Further, that following the sale, a transfer of flats 1652 preference shares and 413 ordinary shares were executed by the original owner of the flat and the 1st plaintiff to the 1st defendant.
3. The plaintiffs pleaded that through the 2nd plaintiff, the 1st plaintiff has been collecting rent for over 25 years, and that on 25th July, 2024, while attending court before the Business Premises Rent Tribunal (BPRT), they learnt that there was another landlord claiming rent on flat J31, the suit property.
4. The plaintiffs pleaded that upon further investigations, they learned that the 1st defendant had illegally and unlawfully sold and transferred the suit property to the 2nd defendant without their consent and knowledge. Further, that the 2nd defendant now claims

ownership of the suit property and demanded rent from the current tenants. The plaintiffs stated that sometime in July, 2022 the 1st defendant advertised in the dailies purporting not to know the owners of the suit property yet as late as June, 2022, they had written to the 2nd plaintiff claiming service charge. That as it stands, the plaintiffs continue to be deprived of its right to ownership and rent over the suit property.

5. The 1st defendant filed its statement of defence dated 9th October, 2024. The 1st defendant stated that it has never issued or consented to the transfer of shares in respect of the suit property to the 1st plaintiff, and neither are her names duly entered in its register of members. That prior to the shares and with respect to the suit property being sold to the 2nd defendant, the last registered owner was Graeme Howard George Hughes who held 413 ordinary shares and 1652 preference shares pursuant to transfer no. 415. As far as the 1st defendant is concerned, the 1st plaintiff is a total stranger to its company.
6. The 1st defendant stated that its concern is on payment of service charge but not on collection of rent of the units, and that since acquiring the shares of the suit property in 1979, to September, 2016 Mr. Hughes Graeme has never paid for the service charge

despite being under a contractual obligation to do so. Further, that he has outstanding service charge amounting to Kshs.1,431,636/- which has accrued interest of Kshs.143,100/- as at 26th September, 2023. The 1st defendant pleaded that in exercise of its contractual lien over the shares as provided in the company's article of association, it proceeded to exercise its right over that lien by disposing the suit property in order to satisfy the service charge debt, which is a lawful debt. The 1st defendant pleaded that this was done in line with Articles 13, 14 and 25 (j) of the Memorandum and Articles of Association.

7. The 1st defendant stated that it advertised the suit property in the daily nation newspaper on 27th July, 2022 and re advertised the same on 7th September, 2023. Further, that it issued a notice of forfeiture of sale of shares on 27th October, 2023 and proceeded to transfer the said shares to the 2nd defendant's account with effect from 14th March, 2024. Further, that it recovered its arrears from the sale of the suit property and holds the balance from the sale on account of Mr. Hughes being the last known registered owner of the shares.
8. This matter proceeded for hearing on 9th July, 2025. Charles Munge (PW1) introduced himself as the husband of the 1st plaintiff. He

relied on his witness statement dated 1st July, 2025 as his evidence in chief and produced the documents contained in the list of documents dated 25th September, 2024 as P. Exhibits Nos. 1 to 9 respectively. PW1 testified that in 1997, they bought a flat from Hughes Graeme, though he never met him as they only purchased the same through an agent.

- 9.** PW1 testified that through the law firm of Ramesh Manek & Co. Advocates, they conducted a conveyance and he was given all the shareholding certificates. He stated that they have had the apartment for the last 27 years, and the same has always been rented to Northshore Consultants. However, he did not know who was in occupation since the 1st defendant purported to sell the same to the 2nd defendant. He stated that the suit property is next to another property they own, and that Northshore Properties was in arrears for 6 months. When his estate agent went to collect the rent arrears, they were informed that the 1st defendant had sold the same.
- 10.** On cross-examination, PW1 testified that the 2nd plaintiff passed a resolution to engage Ms. Makori and sue, and he did not know they had not produced a resolution. He stated that ownership of the units is by dint of ownership of shares in the 1st defendant, and he

believes that the 2nd plaintiff owns shares in the 1st defendant. With regard to the suit property, PW1 testified that it was previously owned by Graeme Hughes, and that he entered into an agreement with the 1st plaintiffs. That for this reason, the 1st plaintiff is the registered owner, and that she was issued with a share certificate in respect thereof. Further, that in the list of documents, the share certificate is not among the documents, and he cannot be able to tell whether the 1st plaintiff's name was entered in the list of shareholders of the 1st defendant's register.

- 11.** PW1 testified that he is certain that the approval of the directors of the 1st defendant was sought and obtained to transfer shares from Hughes to his wife. However, the said approval is not contained in their list of documents. He agreed that all the property owners of Delamere Flats have contractual obligations to pay service charge, and that he is aware that the service charge ran into millions. According to him, the 1st defendant did not have the right to exercise its contractual lien over the shares as per the article of association. He stated that payment of service charge was supposed to be on demand, and that according to the sale agreement, the transfer of shares was done by the vendor's advocates.

- 12.** While he did not produce a registered power of attorney, PW1 stated that the 2nd plaintiff owns flat J21, and that it has also has interest in J31. While they had a tenant in the suit property, they admitted that they did not have a tenancy agreement.
- 13.** On re-examination, PW1 testified that they own three properties in Delamere Flats, and that there is a letter sent to the 1st defendant indicating the existence of a suit before the BPRT, including a demand for rent arrears. He reiterated that Graeme Hughes sold the suit property to the 1st plaintiff, and that there is a transfer of stock and shares which have been registered. Further, that the articles of association of the 1st defendant do not provide for lien over her property. Further, that a contractual obligation to pay service charge does not amount to deprivation of one's property. Following the conclusion of evidence and testimony by PW1, the plaintiffs rested their case.
- 14.** Geoffrey Kariuki Thuo (DW1) introduced himself as the chairman of the 1st defendant. He adopted his witness statement dated 14th January, 2025 as his evidence in chief. He also produced the documents in the list of documents dated 14th January, 2025 as D. Exhibits Nos. 1 to 10 respectively.

- 15.** On cross-examination, DW1 stated that he knew PW1 as one of its shareholders but not the 1st plaintiff. He stated that PW1 owns 2 units in Delamere Flats. With regard to the suit property, DW1 testified that while he did not produce the register, he did not know when Hughes was registered as a shareholder. He admitted that they did not satisfy themselves as to where the person was. Further, that the last known address of Hughes is in London, but their records do not have the said details of the address. On being shown the letter dated 21st June, 2022, DW1 admitted that the same is addressed to the 2nd plaintiff and it refers to the suit property and the letter dated 27th October, 2023 is addressed to Graeme Hughes, and he admitted that the address in both letters are the same.
- 16.** DW1 further testified that they knew very well the owner of the apartment and they gave notice to the general public and also to Graeme Hughes. That following the sale of the suit property, the 1st defendant received Kshs.12,500,000/-, and that the said balance to be paid to the shareholder. That while they were claiming approximately Kshs.1,300,000/-, they have kept the balance in a fixed deposit account awaiting to give it to Graeme Hughes. Further, that they learnt through the tenant that they paid rent to the 2nd plaintiff, and that they had no intention of running away

with someone else's property. He stated that they informed the 2nd plaintiff that they had transferred the property to someone else as they had tried reaching the owner.

- 17.** DW1 further stated that while PW1 enquired on the transfer of shares, they informed him that his name was not in the share register, and maintained that they have not deprived the plaintiffs of valuable property.
- 18.** On re-examination, DW1 testified that there is a copy of the registered shareholders in its bundle of documents and the advertisement was a result of trying to reach Mr. Hughes. Further, that they later wrote to the 2nd plaintiff after the tenant informed them that they pay rent to Highway Dynamics. With the testimony of DW1, the 1st defendant rested its case.
- 19.** The plaintiffs filed their written submissions dated 1st August, 2025. The 1st defendant filed its written submissions dated 12th August, 2025. I have considered the pleadings, the testimonies of the witnesses and the evidence tendered. The issue for determination is *whether the suit has merit*.

- 20.** The plaintiffs in this case contended that they bought the suit property from Graeme Hughes in the year 1997, and while PW1 testified that they never met the said Graeme in person, the said sale was done through an agent and the transaction conducted by the vendor's advocates. That since then, they rented the same to a tenant, and sometime in April 2024, they learnt that the suit property had been sold to the 2nd defendant.
- 21.** On the other hand, the 1st defendant argued that it exercised its right to sell the suit property for purposes of recovering the service charge pursuant to its articles of association and followed due process including advertising the suit property for sale. The 1st defendant further stated that according to their records, Mr. Graeme Hughes is the registered owner and the 1st plaintiff's name is not in their records.
- 22.** I have perused the documents produced, and weighed the same against the witness statements adopted by the parties and their respective testimonies. The sale agreement between Graeme Howard and the 1st plaintiff dated 26th August, 1997 appears to have been executed on behalf of Graeme Hughes by someone by the name of Charles said to be his authorized attorney. However, there is no document showing proof of the power of attorney. It is also not clear whether the advocate who witnessed the said

agreement did so on behalf of the vendor as well. To that extent, and in my view, the sale agreement has not been expressly denied by the 1st defendant. While PW1 produced a copy of the transfer of shares, it is unknown whether the 1st plaintiff ever informed the 1st defendant of this new development to enable them update their records. This explains why the name of the 1st plaintiff does not appear in their register. Further, I do note that PW1 seems to have admitted that there was accrued service charge accumulated on the suit property vide the email sent on 21st June, 2022 and the letter dated 21st June, 2022. While pleading that the tenant has not paid rent owing to the statement of accounts produced, one wonders whether the plaintiffs have ever paid the service charge, and if so, where is the evidence?

- 23.** Interestingly, it appears that the 1st defendant knew very well that the 1st plaintiff was the owner of the suit property following the letter dated 21st June, 2022 which the plaintiffs never seemed to comply with by settling the accrued service charge. The question then is, was the 1st defendant right in disposing the suit property to recover the said amounts?
- 24.** If say that the 1st defendant was aware that the 1st plaintiff was the owner of the suit property, it goes without saying that the 1st plaintiff was bound by the articles of association adopted through a

special resolution which was passed on 8th March, 2011. For that reason, it will be appreciated that parties were bound by the terms of this articles of association. For purposes of this judgment, I will reproduce the relevant clauses which bound the parties herein.

25. Clause 13 of the articles of association provided as follows:-

“The company shall have a first and paramount lien on every share(not being a fully paid share) for all-moneys(whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (including fully paid shares_ standing registered in the name of any person for all moneys presently payable by him or his estate to the company; but the Directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article. The Company’s lien if any, on a share shall extend to all dividends payable thereon.”

26. Clause 25 (d) further provides:

“Every shareholder shall pay to the Company punctually within the first seven days of every calendar month such monthly service charge as the Directors may from time to time resolve to be payable by each of them (according to the size of his flat) in order to enable the Company to meet its obligations as herein provided.”

27. Clause 25 (j) reads:-

“All lawful claims by the Company against any shareholder in respect of any breach by such shareholder of the provisions of this Article (including all legal and other expenses of enforcing such claim) shall be debts payable by such shareholder to the Company and consequently the subject or the lien on his shares for which Article 13 hereof provides: provided that without prejudice to the foregoing provisions of this paragraph the Company may also in the event of any shareholder failing to pay on due date the monthly service charge for which paragraph (d) of this Article provides or any part thereof and continuing in such failure for sixty days after receiving from the Company a written demand to pay the monthly service charge, the Company may without any further notice have a claim on the shares of the shareholder or dispose the shareholder’s shares and give the balance to the shareholder.”

- 28.** From the above cited clauses of the article, it is evident that the 1st plaintiff was bound to pay the service charge when it was due. While contending that the tenant had failed to pay rent as an excuse for their failure to pay the service charge, one wonders what the 1st plaintiff expected the 1st defendant to do to meet its obligations. While I agree that service charge is a debt, clause j provided for the recovery of the said debt.

29. Since the year 1997 which I presume is the time when the 1st plaintiff took possession of the suit property, she has never paid service charge. How did she expect the 1st defendant to run its administrative duties and operations in compliance with the article? It is indeed very unfair for the plaintiffs to claim that the sale was illegal as they were not informed yet they knew they were in huge arrears of the service charge and yet expect to continue to enjoy maintenances services of the common areas of the suit property. In my view, the forfeiture and the sale of the shares was lawful.

30. Having said the above, and since the 1st defendant acknowledges and admits that it was able to recover the accrued amounts and remained with the balance, the plaintiffs available remedy at this juncture is the balance arising from the sale of the suit property. The amended plaint dated 22nd November, 2024 lacks merit and it is hereby dismissed. The 1st defendant to pay the 1st plaintiff the balance of the purchase price less the accumulated service charge as at the date of the said sale within 21 days from the date hereof. Each party to bear its own costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 19TH DAY OF JANUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
19/01/2026.**

In the presence of:

Ms. Vena Aron - Court assistant

Ms. Gitonga holding brief for Ms. Purity Makori for the Plaintiffs

Mr. Mbaji for the 1st Defendant

ORIGINAL