



Said Bin Seif Properties (2016) Limited (Suing as Beneficiary and Administrator of the Estate of Said Bin Seif (Deceased) & another v Director of Surveys & another (Environment & Land Case 8 of 2023) [2024] KEELC 114 (KLR) (25 January 2024) (Judgment)

Neutral citation: [2024] KEELC 114 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 8 OF 2023**

NA MATHEKA, J

JANUARY 25, 2024

BETWEEN

SAID BIN SEIF PROPERTIES (2016) LIMITED (SUING AS BENEFICIARY AND ADMINISTRATOR OF THE ESTATE OF SAID BIN SEIF (DECEASED) 1ST PLAINTIFF

THELMA SALIM AL-BUSAIDY AKA THELMA LYALL & FATHIYA HAFIDH AL-BUSAIDY (SUING AS ADMINISTRATORS OF THE ESTATE OF MEYA BINTI SALIM BIN KHALFAN AL-BUSAIDY AKA MEYA SALIM KHALFAN (DECEASED) 2ND PLAINTIFF

AND

THE DIRECTOR OF SURVEYS 1ST DEFENDANT

THE DISTRICT LAND REGISTRAR, MOMBASA 2ND DEFENDANT

JUDGMENT

1. The Plaintiffs aver that they are the administrators and beneficiaries of the estate of the late Said Bin Seif and Maya Binti Salim (both deceased) who are the registered absolute proprietor of all that parcel of land known as Title Number Mombasa/Block XV11/1068 in half (1/2) equal shares and entitled to possession and occupation thereof. In or about April 2022, the plaintiffs through their advocates on record Messrs Obinju Rondo & Co. LLP requisitioned for the parcel file from the Chief Lands Registrar, Mombasa to transfer the said property to the beneficiaries of the deceased(s) estate as ordered in succession proceedings by the Succession and Probate High Court, Mombasa and Kadhi's Court Mombasa. Upon making enquiries at the Mombasa District Land Registry, the Plaintiffs discovered that upon perusing the green card relating to the property, the property had on 28th January 2015 been unlawfully subdivided into two portions — Mombasa/Block WII/1715 and Mombasa/Block XVII/1716 with the subdivision approvals for the same emanating from the County Government



of Mombasa acting on the instructions from the 1st defendant vide Entry No. 2 on the green card referenced as file Ref No. CT 12/VOL 10/93 of 26th January 2015. The 2nd defendant purports to have on 25th April 2017 further and unlawfully subdivided into two further properties Mombasa/Block XVII/1715 and Mombasa/Block XVII/1716 into Mombasa/Block XVII/1804 and XVII/1805. That the 2nd Defendant purports to have opened a green card on 25th April 2017 for Mombasa/Block XVII/1804 and Mombasa/Block XVII/1805 and issued Title deeds for both properties to the deceased Maya Binti Salim and Said Bin Seif

2. The Plaintiffs aver that the 1st Defendant and 2nd Defendant have, in each respective case with common purpose and knowledge, conspired to fraudulently subdivide the suit property and in those premises the entries made on the green card for the suit property and the green card's opened and generated for Mombasa/Block XVII/ 1804 and Mombasa/Block XVII/1805 were fraudulently procured.
3. The 1st and 2nd Defendant deny the allegations of conspiracy to commit fraud state that any dealings including subdivisions on the said Mombasa/Block XVII 1068 and consequent subdivisions were at all times done in accordance with the law.
4. This court has carefully considered the evidence and the submissions therein. According to the 2nd plaintiff they are the administrators and beneficiaries of the estate of Meya Binti Salim Bin Khalfan Al-Busaidy also known as Meya Salim Khalfan (deceased) under a confirmed grant issued in Mombasa High Court Succession Cause No. 326 of 2013 on 1st October 2015. While the 1st plaintiff is the beneficiary of the estate of Said Seif Salim Busaidy (deceased) under Mombasa Kadhi's Court Succession Petition No. 10 of 2014 on 29th June 2022. Meya Salim Khalfan and Said Seif Salim Busaidy both deceased were registered as the proprietors of the parcel of land Title Number Mombasa/Block XVII/1068 on 2nd May 1965 as tenants in common in equal shares. The plaintiffs instructed their advocates on record to request for the suit premises parcel file from the 2nd defendant, to distribute it to the beneficiary of the deceaseds' estates according to the agreed shares. It is then that the plaintiffs learned that the defendants had without their authority or application approved the registration of a subdivision of the suit premises.
5. It is the plaintiff's case that on 28th January 2015 the suit property had been subdivided into two portions, Mombasa/Block XVII/1715 and Mombasa/Block XVII/1715 with approvals emanating from the County Government of Mombasa. The plaintiffs additionally claimed on 25th April 2017 Mombasa/Block XVII/1715 and Mombasa/Block XVII/1715 were further subdivided into Mombasa/Block XVII/1804 and Mombasa/Block XVII/1805. According to the plaintiffs they never instructed either defendant to subdivide the suit premises, and contended that the actions of the 2nd defendant of proceeding to register the subdivision emanating from the suit property and subsequently issuing new green cards and title documents was unlawful, illegal and urged the court to cancel the said entries.
6. According to the defendants, an application to the Department of Lands, Planning & Housing at the County Government of Mombasa was done by one Said Seif Bin Salim and approved vide a Notification of approval of the Application for Development permission to subdivide Plot No. 1068/ XVII/MI ON 19th January 2015. The subdivision led to the creation of Mombasa/Block- XVII/1715 and Mombasa/Block- XVII/1716 as entry No. 2 on the suit premises green card on 28th January 2015. Two days later on 30th January 2015, Mombasa/Block- XVII/1716 was transferred to Abdulkhikim Nur Farah and Hassan Hashi Shirwa and issued with a title deed on the same day. Later on, 25th April 2017 the County Government of Mombasa approved the subdivision of Mombasa/Block- XVII/1715 into Mombasa/Block- XVII/1804 and Mombasa/Block- XVII/1805. Plot No. Mombasa/ Block- XVII/1804 and Mombasa/Block- XVII/1805 were both registered in the names of Maya Binti



Salim and Said Bin Seif as tenants in common in equal shares and titles issued on 25th April 2017. According to the defendant consolidation and regularisation of Subdivisions Plot No. 1715, 1804 and 1805 (original No. 1068) XVII/MI was done and approved by County Physical and Land Use Planning Officer on 9th October 2019.

7. From the certificate of confirmation of grant from the probate court and orders issued by the Kadhi's court exhibited, the court cannot ascertain the dates of death for both Meya Binti Salim and Said Seif Salim. The plaintiffs contended that Maya Binti Salim and Said Bin Seif never authorized the said subdivision during their lifetime and certainly, they did not as administrators of their estates. The initial subdivision of the suit property Mombasa/Block- XVII/1068 was approved by the County Government of Mombasa on 19th January 2015, at this time it has not been established by way of evidence if either of the registered proprietors were alive. However, from the evidence adduced, the Succession Causes at the Probate and Kadhi's Court No. 326 of 2013 and No. 10 of 2014 suggest that both registered owners were probably deceased by 2015 when the subdivision was being approved.
8. I have perused the green cards issued and I do note that Plot No. 1716 and Plot No. 1715 were both created on 28th January 2015 from the original Plot No. 1068. Plot No. 1715 was then transferred to Abdulkhikim Nur Farah and Hassan Hashi Shriwa on 30th January 2015. The title deed for Plot No. 1715 was held by Maya Binti Salim and Said Bin Seif for only two days and transferred to third parties. What seems to be an extract of a transfer document, which cannot be ascertained if it was the one used to transfer interest, is neither dated nor registered as required. The rush in which the subdivision and subsequent transfer were done is suspicious. The instrument of transfer in my view was fraudulent the only issue is whether the defendants were complicit in that fraud, given that the 2nd defendant is the custodian and issuer of titles. DW1 did not produce the complete transfer of Plot No. 1715, which ought to be in her records and would have been crucial in determining whether the registered proprietors authorized the same. The purpose of Plot 1716 is rather unclear since it was further subdivided by the County Government of Mombasa into Plot No. 1804 and 1805 which were both registered in the names of Maya Binti Salim and Said Bin Seif on 25th April 2017. From the evidence adduced by the defendants and the testimony of DW1, there was consolidation and regularization of Plots 1715, 1805 and 1804. Regularization of plots involves adjusting the boundaries of the properties and may also include setting aside land for public use like access roads. The defendants however did not offer an explanation to the court the reason behind, the consolidation of these plots, yet Plot No. 1715 had been previously allocated to third parties, while Plot No. 1805 and 1804 were allocated to Maya Binti Salim and Said Bin Seif.
9. It is evident that in 2017, the two succession causes touching on the estates of the deceased, were running before the probate and Kadhi's court and therefore no one could deal with the said parcels of land. Section 79 of the [Law of Succession Act](#) provides that, it is only the personal administrator who can administer the estate of a deceased person. It follows therefore that the subdivisions carried out by the 2nd defendant on the instructions of persons other than the applicants were without jurisdiction in two aspects. First, they were not undertaken at the prompting of persons legally recognized to do so, and secondly, the process of subdivision and transfer of joint interest in land mandated by the law was not followed, therefore the said action was a nullity. Regulation 55 of the [Land Registration Regulations](#) provides that there shall be no transfer of an interest in land of a deceased proprietor that can be registered until after the confirmation of the grant of letters of administration. The plaintiffs however ought to have instituted a suit against the County Government of Mombasa for them to explain or better still made an application to the trial court to compel the 2nd defendant to produce the original instruments used in the subdivision and transfer of the suit premises. For the reason that there are several missing correspondences and documentation relevant to the determination of liability on



part of the defendants who are said to have unlawfully subdivided the suit premises without following the due process. For example, the application for subdivision to the County Government of Mombasa would have been key to resolving the dispute before the court. The missing applications, corresponding letters and instruments like the transfer documentation border on suppression of material evidence from both parties. The court has been denied the advantage of having all relevant documentation and materials that would have led the court to a more conclusive finding.

10. The court finds that there is no evidence from the defendants showing that the registered proprietors subdivided or transferred the suit premises. The subsequent consolidation and regularization of the suit premises was not supported by any evidence and the same raises more questions as to the authenticity of the process undertaken by the 2nd defendant. The omissions and irregularities reflect fraudulent transactions, with the assistance of some officials from the 2nd defendant with the intention of interfering with the records and deprive the plaintiffs title to the suit premises. The court finds in favour of the plaintiffs, who have proved their case on a balance of probability that the suit property was illegally, unprocedural and unlawfully subdivided. The court finds Plaintiffs' cases is merited and issues the following orders:

- a. It is hereby declared that the subdivision of Plot No. 1068/XVII/MI registered in the names of Maya Binti Salim and Said Bin Seif holding as tenants in common in equal shares into Mombasa/Block XVII/1715 and Mombasa/Block- XVII/1716 was unlawful and is null and void.
- b. It is hereby declared the further subdivision of Mombasa/Block- XVII/1716 into Mombasa/Block- XVII/1804 and Mombasa/Block- XVII/1805 and the subsequent registration in the Maya Binti Salim and Said Bin Seif to hold as tenants in common in equal shares was unlawful and is null and void.
- c. It is hereby declared that the transfer of Mombasa/Block- XVII/1716 to Abdulkakim Nur Farah and Hassan Hashi Shirwa was unlawful and is null and void.
- d. The 2nd defendant is hereby ordered to cancel all entries relating to the subdivision of Plot No. 1068/XVII/MI and the creation of Mombasa/Block- XVII/1715 and Mombasa/Block- XVII/1716.
- e. The 2nd defendant is hereby ordered to cancel all entries relating to the subdivision of Mombasa/Block- XVII/1716 into Mombasa/Block- XVII/1804 and Mombasa/Block- XVII/1805.
- f. The 2nd defendant is hereby ordered cancel the transfer of Mombasa/Block- XVII/1716 to Abdulkakim Nur Farah and Hassan Hashi Shirwa.
- g. The 2nd defendant is hereby ordered to restore the parcel file of Plot No. Mombasa/Block 1068/XVII registered in the names of Maya Binti Salim and Said Bin Seif holding as tenants in common in equal shares.
- h. The costs of the suit are awarded to the plaintiffs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF JANUARY 2024.

N.A. MATHEKA

JUDGE

