



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 372 OF 2009

MUDHIHIRI MOHAMMED

MOHAMMED MUDHIHIRI

AHMED RAMADHAN

**SUING FOR AND ON BEHALF OF THE BOARD OF TRUSTEES OF
PUMWANI MUSLIM**

**COMMUNITY CENTRE ASSOCIATION.....
PLAINTIFFS**

VERSUS

AHMED IMANI ALI.....1ST DEFENDANT

ABDUL KARURI.....2ND DEFENDANT

**SUED IN THEIR INDIVIDUAL CAPACITIES AND ON BEHALF OF
PUMWANI**

RIYADHA MOSQUE COMMITTEE AS OFFICIALS

MOHAMMED ABASS.....3RD DEFENDANT

MWAI MWINYI.....4TH DEFENDANT

**PUMWANI RIYADHA MOSQUE COMMITTEE.....5TH
DEFENDANT**

JUDGEMENT

1. The Plaintiffs are the trustees of Pumwani Muslim Community Centre Association. The 1st and 2nd Defendants are sued in their individual capacity and as officials of the 5th Defendant which is a registered society under the Societies Act.

2. The Plaintiffs are registered as the owners of L.R. No. 209/2378/15 situated in Nairobi (“the Suit Property”) on behalf of the Pumwani Muslim Community Centre Association. A community hall known as Ukumbusho Hall built in 1958 stands on the Suit Property and a community centre comprising shops,

kiosks, offices, residential premises, recreational facilities and a mosque.

3. The Plaintiffs filed suit on 29th July 2009 seeking a mandatory injunction to compel the Defendants to open the entrance to the Suit Property and remove the metal railings blocking the entrance to the parking area of the Suit Property. The Plaintiffs also seek a permanent injunction to restrain the Defendants from entering, trespassing, or dealing with the Suit Property; and general damages for the Defendants' illegal action of closing and interfering with the management of the Suit Property.

4. The Defendants admit in their defence filed in court on 03/03/2010 that the Suit Property resulted out of the amalgamation of L.R. Numbers 209/2378/15 and 209/2378/PT which the City Council of Nairobi allocated to the Pumwani Muslim Community. They also admit that the Suit Property has always been administered as a community centre for the Muslims in Pumwani area and that it is commonly referred to as the Islamic Centre. They also aver that Ukumbusho Hall was erected on the Suit Property in 1958 through funds given by His Highness the Aga Khan, the City Council and contributions of the local Muslim Community under the chairmanship of Mohammed Mudhihiri.

5. The Defendants contend that the said Mohammed Mudhihiri in breach of his fiduciary duty and trust as a member of the Mosque Committee registered himself as the owner of the Suit Property on behalf of the Muslim Community despite knowing that the community association had applied for registration by the Registrar of Societies. The Defendants aver that the 1st Plaintiff fraudulently and through misrepresentation acquired a beneficial interest in the Suit Property meant for the Muslim community. They also allege that the said Mohammed Mudhihiri did not account for the proceeds collected from the Suit Property.

6. The Defendants contend in the defence that the Plaintiffs hold the Suit Property upon a constructive trust for the members of the 5th Defendant and that the Defendants are entitled to an order that the Plaintiffs should transfer the Suit Property to the 5th Defendant. They urge that the Plaintiffs possession of the Suit Property is a trespass to land and threaten to sue the Plaintiffs concerning the Suit Property. There is no evidence that the Defendants filed suit as they threatened.

7. The issues for determination are:

- a. Was the Suit Property acquired for the use and benefit of the Muslim community in Pumwani?
- b. Were the funds given by His Highness the Aga Khan, the City Council of Nairobi and the Muslim community used to construct Ukumbusho Hall on the Suit Property?
- c. Do the Plaintiffs hold the Suit Property upon a constructive trust for the 5th Defendant?
- d. Are the Plaintiffs trespassers on the Suit Property?
- e. Is the 5th Defendant entitled to an order for the transfer of the Suit Property to itself?
- f. Are the Plaintiffs registered as the owners of the Suit Property on behalf of the Pumwani Muslim Community Centre Association?

8. It is not in dispute that the Suit Property was acquired for the use and benefit of the Muslim Community in Pumwani area. The 1st to 3rd Plaintiffs administer and manage the premises on the Suit Property.

9. The 1st to 3rd Plaintiffs gave evidence in this case. They stated that Pumwani Muslim Centre Community Centre Association was registered on 07/08/1957 under certificate number 1363.

10. The 1st Plaintiff stated that his father constructed the Hall on the Suit Property in 1957. He stated that sometime in 2009 the Defendants kept threatening to invade and take over the premises on the Suit

Property. The 1st Plaintiff reported the matter to the police. The Plaintiffs produced a copy of the letter to the police dated 10/6/2009 on the Defendant's threatened invasion of the Suit Property.

11. The Defendants wrote to the tenants in the premises on 29/06/2009 informing them that henceforth they would be collecting rent. This witness stated that Pumwani Muslim Community Centre Association which has over 200 members has no relationship with Pumwani Riyadha Mosque Committee.

12. The Plaintiffs produced the Defendants letter dated 29/06/2009 asking tenants to pay rent to Bridgeport View Services from 5/7/2009 and photographs of the closed entrance to the Suit Property.

13. They also produced a copy of the letter of allotment dated 15/3/1982 granting L.R. No. 209/2378/PT to the Pumwani Moslem Community; correspondence on the amalgamation of this plot to create the Suit Property; a copy of the lease dated 20/12/1999 granting the Suit Property to Mudhihiri Mohammed as Chairman, Mohammed Mudhihiri as Secretary and Ahmed Ramadhan as Treasurer to hold as trustees for Pumwani Muslim Community Centre Association and a copy of the trust deed appointing Mudhihiri Mohammed, Mohammed Mudhihiri and Shekhuna M. Mohammed as the trustees of Pumwani Muslim Community Centre Association dated 11/05/1999 The grant is for 99 years with effect from 1/1/1999.

14. The Plaintiffs also produced copies of the certificate of registration for Pumwani Muslim Community Centre Association dated 7/08/1959, its Constitution and a list of its members.

15. The Plaintiffs further testified that Mudhihiri Mohammed built Ukumbusho Hall on the Suit Property with the support of His Highness the Aga Khan. The Plaintiffs stated in their evidence that the Defendants wanted to invade the Suit Property and collect rent without giving any reasons. The Plaintiffs relied on a copy of an article carried in *The East African Standard* of 2/10/1959 on the official opening of Ukumbusho Hall which reported that the Hall was constructed with funds from Mohammed Mudhihiri and the City Council in support of the claim that Mohammed Mudhihiri was instrumental in the construction of the Hall.

16. The 2nd Plaintiff stated in his evidence that the Defendants had also targeted the property of other Muslim community centers for take over. He stated that there was only one mosque on the Suit Property and that Pumwani Riyadha Mosque was different and not situated on the Suit Property.

17. The 3rd Plaintiff stated in her evidence that she was elected trustee with the 1st and 2nd Plaintiffs in the 1980s and that the family of the late Mudhihiri Mohammed has always administered the Suit Property together with other trustees.

18. It was the testimony of the 3rd Plaintiff that the Defendants' claim over the Suit Property was outrageous. She stated that the young men claiming ownership of the Suit Property and other Muslim centers recently converted to Islam purely for purposes of grabbing Islam property. She stated that the Defendants had been arrested.

19. When the Plaintiffs closed their case the Defendant's counsel sought an adjournment to enable him call the committee members of the 5th Defendant as defence witnesses. The matter was adjourned to 3/5/2017 for defence hearing.

20. The Defendants' Counsel informed the court on 3/5/2017 that he was unable to procure witnesses for the defence. He claimed that the defence witnesses were victims of forced disappearances instigated by state agencies. The defence did not call any evidence and elected to rely on the defence filed in court. No evidence was produced to support the claim that the Plaintiffs hold the Suit Property upon a constructive trust for the 5th Defendant. The 5th Defendant failed to demonstrate that it is entitled to an order for the transfer of the Suit Property to itself.

21. Only the Plaintiffs' counsel filed his written submissions and attended court to highlight the submissions. The Plaintiffs' counsel urged the court to dismiss the Defendants' claim to the Suit Property

since the Defendants had not given evidence to support their claim. He urged the court to grant the reliefs sought in the plaint.

22. The court has considered the pleadings, evidence tendered by the Plaintiff and its submissions and finds that the Plaintiffs have proved that Pumwani Muslim Community Centre Association is the registered owner of the Suit Property and that the 1st, 2nd and 3rd Plaintiffs are the registered trustees of Pumwani Muslim Community Centre Association mandated to administer the Suit Property for the benefit of the Muslim community in Pumwani.

23. The court grants prayers (a) and (b) sought in the Plaint. The Plaintiffs will have the costs of the suit.

Dated and delivered at Nairobi this 19th day of September 2017.

K. BOR

JUDGE

In the presence of: -

for the Plaintiff

or the Defendant

Mr. V. Owuor- Court Assistant