



**Patel & another v Greenview Developers Limited (Environmental and Land Originating Summons E056 of 2024) [2025] KEELC 5595 (KLR) (28 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5595 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E056 OF 2024**

**MN KULLOW, J**

**JULY 28, 2025**

**IN THE MATTER OF ORDER 37 RULE 3 OF THE CIVIL PROCEDURE RULES AND IN  
THE MATTER OF SECTION 101 OF THE LAND REGISTRATION  
ACT AND IN THE MATTER OF HOUSE NO. 5 IN PEPONI VIEW ESTATE  
ERECTED ON LAND REFERENCE NUMBER 1870/VIII/120, NAIROBI**

**BETWEEN**

**HEMAGINI KIRAN PATEL ..... 1<sup>ST</sup> APPLICANT**

**KIRAN KUAR CHANDUBHAI PATEL ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GREENVIEW DEVELOPERS LIMITED ..... RESPONDENT**

**JUDGMENT**

**A. Introduction**

1. The matter before this court is an Originating Summons dated 27<sup>th</sup> August 2024 brought under the provisions of Order 37 Rule 3 of the Civil Procedure Rules, 2010, and Section 101 of the [Land Registration Act](#), No. 3 of 2012. The Applicants, by way of this Summons, seek the following substantive reliefs:
  - a. That a vesting order do issue to vest in the Applicants ownership and title to Town House No. 5 located within Peponi View Estate, constructed on Land Reference Number 1870/VIII/120, Nairobi, together with one (1) share in the management company and all rights, privileges, and appurtenances attached thereto, in accordance with the sale agreement executed on 7<sup>th</sup> December 2015;
  - b. That the Land Registrar Nairobi Land Registry to register the vesting order and issue the Applicants with a duly registered lease in their names in respect of Town House No. Five (5) in Peponi View Estate erected on Land Reference Number 1870N111/120.



- c. That the Honourable Court be pleased to issue any such other relief as may be just and expedient in the circumstances; and
- d. That each party shall bear its own costs of the application.

## **B. Procedural History and Service**

2. The Originating Summons was duly filed on 27<sup>th</sup> August 2024 by the firm of Teddy & Company Advocates on behalf of the Applicants. Upon filing, the matter was listed for several mentions for directions and progress. Throughout the pendency of the matter, the Respondent, Greenview Developers Limited, despite being served on multiple occasions, failed to enter appearance, file a response, or otherwise participate in the proceedings.
3. The court record reveals the following chronological sequence of procedural events and service:
  - I. On 8<sup>th</sup> October 2024, a mention notice was issued for appearance before Hon. A. Omollo, but no appearance was recorded on behalf of the Respondent.
  - II. A subsequent mention date was fixed for 14<sup>th</sup> November 2024, before Hon. Lady Justice L. Mbugua. The Applicants attended, but once again, there was no appearance by the Respondent.
  - III. The Respondent had been duly served with a mention notice dated 31<sup>st</sup> October 2024, and this is confirmed by an affidavit of service sworn on 7<sup>th</sup> November 2024, which is duly filed and on record.
  - IV. Thereafter, the matter was mentioned again on 27<sup>th</sup> January 2025, before Hon. T. Murigi, J., following service upon the Respondent of another mention notice dated 14<sup>th</sup> November 2024, as evidenced by the affidavit of service sworn on 22<sup>nd</sup> November 2024.
  - V. The Respondent remained absent and did not file any response. The Applicants, having attended consistently, were granted leave by the court to file their written submissions.
  - VI. The matter came up once more on 24<sup>th</sup> March 2025, before Hon. T. Murigi, J., where the Applicants confirmed that they had filed their submissions dated 21<sup>st</sup> March 2025, and the matter was marked as ready for ruling.
  - VII. On 21<sup>st</sup> May 2025, the file was reallocated to this court for purposes of writing and delivering the judgment. A mention was scheduled for 28<sup>th</sup> May 2025, at which the ruling date was to be picked. An affidavit of service dated 7<sup>th</sup> May 2025, on record, confirms that the Respondent was once again served with a notice of mention dated 1<sup>st</sup> April 2025, but still did not appear or participate.
4. It is therefore manifestly clear to this court that the Respondent has, despite repeated and duly acknowledged service, failed to file any pleadings or engage with the process, and has thereby waived its right to be heard.
5. The matter thus proceeded *ex parte* and is now ripe for determination on its merits based on the uncontested affidavit evidence and written submissions filed by the Applicants.



### **C. Applicants' Case**

6. The Applicants' case is grounded on a written sale agreement dated 7<sup>th</sup> December 2015, entered into with the Respondent, for the purchase of Town House No. 5 situated on L.R. No. 1870/VIII/120, together with a share in the estate's management company.
7. The agreed purchase price was Kenya Shillings Fifty Million (Kshs. 50,000,000), with the sum of Kshs. 40,000,000 payable prior to 10<sup>th</sup> July 2015, and the balance of Kshs. 10,000,000 payable upon the issuance of an Architect's Certificate of Practical Completion, as provided under Clause 3 of the sale agreement.
8. The Applicants aver that they made payments totalling Kshs. 39,860,000, and further paid all required legal and statutory charges, including stamp duty, registration fees, and advocate's fees, in preparation for the registration of a sublease in their favour. These facts are substantiated by copies of payment confirmations, annexed as exhibits to the supporting affidavit.
9. A dispute arose between the parties regarding alleged additional construction costs incurred and the timing and conditions attached to the final instalment of Kshs. 10,000,000. The Applicants maintained that they were not liable for excess completion costs and that the balance was only due upon practical completion.
10. The matter was referred to arbitration, pursuant to the dispute resolution clause in the sale agreement. The arbitral tribunal rendered its final award on 22<sup>nd</sup> August 2022, wherein it made the following findings:
  - a. The Respondent's claim for Kshs. 10,000,000 was dismissed in its entirety;
  - b. The Applicants were only held liable to pay Kshs. 140,000, and only upon registration of the lease in their favour;
  - c. The Respondent was condemned to pay the costs of the arbitration.
11. The Applicants state that despite the finality and binding nature of the arbitral award, the Respondent has persistently failed to cause the registration of the sublease, has not refunded excess charges, and continues to withhold completion documents, thereby frustrating the Applicants' efforts to secure their property rights.
12. The Applicants submit that their right to legal title under the agreement has crystallized and is no longer contested, and that the Respondent's refusal to execute transfer documents renders it impossible to complete the conveyance without judicial intervention.
13. Consequently, the Applicants pray for a vesting order, arguing that the circumstances meet the legal threshold for such relief, given that the sale was valid, the purchase price has substantially been paid, the Respondent has no further legal basis to withhold title, and the arbitral award has settled all outstanding obligations.

### **D. Issues for Determination**

14. Having considered the Originating Summons dated 27<sup>th</sup> August 2024, the supporting affidavit, annexures thereto, and the written submissions dated 21<sup>st</sup> March 2025 by the Applicants, the following issues arise for determination:
  - a. Whether this Court has jurisdiction to hear and determine the Originating Summons;



- b. Whether the Applicants have demonstrated compliance with the contractual terms to justify issuance of a vesting order;
- c. Whether the court should issue a vesting order in favour of the Applicants in respect of Town House No. 5 on L.R. No. 1870/VIII/120, Nairobi;
- d. Whether the Applicants are entitled to the ancillary orders sought; and
- e. Who should bear the costs of the application.

### **Analysis and Determination**

#### **Whether this Court has jurisdiction to hear and determine the Originating Summons;**

15. The present matter has been instituted under Order 37 Rule 3 of the Civil Procedure Rules, 2010, which provides for the filing of an Originating Summons by a vendor or purchaser of immovable property for the resolution of issues connected with the contract of sale. The provision reads:
 

“A vendor or purchaser of immovable property or their representatives respectively may, at any time or times, take out an originating summons ... for the determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract).”
16. Further, Section 101 of the *Land Registration Act*, No. 3 of 2012, grants this Court jurisdiction over all actions, suits, and proceedings concerning land under the Act. Additionally, Article 162(2)(b) of *the Constitution*, and Section 13 of the *Environment and Land Court Act*, clearly vest this court with original jurisdiction over disputes relating to title, use, occupation, and registration of land.
17. The issue before the court is neither about the validity of the contract nor about a disputed interest in the property it is purely a question of facilitating the registration of land in favour of purchasers who have met their obligations, where the vendor has become unwilling or obstructive. This squarely falls within the ambit of Order 37 Rule 3.
18. Accordingly, I find and hold that this court has the requisite substantive and procedural jurisdiction to hear and determine this matter.

#### **Whether the Applicants have demonstrated compliance with the contractual terms to justify issuance of a vesting order;**

19. The Applicants produced before this court a sale agreement dated 7<sup>th</sup> December 2015, pursuant to which they agreed to purchase the suit property for Kshs.50,000,000. They have annexed receipts and confirmations evidencing payment of Kshs.39,860,000, along with stamp duty and other completion costs.
20. The balance of Kshs.10,000,000 was explicitly contractually deferred to the issuance of the Architect’s Certificate of Practical Completion, a condition precedent to payment.
21. Following a disagreement as to the final payment and excess charges, the matter was referred to arbitration as per the dispute resolution clause of the agreement. The arbitral tribunal, in an award dated 22<sup>nd</sup> August 2022, made the following determinations:
  - a. The Respondent's claim for the outstanding Kshs.10,000,000 was unfounded;



- b. Only Kshs.140,000 was payable by the Applicants, but only upon the registration of the lease in their favour;
  - c. The Respondent was directed to bear the costs of the arbitration.
22. The arbitral award has not been set aside, challenged, or appealed, and therefore remains binding and enforceable. It conclusively affirms that the Applicants have no outstanding liability save for the post-registration payment of Kshs.140,000.
23. In view of the above, I find that the Applicants have sufficiently demonstrated substantial and sufficient compliance with the contract. There is no legal or equitable justification for the Respondent to withhold the lease or frustrate completion of the transaction.

#### **Whether the Court Should Issue a Vesting Order**

24. A vesting order is a judicial mechanism through which the court transfers title or proprietary interest from one party to another without the necessity of a formal conveyance, often in cases where the titleholder refuses or fails to do so.
25. In *Caperina Enterprises Limited -Vs- Davca Services Limited & Another* [2018] eKLR, the court held:  
“In absence of any opposition to the Originating Summons ... and being satisfied that the jurisdiction of this court has been properly invoked under Order 37 rule 3 ... the court hereby grants the Applicant prayers 1 and 2 of the originating summons.”
24. Similarly, in *Re Holy Trinity Catholic Church Buruburu* [2007] eKLR, the court reiterated that  
“In Kenya the High Courts of Kenya have powers to issue vesting orders. These are orders given by the High Court to a person entitling him/her of possession control or title of certain properties.”
27. Applying the above principles to this case, I am persuaded that the Applicants have acquired a beneficial and equitable interest in the suit property and that the Respondent’s continued failure to execute the lease frustrates a lawful transaction. The issuance of a vesting order is, therefore, not only appropriate but necessary to prevent injustice and to give effect to the parties’ intentions.

#### **Who should bear the costs of the application.**

28. On the issue of costs, the Originating Summons specifically sought that each party bear its own costs. In exercising its discretion under Section 27 of the *Civil Procedure Act*, this Court is guided not only by the outcome of the suit, but also by the conduct of the parties and any express proposals made at the commencement of proceedings. In this instance, the Applicants, despite being the successful parties, proposed at the outset that no party should be burdened with costs.
29. There is also no indication that the Respondent acted maliciously or in bad faith in relation to the arbitration process or these proceedings, albeit its persistent non-compliance. In the circumstances, the court finds no compelling reason to depart from the Applicants’ own position and accordingly makes no order as to costs.

#### **E. Final Orders**

28. In light of the foregoing analysis and having carefully considered the pleadings, affidavit evidence, submissions and applicable law, I hereby make the following orders:



- a. A Vesting Order is hereby issued vesting ownership and interest in Town House No. 5, Peponi View Estate, Nairobi, constructed on Land Reference Number 1870/VIII/120, together with one (1) share in the estate's management company, in the names of the Applicants: Hemagini Kiran Patel; And Kiran Kumar Chandubhai Patel.
- b. The Land Registrar, Nairobi, is hereby directed to register this vesting order and issue a registered lease in respect of the said property in the names of the Applicants as joint proprietors.
- c. The Applicants shall be entitled to take possession, occupation, and control of the said property forthwith.
- d. The Applicants shall, upon registration of the lease, pay the sum of Kshs.140,000 to the Respondent, in full and final settlement in accordance with the arbitral award dated 22<sup>nd</sup> August 2022.
- e. Each Party shall bear the costs of this suit.

It is so ordered!

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 28<sup>TH</sup> DAY OF JULY, 2025.**

**MOHAMMED N. KULLOW**

**JUDGE**

Ruling delivered in the presence of: -

Mr. Ochieng for the Petitioner

N/A for the Respondent

Philomena W. Court Assistant

