

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. E008 OF 2025

SAIF SAID SAIF AL-BUSAIDY (*Suing in his capacity as Administrator of the Estate of Khola Binti Mohamed Bin Seif and Azzah Binti Mohamed Bin Seif*) **PLAINTIFF**

VERSUS

EAST COAST SYNDICATE BUILDING LTD ... 1ST DEFENDANT

THE ADMINISTRATOR OF THE ESTATE OF THE LATE LAWRENCE REGERU WAMBAA 2ND DEFENDANT

FATEMI INVESTMENTS LTD 3RD DEFENDANT

WARUNGU HOLDINGS LTD 4TH DEFENDANT

NEW MAREWA HOTEL LTD 5TH DEFENDANT

MIREMA INVESTMENTS LTD 6TH DEFENDANT

THE BOARD OF TRUSTEES, NSSF 7TH DEFENDANT

RULING

1. By a Complaint dated 10th March 2025, Saif Said Saif Al-Busaidy (suing in his capacity as the Administrator of the Estate of Khola Binti Mohamed Bin Seif and Azzah Binti Mohamed Bin

Seif prays for judgment against the Defendants jointly and severally for:

- a) A declaration that the 1st Defendant is in breach of a lease dated 1st December, 1948 and that the same be forfeited and the said property and erected buildings thereon revert to the Plaintiff;**
- b) A declaration that the Plaintiffs are entitled to exclusive and unimpeded right of possession and occupation of all that piece of land known as title Numbers Mombasa/ Block/XX/78 as subdivided into title Numbers Mombasa/ B lock XX/278, 280, 281, 283, 328 & 329 (consolidated into 347) & 335 and the erected buildings and hereditaments thereon;**
- c) A declaration that the 2nd to the 7th Defendants whether by themselves or their servants or agents, tenants or otherwise howsoever are wrongfully, illegally in occupation of the suit property Title Numbers: Mombasa/Block XX/278, 280, 281, 283, 328 & 329 (consolidated into 347 & 335) and accordingly trespassers on the same;**

- d) An injunction restraining the Defendants whether by themselves or their servants or agents, tenants or otherwise howsoever from remaining or continuing in occupation of the suit properties;**
- e) Vacant possession of the suit properties;**
- f) Mesne profits monthly from 1st March 2004 for the suit properties in accordance with the valuation reports of Elite Valuers Africa Ltd filed herewith until possession is delivered up;**
- g) Rent arrears annually from 2018 at the rate of Kshs 3,000/= monthly until possession is delivered up;**
- h) General damages for breach of contract and trespass;**
- i) Interest on (f), (g) and (h) above and**
- j) Costs.**

2. Those prayers arise from the Plaintiff's contention that the deceased were the registered freehold owners entitled to

possession of the suit properties while the 1st Defendant was by way of an indenture dated 1st December 1948 the registered lessee of the properties for a period of 99 years.

3. It is the Plaintiff's case that upon assuming the role of the administrator of the estates, he discovered that the 1st Defendant had breached the existing lease after failing to pay the agreed rent in the manner stipulated for over 50 years. The Plaintiff asserts that he issued a Notice of Forfeiture of the lease on 12th February 2024 to the 1st Defendant for contravening the terms of the indenture but the Defendants have refused to yield possession.
4. Warungu Holdings Limited (the 4th Defendant) is opposed to the claim. In its Statement of Defence dated 3rd June 2025, the 4th Defendant denies that Title Number Mombasa/Block XX/78 was registered in favour of the two deceased persons as freehold owners. The 4th Defendant also denies any knowledge of an indenture dated 1st December 1948.
5. The 4th Defendants avers that they are the owners of a lease for a term of 79 years and 4 months from 1st July 1968 granted to them by the 1st Defendant who is the proprietor of

the properties. The Defendant further asserts that the Plaintiff's action to recover land cannot be brought after the end of 12 years.

6. New Marema Hotel Limited (the 5th Defendant) is equally opposed to the suit. In their Statement of Defence dated 22nd May 2025, the 5th Defendant equally denies that the deceased were the registered owners of the properties and that the same form part of their estate. The 5th Defendant similarly denies knowledge of an indenture dated 1st December 1948.
7. The 5th Defendant avers that it is the lawful and bona fide sub-lessee of Mombasa/Block XX/278 by virtue of a Certificate of Lease issued in its favour for 79 years and 4 months commencing on 1st July 1968 and expiring in the year 2047.
8. On his part, the Administrator of the Estate of Lawrence Regeru Wambaa (the 2nd Defendant) has raised a Notice of Preliminary Objection dated 9th July 2025 objecting to the suit on the grounds listed as follows:

- 1. The Plaintiff has no title to the suit properties. If which is denied, they include LR No. Mombasa/ Block XX/281/A because the Plaintiff lost the cause of action for forfeiture after the expiration of 12 years from 1st December, 1948;**
- 2. The suit is barred by Section 7 of the Limitation of Actions Act as it is governed by Repealed Transfer of Property Act of India of 1882;**
- 3. By virtue of either Section 114 of the said Repealed Transfer of Property Act of India of 1882 and Section 75 of the Land Act, 2012, the suit is barred in law for contravening mandatory provisions;**
- 4. The 2nd Defendant's property LR No. Mombasa/Block XX/281/A is not free property of the deceased within the meaning of Section 3 of the Law of Succession Act, which applies to Mombasa High Court Succession Cause No.1 of 1936; and consequently, the Plaintiff has no cause of action against them;**
- 5. It is a forfeiture suit which has been brought by the Plaintiff who has breached the mandatory**

provisions of either Section 114 of the Repealed Transfer of Property Act of India of 1882 or section 75 of the Land Act 2012, whichever applies, which provisions requires that the lessor before a suit is brought, remedies within a reasonable time, covenants in the lease, which are breached; and

6. The claim for possession is barred by Section 7 of the Limitation of Actions Act, as the time for bringing, ended in 1960-25 years ago.

9. I have carefully perused and considered the Preliminary Objection by the 2nd Defendant. I have similarly perused and considered the rival submissions and authorities placed before me by the Learned Advocates representing the 2nd Defendant and the Plaintiff.

10. The gist of the 2nd Defendant's Preliminary Objection is the contention that this is a forfeiture suit and that the same has been brought outside the period provided under the Limitation of Actions Act. It is the 2nd Defendant's case that the forfeiture clause was at the relevant time governed by the Limitation Ordinance of 1934 which required a suit of no-

entry of the demised premises to be brought within 12 years from the time the right of action accrued.

11. By this suit as instituted, the Plaintiff urges the court to make a declaration that the 1st Defendant is in breach of a lease agreement dated 1st December 1948 and that the Lease should be forfeited and the property and buildings erected thereon should revert to the Plaintiff. In addition, the Plaintiff seeks a declaration that he is as a result of the breach entitled to exclusive and unimpeded right of possession and occupation of the suit property and that the 2nd to 7th Defendants occupation thereof is wrongful and illegal.
12. The basis of those prayers is the Plaintiff's contention that Khola Binti Mohamed Bin Seif and Azzah Binti Mohamed Bin Seif (both now deceased) were the registered freehold owners entitled to possession of the suit properties. It is the Plaintiff's position that upon taking up his duties as the Administrator of the estates of the two registered proprietors he discovered that the 1st Defendant had breached the

existing lease for failing to pay the agreed rent in the manner stipulated for over fifty (50) years.

13. It is the Plaintiff's case that following the said discovery, he issued a Notice of Forfeiture of the Lease to the Defendants on 12th February 2024 for contravening the terms of the indenture dated 1st December 1948 but the Defendants have refused to yield possession and that they now retain possession of the suit properties as trespassers.
14. From a perusal of the material before the Court, Clause 13 and 15 of the Lease dated 1st November 1948 provided as follows:

“13. The lessee will at the expiration or sooner determination of the said term, quietly yield up unto lessors the said demised premises together with the buildings.

15. If at any time the said rent herein reserved or any part thereof shall be in arrears and unpaid for 15 days after any of the days hereinafore appointed for the payment of the same, whether legally, demanded or not or if there shall be any breach by the Lessee of any of the conditions of this lease, the

lessors may re-enter upon the said premises and immediately thereupon, the said lease shall absolutely cease and determine.”

15. At Paragraph 17 of the Plaint herein dated 28th January 2025, the Plaintiff pleads as follows:

“17. The Plaintiff avers that it is the failure and/or neglect on the part of the 1st Defendant to pay rent for over 70 years in contravention of the terms of the 1948 lease/indenture that forced him to issue a notice of forfeiture of lease on the 12th of February 2024 in accordance to clause 15 of the aforementioned lease.”

16. I was however unprepared to accept the proposition that the Lessor could wake up some 70 years after breach to evict the Lessee through a forfeiture suit. I say so because the Limitation Ordinance, 1934, provided at Section 10 and 29 thereof as follows:

“10. No person shall make an entry or distress, or bring a suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry or

distress, or to bring such suit, shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry or distress, or to bring such suit shall have first accrued to the person making or bringing the same.

29. At the determination of the period limited by this part to any person for making an entry or distress, or bringing any suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress or suit respectively might have been made or brought within such period shall be extinguished.”

17. As it were, the Limitation Ordinance of 1934 was replaced by the Limitation of Actions Act, 1968 which Act retained the same 12 years limitation period for recovery of land. The later enactment of the Limitation of Actions Act [Cap 22 of the Laws of Kenya] in 1970 further consolidated and re-

enacted the same rule in Sections 7 and 17 thereof. The said Section 7 of Cap 22 now provides as follows:

“7. Actions to recover land.

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

18. Considering those provisions in ***Karanja Matheri -vs- Kanji (1976) KLR, 172*** Harris J. stated the law as follows:

“By section 7 of the Limitation of Actions Act, it is provided that an action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him; Section 13(1) declares that a right of action to recover land does not accrue unless the land is in the possession of some person in whose favour the period of limitation can run; Section 17 enacts that, subject to section 18, at the expiration of the period prescribed by the Act, for a person to bring an action to recover land, the title of that person to the land is extinguished, and Section

18 states that the Act applies to equitable interests in land in like manner as it applies to legal estates.”

19. Arising from the foregoing, this Court is in agreement with the submissions of Dr. Kamau Kuria, SC Learned Counsel for the 2nd Defendant that since the 1st Defendant had not paid any rent from 1st January 1950, the Plaintiffs were merely holding the title for the suit properties in trust for the 1st Defendant from 31st December 1962 when the 12 years provided in law for the recovery of the land, expired.
20. While the Plaintiff asserted that his claim transcended the issue of forfeiture, it was clear to me that the claims for injunctions, vacant possession, mesne profits and general damages were predicated on the purport that the Plaintiff had the right to recover the suit properties by way of forfeiture.
21. In light of the foregoing, I was persuaded that there was merit in the 2nd Defendant's Preliminary Objection dated 9th July 2025. The suit herein is time-barred and incurably defective. It is hereby struck out with costs.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 5th day of March, 2026.

.....
J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Ms. Mulongo holding brief for Obinju Advocate for the Plaintiff
- c) Ms. Otuya holding brief for Adhoch Advocate for the Defendants
- d) Mr. Munyori Advocate for the 1st and 2nd Defendants
- e) Mrs. Akwana Advocate for the 3rd, 8th and 9th Defendants
- f) Mr. Otieno Advocate for the 4th Defendant
- g) Ms. Ngumba holding brief for Ataka Advocate for the 5th Defendant.
- h) Mr. Kemei Advocate for the 7th Defendant