

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC LC NO. E038 OF 2024

FLOAT INVESTMENTS LIMITED..... PLAINTIFF

VERSUS

CATHERINE MUMBUA NDETO.....1ST DEFENDANT

NANCY WANJIRU.....2ND DEFENDANT

LYDIA KANGENDO.....3RD DEFENDANT

CONSOLATA WANGARI MUNGAI.....4TH DEFENDANT

(BY ORIGINAL ACTION)

AND

CATHERINE MUMBUA NDETO.....1ST PLAINTIFF

NANCY WANJIRU.....2ND PLAINTIFF

LYDIA KANGENDO.....3RD PLAINTIFF

CONSOLATA WANGARI MUNGAI.....4TH PLAINTIFF

VERSUS

FLOAT INVESTMENTS LIMITED.....1ST DEFENDANT

JACINTA MBATHA NZELE.....2ND DEFENDANT

TABITHA NJAMBI KARIUKI.....3RD DEFENDANT

FLORENCE MUTONO KISILU.....4TH DEFENDANT

MARY WANGECI NDEGWA.....5TH DEFENDANT

THE REGISTRAR OF COMPANIES.....6TH DEFENDANT

AND

CONGREGATION OF OUR LADY OF CHARITY

OF THE GOOD SHEPHERD (THROUGH ITS

CHAIRPERSON-SR CATHERINE MUTINDI

KIVUTUI).....INTERESTED PARTIES

(BY COUNTER-CLAIM)

JUDGMENT

A. Plaintiff's claim

1. By a plaint dated 15.05.2024 the plaintiff sued the defendants seeking the following reliefs;
 - a. *An order restraining the 1st 2nd and 3rd Defendants from demolishing, constructing andremoving any materials or- items in the- suit property pending the hearing and . determination of this suit.*
 - b. *An order compelling the 4th Defendant to release the original Title Deed of the suit property which is currently in her possession to the Plaintiff or deliver the said title deed to the Deputy Registrar of Environment & Land Court.*
 - c. *A Permanent Injunction restraining the 1st 2nd and 3rd Defendants, their representatives, employees, servants or agents from entering into, occupying, possessing or in any other way interfering with the Plaintiff's quiet possession of the suit property Plot No Mombasa/Mainland South/Block V/98 pending hearing and determination of the suit.*
 - d. *An order that the 1st, 2nd and 3rd Defendants vacate the parcel of Land known as Plot No Mombasa/Mainland South/Block V/98 within 30 days from the date of Judgement. In default, the Plaintiff to forcefully evict the 1st 2nd and 3rd Defendants and the Defendants to bear the costs of eviction.*
 - e. *General damages for trespass.*
 - f. *Costs of the suit*
 - g. *Interest on (e) and (f) above at Court rate until payment in full.*

h. Any other and such further relief that this Honourable Court deems fit.

2. The plaintiff pleaded that at all material times it was the registered proprietor of plot No. Mombasa/Mainland South/Block V/98 (*the suit property*) located at Shelly Beach in Mombasa. It was pleaded that sometime in September 2022 the plaintiff allowed the 1st, 2nd and 3rd defendants to occupy the suit property which permission was withdrawn on 27.03.2024.
3. The plaintiff pleaded that despite withdrawal of its permission and issuance of a notice to vacate the defendants had failed to oblige and had instead changed the locks to the suit property in a bid to prevent the plaintiff from accessing the same. It was further pleaded that the 4th defendant had wrongfully confiscated the title for the suit property without lawful justification or excuse.

B. Defendants' response

4. The defendants filed a defence and counter-claim dated 14.06.2024 in answer to the plaintiff's claim. By their defence, the defendants pleaded that at all material times the suit property was the legitimate property of the Congregation of Our Lady of Charity of the Good Shepherd (the church) which it acquired from a company known as Float Investments Ltd.

5. It was pleaded that the suit property was transferred to the church through transfer of shares which were transferred to the church and 4 serving nuns to hold the shares in trust for and on behalf of the church. It was pleaded that when those 4 nuns left the church they fraudulently transferred the shares of the church to themselves and claimed ownership of the suit property by virtue of their shareholding. The defendants pleaded that the church took possession of the suit property upon purchase and has ever since been possession as the lawful owner and not as trespassers as alleged by the plaintiff.
6. By their counter-claim, the defendants sued the current shareholders of Float (the 4 nuns) and the registrar of companies over the alleged fraudulent transfer of shares from the church to the nuns who had left the church. It was pleaded that the church had bought the suit property for Kshs.9,000,000/= in 2011 from Float Investments Ltd and that ownership was transferred by merely transferring the 20 shares of the company to the church and to the 2nd - 5th defendants (who were serving as nuns) to hold the same on behalf of the church.
7. The defendants pleaded that upon leaving the church, the 2nd to 5th defendants fraudulently caused the 16 shares of the church

to be transferred to themselves without the knowledge and consent of the church. As a result, the defendants sought the following reliefs by their counter-claim;

- a) *A declaration that the Interested Party is the beneficial owner of the suit property registered in the name of the 1st Defendant.*
- b) *A declaration that the 2nd to 5th Defendants are no longer members of the Interested Party. Consequently, they should transfer the shares they hold in the 1st Defendant to the members of the Interested Party and/or its leadership within 30 days of entry of Judgment in favour of the Plaintiffs and the Interested Party, by executing all the necessary forms and/or documents.*
- c) *In the event the 2nd to 5th Defendants refuse and/decline to effect the transfer of shares as per order (b) herein above, the Deputy Registrar of this Honourable Court be directed to execute all the necessary forms and/or documents to effect the transfer of shares from the 2nd to 5th Defendants to the members of the Interested Party and/or its leadership.*
- d) *A direction that the 6th Defendant does effect the transfer of shares as per orders (b) & (c) herein above.*
- e) *The cost of this suit be borne by the 2nd to 5th Defendants.*
- f) *Interest on (e) at court rate from the time of entry of judgment until payment in full.*

C. Plaintiff's rejoinder

8. The plaintiff filed a reply to defence and defence to counter-claim dated 11.03.2025. By its reply to defence, the plaintiff joined issue with the defendants upon their defence. It was denied that 4 former nuns of the church had fraudulently transferred the 16 shares of the church to themselves in a bid to grab the suit property. It was denied that the church was the legitimate owner of the suit property.
9. By their defence to counter-claim, the plaintiff and the 2nd to 5th defendants by counter-claim denied all the material allegations pleaded against them in the counter-claim and reiterated the contents of the plaint. They denied the fraud and particulars of fraud alleged against them and put the defendants to strict proof hereof.

D. Trial of the action

10. At the trial hereof, the plaintiff called one witness, Tabitha Njambi Kariuki, to testify on its behalf. She adopted the contents of her witness statement dated 15.05.2025 as her evidence in chief. She testified that she was a director of the plaintiff company and produced the 7 documents in the plaintiff's list of documents as exhibits. She denied any fraudulent transfer of shares and maintained that the plaintiff was the legitimate owner of the suit property.

11. On their part, the defendants called 5 witnesses at the trial. They adopted their respective witness statements all dated 15.05.2025 as their evidence in chief. They produced the 51 documents in their list of documents as exhibits. Their evidence essentially mirrored what they pleaded in their defence and counter-claim.
12. It was noteworthy, however, that the 2nd, 4th and 5th defendants by counter-claim did not testify at the trial even though they filed a defence to the counter-claim.

E. Directions on submissions

13. Upon conclusion of the trial, the parties were given timelines within which to file and exchange their respective written submissions. The record shows that the plaintiff filed submissions dated 10.12.2025 whereas the defendants' submissions were dated 14.01.2026.

F. Issues for determination

14. The court has noted that the parties did not file an agreed statement of illness for determination. As such, the court shall frame the issues as provided for under **Order 15 Rule 2 of the Civil Procedure Rules**. Under the said rule, the court may frame issues from any of the following;

a) *The allegations made in the pleadings or in answers to interrogatories.*

b) *The allegations made on oath by or on behalf of the parties.*

c) *The contents of documents produced by the parties.*

15. The court has perused the pleadings, the evidence and documents in this matter. The court is of the opinion that the following are the main issues for determination herein;

a) *Who between the plaintiff and the church is the legitimate owner of the suit property.*

b) *Whether the plaintiff in the main suit has proved its claim against the defendants.*

c) *Whether the defendants have proved their counter-claim.*

d) *Whether the plaintiff in the main suit is entitled to the reliefs sought in the suit.*

e) *Whether the defendants are entitled to the reliefs sought in the counter-claim.*

f) *Who shall bear costs of the suit and counter-claim.*

G. Analysis and determination

a. **Who between the plaintiff and the church is the legitimate owner of the suit property**

16. The court has considered the material and submissions on record on this issue. The material on record shows that vide a land sale agreement dated 23.11.2009 Float Investments Ltd as vendor sold the suit property to the Union of Our Lady of Charity as purchaser at an agreed purchase price of Kshs.9,000,000/=.
- There is on record a share transfer agreement dated 19.05.2011 by which the 2 directors of Float agreed to transfer their 20 shares to the purchasers. One of the transferees was Tabitha Njambi Kariuki (PW1) who conceded at the trial that she signed the agreement on behalf of the Union of Our Lady of Charity.
17. The transfer of Share or Stock forms signed in 2011 indicate that the church got 16 shares whereas the 4 representatives of the church (the 4 nuns) got one share each. All the subsequent annual returns maintained the same shareholding until 2015 when new returns were filed on 18.09.2015 altering the shareholding. Those returns showed that the shares of the church disappeared whereas the remaining 4 nuns acquired 4 additional shares each.
18. When PW1 was questioned during cross-examination on the change of shareholding she stated as follows;

“.....I do not have forms for transfer of shares by the Union to the 4 leaders. Even the single share the 4 leaders were given they were holding them on behalf as the Union....”

19. In her further cross-examination by the defendants' advocate, PW1 stated as follows;

“The 4 directors are among the 10 nuns who left the congregation. The defendants we have sued are still members of the congregation of the Good Shepherd. I confirm that I was holding the shares in Float on behalf of the Union.”

20. The material on record shows that there was a merger of two churches or congregations after the sale agreement for the purchase of the suit property was signed. The first is the Union of Our Lady of Charity whereas the second was the Sisters of Our Lady of Charity of the Good Shepherd. That merger would not, however, affect the property rights of the church since there is no evidence on record to show that there was a transfer of shares by either of the 2 congregations to the 4 nuns who took up the entire shareholding of Float Investments Ltd.

21. The court is satisfied that at all material times the purchaser of the suit property was the church. The court is also satisfied that

the 4 nuns who were holding one share each in Float Investments Ltd were holding the same on behalf of the church and not in their personal or individual capacities. The court is further satisfied that in the absence of a transfer of shares by the church to the 4 nuns who ultimately got 5 shares each in Float, the transfer of those shares was fraudulent and unlawful. The 4 nuns who are the shareholders of Float ought to have surrendered the shares in Float to the church upon leaving the congregation. As such, the court finds that the church now called the Congregation of Our Lady of Charity of the Good Shepherd is the legitimate owner of the suit property.

b. Whether the plaintiff in the main suit has proved its claim against the defendants

22. The court has considered the material and submissions on record. The court has already found that the suit property was bought for valuable consideration by the church from the plaintiff company. The transfer was effected by way of transfer of shares to the church and the 4 nuns. The latter were merely holding the shares on behalf of the church in their capacity as church leaders. As a result, the court finds that the plaintiff has failed to prove its claim against the defendants to the required standard.

c. Whether the defendants have proved their counter-claim

23. The court has already found and held that the church is the legitimate owner of the suit property. The defendants testified that they were officials of the church hence they wanted the shares of the church in Float Investments Ltd to be restored so that the church regains ownership of the suit property.
24. As PW1 conceded at the trial, there was no evidence on record to demonstrate that the church ever transferred its 16 shares in Float Investments Ltd to the 4 former nuns who are now the sole shareholders. The transfer of shares must have been fraudulently orchestrated by the four in order to grab the suit property. They must be stopped in their tracks. The court is thus satisfied that the defendants have proved their counter-claim against the plaintiff and the rest of the defendants in the counter-claim. It is strange the other 3 shareholders, that is, the 2nd 4th and 5th defendants did not tender any evidence at the trial to demonstrate how they acquired additional shares whereas the church had only allocated them one share each to hold the same on behalf of the congregation.

d. Whether the plaintiff in the main suit is entitled to the reliefs sought in the suit

25. The court has found that the plaintiff has failed to prove its claim against the defendants to the required standard. It would, thereafter, follow that the plaintiff is not entitled to the reliefs sought in the suit or any one of them.

e. Whether the defendants are entitled to the reliefs sought in the counter-claim

26. The court has found that the church is the legitimate owner of the suit property. The court has found that the defendants have proved their counter-claim against the defendants in the counter-claim to the required standard. It is evident from the material on record that the registration of the suit property in the name of Float Investments Ltd has never changed over the years. The real dispute has been on the shareholding of the company. The legitimate shareholders of the company would also be owners of the suit property. The court is thus of the opinion that the defendants are entitled to the reliefs sought in the counter-claim in order to restore ownership of the suit property to the church.

f. Who shall bear the costs of the suit and the counter-claim

27. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event

in accordance with the *proviso* to **Section 27 of the Civil Procedure Act (Cap 21)**. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd [1967] EA 287*. The court finds no good reason why the successful parties should not be awarded costs of the counter-claim. However, the court is of the view that Float Investments Ltd should not be condemned to pay any costs since its name was wrongfully used in filing the suit by the former nuns who had fraudulently converted shares of the church for personal benefit. However, the fraudsters shall be condemned to pay the costs of the counter-claim.

H. Conclusion and disposal orders

28. The upshot of the foregoing is that the court finds and holds that the plaintiff has failed to prove its claim against the defendants. The court also finds that the defendants have proved their counter-claim to the required standard. As a consequence, the court makes the following orders for disposal of the suit and counter-claim.

a) The plaintiff's suit be and is hereby dismissed with no order as to costs.

b) Judgment is hereby entered for the defendants against the 2nd, 3rd, 4th and 5th defendants by counter-claim in the following terms;

- i. A declaration is hereby made that the Interested Party is the beneficial owner of the suit property registered in the name of the 1st Defendant.***
- ii. An order is hereby made that the 2nd to 5th Defendants should transfer the shares they hold in the 1st Defendant to the members of the Interested Party and/or its leadership within 30 days of entry of Judgment in favour of the Plaintiffs and the Interested Party, by executing all the necessary forms and/or documents.***
- iii. In the event the 2nd to 5th Defendants' failure to effect the transfer of shares as ordered the Deputy Registrar of this Honourable Court shall execute all the necessary forms and/or documents to effect the transfer of shares from the 2nd to 5th Defendants to the members of the Interested Party and/or its leadership.***
- iv. An order is hereby made that the 6th Defendant shall effect the transfer of shares as ordered herein in order to give effect to the judgment.***
- v. The defendants in the main suit are hereby awarded costs of the counter-claim to be borne by the 2nd to 5th defendants by counter-claim.***

Orders accordingly.

Judgment dated and signed at Mombasa and delivered virtually via Microsoft Teams on this **5th day of March, 2026.**

.....
Y. M. ANGIMA
JUDGE

In the presence of:

Nechesa - Court assistant

Mr. Kongere for the plaintiff

Mr. Kiongera and Ms. Wangui for defendants

ORIGINAL