



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CORAM: F. MUGAMBI, J**  
**COMMERCIAL SUIT NO. E375 OF 2022**

**BETWEEN**

**HABIBA ALI WELAL ..... 1<sup>ST</sup>**  
**PLAINTIFF**  
**BATULA ALI WELAL ..... 2<sup>ND</sup>**  
**PLAINTIFF**  
**MUNA ALI WELAL ..... 3<sup>RD</sup>**  
**PLAINTIFF**

**VERSUS**

**ADAN YARE HASSAN ..... 1<sup>ST</sup>**  
**DEFENDANT**  
**FATUMA ABDULKADIR ALI ..... 2<sup>ND</sup>**  
**DEFENDANT**

**RULING**

**Introduction and Background**

**1.** The dispute between the parties arises from the management and running of Emirates Mall constructed on **LR. No 36/11/9** Eastleigh Nairobi (the suit premises). The parties are proprietors of the suit property and shareholders in Emirates Shopping Mall (K) Limited, a company incorporated

for purposes of joint management of the premises.  
There are 2 pending applications for determination.

***The 1<sup>st</sup> application:***

- 2.** The application dated **18<sup>th</sup> February 2025** filed by the defendants seeks to review, vary, or set aside the orders of 28<sup>th</sup> July 2023. The defendants also seek a temporary injunction restraining plaintiffs from managing, collecting rent, or interfering with the suit premises, an order compelling them to account for Kshs. 105,840,000/- rental income collected since 19<sup>th</sup> December 2019 and compelling them to deposit the monthly rental income into a joint bank account. They also wish to have the plaintiffs compelled to provide audited statements of accounts, to produce financial records and receipts of rental income and to pay the defendants Kshs. 66,150,000/- being their 62.5% share of rental income.
- 3.** The application is supported by the affidavit of ADAN YARE HASSAN sworn on 18<sup>th</sup> February 2025 and opposed through the Replying Affidavit sworn by BATULA ALI WELAI, the 2<sup>nd</sup> plaintiff, on 21<sup>st</sup> August 2025. The plaintiffs accuse the defendants of collecting all rent in cash from tenants and

renewal fees known as goodwill payments without remitting the plaintiffs' rightful 37.5% share. They deny owing any rental arrears to the defendants or having collected Kshs. 105,840,000/-. They further deny that the National Bank account, A/C No. 01036063943600, is dormant. They maintain that the said account remains operational under the court's order dated 28<sup>th</sup> July 2023, which prohibits any withdrawal or dealing without the mandatory signature of Habiba Ali Welai, the 1<sup>st</sup> plaintiff.

4. They argue that no new or compelling evidence has been presented to warrant a review of the said Court orders. They confirm that they are amenable to a joint audit of all rental income from the premises, including amounts collected by the 1<sup>st</sup> defendant. They equally confirm that they are not opposed to the establishment of a joint bank account for depositing rental income, on condition that it is managed transparently and in accordance with the court's orders and the agreed ownership ratio and that all tenants should be directed to remit their rent into the said joint account whereupon the funds deposited therein should be distributed monthly in accordance with the

ownership shares: 62.5% to the defendants and 37.5% to the plaintiffs.

***The 2<sup>nd</sup> application:***

- 5.** The application dated **25<sup>th</sup> July 2025** has been filed by the plaintiffs and seeks orders that the defendants be restrained by way of injunction from disconnecting electricity supply to any portion of the suit premises. Further, the plaintiffs seek an order directed to Kenya Power & Lighting Company to relocate the main electricity meter box to a common area within the building, accessible to all parties and not under the exclusive control of the defendants, with the costs of such relocation to be borne by the plaintiffs.
  
- 6.** The plaintiffs also seek an order that all rental income derived from the shopping mall be deposited into a joint account held by all the registered proprietors. In addition, the plaintiffs pray that the sum of Kshs. 500,000/=, being rent payable for the premises occupied by the defendants, be deposited in Court for ease of division among the parties. Lastly, they seek that the Officer Commanding Police Station, Pangani, be

directed to ensure enforcement and compliance with the orders of this Honourable Court.

7. The application is supported by the affidavit of HABIBA ALI WELAI sworn on 25<sup>th</sup> July 2025. It is opposed through the Replying Affidavit sworn by ADAN YARE HASSAN, the 1<sup>st</sup> defendant, on 29<sup>th</sup> July 2025. The defendants accuse the plaintiffs of not disclosing the fact that they have been collecting rent from the suit premises without accounting for the same. The deponent denies the allegations of disconnection of electricity from any part of the suit property and maintains that the said meter box is located at the basement which is accessible to everyone and confirms that all apartments have electricity.

### **Analysis and Determination**

8. I have equally considered the written submissions filed by the parties in support of their respective cases. Both applications arise from the same underlying dispute regarding the management of rental income and utilities at the suit premises. Each party accuses the other of mismanagement and non-disclosure. Both parties, however,

acknowledge the need for transparency and a joint mechanism for collection and distribution of rental income.

- 9.** In a Ruling delivered on 28<sup>th</sup> July 2023, this Court referred this matter for mediation. The parties have not reported to Court the outcome of that process. The record however shows that a Certificate of Non-Compliance was filed by the mediator on 21<sup>st</sup> November 2023 indicating that *the parties are neither willing to participate in mediation nor meet for any negotiation whatsoever*. Courts do not make orders in vain and in the circumstances, nothing that mediation has failed, this Court ought to ensure that the dispute is heard and determined expeditiously.
- 10.** In that regard, the prayer for review of the orders issued on 28<sup>th</sup> July 2023 is overtaken by events. Regarding the rent deposits, I do note that both parties agree regarding depositing rental income into a joint interest earning account pending the determination of the matter. No evidence has been presented to this Court to prove that the defendants have interfered with the electricity

supply to any portion of the suit premises. As such, any prayers relating to this ground are hereby dismissed.

**11.** Finally, the prayer for accounts is a substantive remedy that lies at the very heart of the dispute between the parties. Ordinarily, such an exercise cannot be undertaken at an interlocutory stage without risking a premature determination of contested issues, since it requires a full evidentiary hearing, scrutiny of records, and possibly expert input. However, I do note that both parties have expressed consensus on the need for a proper account and audit of the collections from the mall. In the circumstances, I am prepared to allow the prayer.

### **Disposition**

**12.** Accordingly, and for the reasons stated, I do hereby make the following orders:

- i. The prayer for review, variation, or setting aside of the orders of 28<sup>th</sup> July 2023 is declined.***
- ii. Pending hearing and final determination of the suit, all rental***

***income from the suit premises shall be deposited into a joint interest earning bank account in the names of the plaintiffs and the defendants to be opened within the next 30 days.***

***iii. An independent audit shall be undertaken of all rental income collected from the suit premises from December 2019 to date by a mutually agreed auditor, to be agreed upon within 14 days from the date of these orders. In default of such an agreement, the Chairperson of the Institute of Certified Public Accountants of Kenya (ICPAK) shall appoint an auditor for such purpose, whose fees shall be met by the company.***

***iv. The other prayers sought are hereby dismissed.***

***v. Each party shall bear their own costs of the applications.***

**DATED, SIGNED AND DELIVERED IN NAIROBI  
THIS 12<sup>TH</sup> DAY OF MAY 2026.**

**F. MUGAMBI**  
**JUDGE**

**Delivered in presence of:**

Omondi for 2<sup>nd</sup>, 3<sup>rd</sup> plaintiffs

Court Assistant: Lillian & Gloria

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