



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 1216 OF 2015

ZAHIDA MOHAMED KASSAM NOORANI.....1ST PLAINTIFF

MOHAMED KASSAM OSMAN NOORANI.....2ND PLAINTIFF

VERSUS

PARINBANU AZIZ MOHAMED.....1ST DEFENDANT

AMYN AZIZ MOHAMED2ND DEFENDANT

SULTAN PROPERTIES LIMITED.....3RD DEFENDANT

JUDGMENT

1. On 30/11/2015, through a plaint of even date, the plaintiffs, Zahida Mohamed Kassam Noorani and Mohamed Kassam Osman Noorani, brought this suit seeking the following orders:

- a) The defendants specifically perform their contract with the plaintiff;.*
- b) The 1st and 2nd defendants do execute the transfer of lease and all necessary papers to transfer Flat No. 7 of Block D on Land Reference Number 209/25/11 to the plaintiffs;*
- c) In the event the 1st and 2nd defendants fail to execute the transfer of lease over Flat Number 7 of Block D on Land Reference Number 209/25/11 within 21 days of the order then the Deputy Registrar of this court do sign and deliver the necessary transfer of lease to the plaintiffs.*
- d) The defendants do complete the transfer of 2 shares in the 3rd defendant to the plaintiffs within 21 days failing which the Company Registrar do vest 2 ordinary shares belonging to Azuzidin Gulamhussein Mohamed to the plaintiffs;*
- e) Damages; and*
- f) Costs of this suit.*

2. The plaintiffs contended that in 2005, the 1st and 2nd defendants, as administrators of the estate of the late Alizudin Gulamhussein Mohamed, Nathoo sold to them Apartment Number 7 situated in Block D, erected on Land Reference Number 209/25/11 Parklands, Nairobi (the suit property). They added that the sellers had since then failed to convey the title to the m. They further contended that the 3rd defendant, Sultana properties Limited, was incorporated solely to hold and develop Sultana Properties Estate in which are erected six apartments and two maisonettes, the suit property being one of the six apartments. The said estate stands on Land Reference Number 209/25/11. Owing to the failure by the 1st and 2nd defendants to convey the title to the plaintiffs, the plaintiffs sought eek the above orders.

3. The suit was undefended. Summonses to enter appearance were served through a notice in the Standard Newspaper on 7/9/2016. At the hearing, the 1st plaintiff, Zahida Mohamed Kassam Noorani testified. He adopted his witness statement dated 30/11/2015 and produced seven exhibits: (i) copy of lease dated 6/1/1994 registered as IR Number 61514 in the name of Azizudin Gulamhussein Mohamed (the **deceased**); (ii) copy of grant of letters of administration in respect of the deceased's estate issued to the 1st and 2nd defendants herein on 2/10/2001; (iii) copy of sale agreement between the plaintiffs and the 1st and 2nd defendants herein; (iv) copy of acknowledgement of receipt of money by the 2nd defendant; (v) copy of a letter dated 10/4/2008 by Mehboobali Noorani addressed to the Chairman of Sultana Properties Limited; (vi) copy of share transfer form signed by the 1st and 2nd defendants in favour of Mehboobali Hassan Noorany and Zalida Mohamed Kassan Noorani; and (vii) demand letter by Mwangangi Nzisa & Associates Advocates dated 11/7/2014.

4. I have considered the pleadings and the evidence placed before the court in this undefended cause. Ordinarily, in the absence of any

defence, the orders sought in the plaint would be granted without much ado. However, in the present suit, the 1st and 2nd defendants are alleged to have disposed the suit property in their trustee capacity as administrators of the estate of the registered proprietor, Azuzidin Gulamhussein Mohamed. The only document produced as evidence relating to ***Nairobi High Court Succession cause Number 1637 of 2001; In the matter of the late Azizudin Gulamhussein Mohamed Nathoo also known as Aziz Mohamed Nathoo*** is the grant. Key but regrettably not produced is the certificate of confirmation of grant. The certificate of confirmation of grant is the instrument which vests the estate of a deceased person in the designated beneficiaries. In the absence of the certificate of confirmation of grant, the orders sought in this suit will, regrettably, not be available.

5. The upshot of the above finding is that the suit herein, though undefended, fails owing to the plaintiffs' failure to present evidence to demonstrate that the 1st and 2nd defendants were authorized in **Nairobi High Court Succession Cause Number 1637 of 2001** to dispose the suit property. The plaintiffs will be at liberty to bring a proper suit, properly supported with all the necessary evidence. With a heavy heart, I decline to grant the orders.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 6TH DAY OF DECEMBER 2018.

B M EBOSO

JUDGE

In the presence of:-

Roselyne Nechesah - Court Clerk