



**Moledina v Vasant (Civil Suit 132 of 2021) [2024] KEELC 4260 (KLR) (15 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4260 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
CIVIL SUIT 132 OF 2021**

**LL NAIKUNI, J**

**MAY 15, 2024**

**BETWEEN**

**TAHERA MOHAMED HUSSEIN MOLEDINA ..... PLAINTIFF**

**AND**

**RUKIA VASANT ..... DEFENDANT**

**JUDGMENT**

**I. Preliminary**

1. The Judgment of this Honorable Court pertains to the suit the filed Plaintiff dated 7<sup>th</sup> July, 2021 by Tahera Mohamed Hussein Moledina, the Plaintiff herein against Rukia Vasant, the Defendant herein.
2. Upon service of the pleading and Summons to Enter Appearance dated 7<sup>th</sup> July, 2021 the Defendant filed Memorandum of appearance dated 29<sup>th</sup> July, 2021 and a Statement of Defence dated 4<sup>th</sup> July, 2021 filed on 16<sup>th</sup> August, 2021.

**II. Description of the Parties in the suit**

3. The Plaintiff is described in the Plaintiff as a female adult of sound mind residing in Mombasa. Her address for service for the purposes of this suit shall be care of Messrs. Kasmani & Co. Advocates, First Floor, Tea Trade Center, Nyerere Avenue, P. O. Box 99236 - 80107 Mombasa.
4. The Defendant in the Plaintiff is described as a female adult of sound mind residing and working for gain in Mombasa. Service of the Summons herein will be effected upon the Defendant through the Plaintiff's Advocates' office.

**III. Court directions before the hearing**

5. Nonetheless, on 21<sup>st</sup> March, 2023, the Honourable Court fixed the hearing dated on 22<sup>nd</sup> May, 2023 with all parties having fully complied on the Provisions of Order 11 of the Civil Procedure Rules 2010



on the Pre - trial conference, the suit was fixed for full trial on the 22<sup>nd</sup> May, 2023 with the Court proceeding for the same at that morning.

6. This matter proceeded on for hearing by way of adducing “viva voce” evidence with the Plaintiff’s witness (PW – 1) testifying in Court on 22<sup>nd</sup> May, 2023. After which the Plaintiff closed her case. The Defendant closed her case thereon.

#### **IV. The Plaintiff’s case**

7. From the filed pleadings, the suit property in title number Mombasa/Block XXX1/34 measuring 0.0310 acres. (Hereinafter referred to as “The Suit Property”), belongs to the Plaintiff. She was issued with a Certificate of Title deed under the Registered Land Act, CAP. 300 (now repealed) on 24<sup>th</sup> September, 2018. The Defendant had been and still is a resident at the residential premises existing on the Plaintiffs’ Property as a tenant at a monthly rent of Kenya Shillings Eight Thousand (Kshs. 8,000/-) per month. The Plaintiff through its Advocates on record gave a 1 month notice to the Defendant to vacate the Property. The Defendant had failed, neglected and/or refused to vacate the Property and continues to occupy the Property without the consent of the Plaintiff. That as a result of the Defendant’s refusal to vacate the Property, the Plaintiff continued to suffer loss in terms of rental income.
8. According to the Plaintiff there was no other suit pending and there had been no previous proceedings in any court between the Plaintiff and the Defendant over the subject matter of this suit. The jurisdiction of the Court was also admitted as the cause of action in the suit arose in Mombasa.
9. The Plaintiff prayed for Judgment to be entered against the Defendant for:-
  - a. Delivery of vacant possession of the Property to the Plaintiff;
  - b. Mesne profits at the rate of Kshs. 8,000/- per month from the date of filing hereof until the delivery of vacant possession;
  - c. Costs of and incidental to this suit.
10. On 22<sup>nd</sup> May, 2023, the Plaintiff testified as PW - 1 as follows:-

#### **A. Examination in Chief of PW - 1 by M/s Kasamani Advocate.**

11. PW – 1 was sworn and testified in Kiswahili language. She identified herself as M/s. Tahera Mohamed Hussein Moledina. She informed Court of being on 22<sup>nd</sup> April, 1955. Currently, she was not working. The Defendant was her tenant. She recorded the statement dated 7<sup>th</sup> July, 2021, which she relied on as the evidence in chief in support of this case.
12. PW – 1 was the legal owner of the suit premises. She had the Certificate of title. She produced the original title to the land. The property was developed with two (2) residential flats. The Defendant and herself had a tenancy agreement, terms and conditions stipulated thereof.
13. PW – 1 testified that the Defendant was in occupation of the ground floor of the property. Her rental payment was a sum of Kenya Shillings Eight Thousand (Kshs. 8, 000.00/=) per month. She continued to occupy the flat but and always been irregular in remitting her rental payments, at times failing to pay rent for a whole year. Indeed, for two years the Defendant had not paid any rent. She was a widower and the rental income from the property was her only source of income.
14. PW – 1 never had any other source of income for her daily upkeep and medical needs. The failure to remit rent put her in difficult financial situation. She wanted her to vacate the premises immediately.



The Defendant had refused to vacate the property despite being issued with notices to do so. She needed to adopt her recorded witness statement. That was all.

#### **B. Cross examination of PW - 1 by Mr. Gichana Advocate.**

15. PW - 1 told the court that she was registered as the owner of the suit property on 24<sup>th</sup> September, 2018. She inherited the land from her late husband. By then the tenant was occupying the house. She did not know the age of the tenant. She had never received money from her advocate; on 29<sup>th</sup> April, 2021 when her advocate wrote a letter; she could not recall having received any payment of a sum of Kenya Shillings One Sixty Seven Thousand (Kshs. 167,000/-) as alleged by the Defendant in her statement. She had not been receiving any rental money of a sum of Kenya Shillings Eight Thousand (Kshs 8,000/-) and that she denied ever refusing the monies.
16. The witness asked for the vacation of the Defendant off the suit premises. She claimed that she was in need of money hence she may not refuse the money. She stated that the Defendant should vacate the suit premises. She was not willing to maintain the tenant – landlord relationship.
17. On 22<sup>nd</sup> May, 2023, M/s Kasmani Advocate for the Plaintiff marked the close of the Plaintiff's case.

#### **V. The Defendant's case**

18. The Defendant entered appearance and filed her statement of defence dated 4<sup>th</sup> July, 2021 where the Defendant averred that she admitted the contents of Paragraph 1 and 2 of the Plaintiff in so far as the same relates to the descriptive of the parties save that their address of service shall be C/O GICHANA BW'OMWANDO & CO. ADVOCATES, QAMAR, PLAZA, 2ND FLOOR, SUIT NO. 8, TAITA STREET, P.O BOX 2442-80100, MOMBASA. Email gichanaem@yahoo.com Mobile Phone 0722326769. She averred that she was a stranger to the averments contained in Paragraph 3 of the Plaintiff.
19. Without prejudice to the contents of Paragraph 3 of the Defence, the Defendant be estopped from raising such defence by dint of Section 121 of the *Evidence Act*, Cap 80 Laws of Kenya, hence "a fait accompli". The Defendant denied the contents of Paragraphs 4, 5 and 6 of the Plaintiff.
20. The Defendant denied the contents of Paragraph 7 the Plaintiff, The Defendant averred that the suit was Res Judicata/Sub Judice by dint of existence of CMCC No. 237 of 2011 between the Plaintiff and the Defendant herein which was pending or concluded. The jurisdiction of the Court is admitted.

#### **IV. Amended Reply to Defence by the Plaintiff**

21. On 29<sup>th</sup> September, 2022 the Plaintiff responded to the Defendant's Statement of Defence dated 16<sup>th</sup> August, 2021 through an 8<sup>th</sup> paragraphed Reply to Defence where she reiterated the contents of the Plaintiff as if the same were set out herein seriatim. The Plaintiff admitted the contents of Paragraph 2 of the Defence in so far as the same is merely descriptive of the parties herein. In response to paragraph 3 of the Defence, the Plaintiff reiterated the contents of paragraph 3 of the Plaintiff.
22. The Plaintiff concurred with the Defendant on the contents of of Paragraph 4 of the Defence. In response to paragraph 6 of the Defence, the Plaintiff reiterated the contents of paragraph 7 of the Plaintiff and further stated that the suit was not Res Judicata as:
  - a. the parties in CMCC No. 237 of 2011 were different from the parties to the present suit;



- b. the claims by the Plaintiff in the present suit arise from a different period of time from that in CMCC No. 237 of 2011;
  - c. the suit CMCC No. 237 of 2011 has by effluxion of time abated by dint of Order 24 Rule 3 (2) of the Civil Procedure Rules, 2010 and has neither been heard nor finally decided or determined on merit.
23. The Plaintiff admitted the contents of Paragraph 7 of the Statement of Defence. The Plaintiff reiterated the entire Plaint and stated that it is entitled to the orders sought therein.
24. The Defendant never summoned the Defendant nor any witness to testify. Thus, on 12<sup>th</sup> March, 2024, the Defendant case was marked close.

## **VI. Submissions**

25. On 12<sup>th</sup> March, 2024 upon the closure of both the Plaintiff and Defendant case, the parties were directed to file and serve their written submissions within stringent timeframe thereof on. Pursuant to that, by the time the Court had retired to pen down the Judgement, none of the Parties had complied. Thus, on 30<sup>th</sup> April, 2024, the Honourable court reserved a date to deliver its Judgement on 15<sup>th</sup> May, 2024.

## **VII. Analysis and Determination**

26. I have keenly assessed the filed pleadings by all the Plaintiffs herein, the written submissions and the cited authorities, the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes.
27. In order to reach an informed, reasonable and just decision in the subject matter, the Honourable Court has crafted the following two (2) issues for its determination. These are: -
- a. Whether the Plaintiff has proved that it is entitled to orders of vacant possession and mesne profits as prayed in the plaint
  - b. Who bears the costs of the suit?
- ISSUE No. a). Whether the plaintiff has proved that it is entitled to orders of vacant possession and mesne profits as prayed in the plaint
28. Under this sub heading, the Honourable Court deciphers that the main substrata in this matter is on the breach of the Land Lord – tenancy agreement and the consequences thereof. It is trite law under the provision of Sections 107 to 112 of the *Evidence Act*, cap. 80 provides:-
- Evidence Act* Sections 107, 108 and 109 provides as follows:-
- “Section (107); Burden of proof.
- (1); Whoever desires any court to give Judgement as to any legal right or liability dependent on existence of facts which he asserts must prove those facts exists.
- (2); When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
- Section (108); Incidence of burden.



The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section (109); proof of particular fact.

The burden of proof as to any particular fact lies in the person who wishes the court to believe in its existence. Unless it is provided by any law that the proof of fact shall lie on any particular person.

29. This means that he who alleges must prove. It follows that the Plaintiff has a duty to prove the breach of tenancy contract by the Defendant herein. The Learned Counsel for the Plaintiff submitted that that burden of proof against the Defendant had been discharged at all. Indeed, despite of filing of Defence which were full of mere denials, the Defendant failed to appear in Court and tender her evidence controverting the allegations made out against her by the Plaintiff from filed pleadings and the testimony tendered in Court in support of her case. The effect of this was that the evidence by the Plaintiff remained uncontroverted. The Plaintiff relied on her filed pleadings filed in court, in particular the Plaintiff, List of documents and witness statement.

30. Additionally, from the very onset, the Honourable Court wishes to state that under the provision of Section 13 (1) and (2) of the Environment & Land Act, No. 19 of the 2011, it is clothed with the Jurisdiction to handle the subject matter being Land Lord – tenancy agreement and/or relationship. Section 13 (1) and (2) provides that:-

“The Court shall have original and Appellate Jurisdiction to hear and determine disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercising of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes:

(a). relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, variations, mining, minerals and other natural resources.....(Emphasis is mine).

31. However, for avoidance of any doubts, and it might be misconstrued, and luckily it was never raised by any of the parties, the Court feels it imperative to state that the subject matter does not fall under the Jurisdiction – the Business Premises Tribunal (Hereinafter referred to as the Tribunal”). Ideally, the Tribunal was vested with jurisdiction to determine whether or not a controlled tenancy exists. Section 2 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Cap. 301 defines “Controlled tenancy” as follows:

“Controlled tenancy” means a tenancy of a shop, hotel or catering establishment-

(a) which has not been reduced into writing; or

(b) which has been reduced into writing and which -

(i) is for a period not exceeding five years

(ii) contains provisions for termination, otherwise than for breach of covenant, within five years from the commencement thereof;”



32. Under Section 12 (1) (a) of the Act as follows:

“to determine whether or not any tenancy is a controlled tenancy.”

Section 12 (1) (e) provides that the Tribunal has powers to:

“to make orders, upon such terms and conditions as it thinks fit, for the recovery of possession and for the payment of arrears of rent and mesne profits, which orders may be applicable to any person, whether or not he is a tenant, being at any material time in occupation of the premises comprised in a controlled tenancy;”

33. According to the above provision, the Tribunal was vested with powers to make orders for recovery of possession and for payment of mesne profits against either a Tenant or any person in occupation of the premises irrespective of whether that person is a person or not.

“Kaka Mohamed – Versus - Mohamed Ali (2018) eKLR the Court faced a similar case in respect of a controlled tenancy, it pronounced itself as follows:-

“It is generally true that this court has jurisdiction in matters of tenancy. But in matters of controlled tenancy, the first port of call is not this court. Under Section 2 (1) of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, (Cap. 301), a tenancy agreement or arrangement that is not in writing is a controlled tenancy. The tenancy between the parties herein seems to be one such tenancy because no written agreement has been availed. A person with a complaint or grievance relating to or surrounding such tenancy is duty-bound to go to the tribunal set up under the Act. This court is not one such tribunal.”

34. It was also decided in the case of “Leo Investment Limited t/a Mara Concord Game Lodge – Versus - Samson Ololmaitai & Another [2020] eKLR that:

“... I find that the Plaintiff/Applicant suit is entirely premised on a tenant landlord relationship between the Applicant and respondent... the operating statute under which this relationship is premised in the Landlord Tenant (shop, Hotels and catering establishment) Act and by extension therefore the provisions of Section 6 of the Act directs the jurisdiction of this court to hear and determine the dispute herein.

35. The upshot of all the above is that the Plaintiff and the Defendant’s as parties in the instant case do not fall within the ambit of “the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, (Cap. 301). There existed a Land Lord – tenancy agreement terms and conditions stipulated thereof for a residential house and not a business premises. For that reason, therefore the Court will now proceed to analysis the issues as stated out under the sub – heading. Although the issue of title was never challenged, but for avoidance of any doubt, it is significant for the Plaintiff to prove legal ownership of the suit property. It is trite law that for a person to prove legal ownership of land they must have a title. The provision of Section 24 of the *Land Registration Act*, 2012 provides as follows:-

“The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”



36. It is evident that the right to own and acquire property in Kenya is premised under Article 40 of *the Constitution* of Kenya, 2010. The said Article provides as follows:-

“(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person--

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation-

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law....”

37. The provision of Section 25 (1) of the said Act further provides that:-

“the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to any lawful encumbrances, set out in this section.”

38. Further, a Certificate of Title is “a prima facie’ conclusive evidence of ownership of the stated land. This is provided for in Section 26(1) of the *Land Registration Act* which provides: -

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except

a. on grounds of fraud, or misrepresentation to which to which the person is proved to be a party; or

b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”



1. It will be seen from Section 26 above, that the certificate of title is to be taken as prima facie evidence that the person named therein is the proprietor of that land. Sections 24 and 25 above, in essence, do provide that it is the title holder who is entitled to the proprietary rights comprised in the subject land. A certificate of title is conclusive evidence of ownership and is prima facie evidence that the registered proprietor is the owner. Whereas Section 24 of the Land Registration Act gives the registered proprietor absolute rights over the registered land, Section 26 gives sanctity to title and makes provisions of when such title can be cancelled or revoked.
2. The Plaintiff has produced the original Certificate of title deed issued to her on 24<sup>th</sup> September, 2018 which the court is satisfied that it is sufficient prove of her ownership to the land. I reiterate that the said title has not been challenged. Thus, it then remains that it is a valid document. In conclusion, the Court finds that the Plaintiff is the bona fide owner of this suit property. The plaintiff no doubt is entitled to the prayers sought in the plaint.
3. On whether the Plaintiff is entitled to mense profits at the rate of a sum of Kenya Shillings Eight Thousand (Kshs. 8,000/-) per month from the date of filing hereof until the delivery of vacant possession; Civil Procedure Act Section 2 defines Mesne profits in relation to property to mean:-

“Those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession”

42. The Court of Appeal in “Mistry Valji – Versus - Janendra Raichand & 2 others [2016] eKLR” stated:

“Measure for mesne profit was described in the Privy Council decision in *Invergue Investments v Hacketh* (1995) 3 All ER 842 cited with approval in the *Kenya Hotel Property Ltd* case (supra) as follows:

“This is form of an ordinary claim for mesne profit, that is to say, a claim for damages for trespass to land....The question for decision is the appropriate measure of damages.”

The Privy Council observed that that measure of damages must be reasonable rent. The usual practice is to assess mesne profits down to the date when possession is given.

43. In the case of “Rajan Shah T/A Rajan S. Shah & Partners – Versus -Bipin P. Shah [2016] eKLR”, Mativo J held that:

“The term ‘mesne profits’ relates to the damages or compensation recoverable from a person who has been in wrongful possession of immovable property. The Mesne profits are nothing but a compensation that a person in the unlawful possession of others property has to pay for such wrongful occupation to the owner of the property. It is settled principle of law that wrongful possession is the very essence of a claim for mesne profits and the very foundation of the unlawful possessor’s liability therefore. As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immovable property is liable for mesne profits. Mesne profits are awarded in place of rents, where the tenant remains in possession after the tenancy agreement has run out or been duly determined. A landlord claiming for mesne



profits is claiming for the profits intermediate from the date the tenant ought to have given up possession and the date he actually gives up possession.”

44. According to the Plaintiff, the Defendant has been resident at the residential premises existing on the Plaintiffs’ Property as a tenant at a monthly rent of a sum of Kenya Shillings Eight Thousand (Kshs. 8,000/-) per month. The Plaintiff through its Advocates on record gave a 1 month notice to the Defendant to vacate the Property. There has been no proof provided to substantiate the same. Although the Court notes that on 12<sup>th</sup> March, 2024 it has asked the Defendant to furnish the Court with the full statement of account of how much has paid. The Court further notes that on 22<sup>nd</sup> May, 2024 the parties consented that the Defendant was to undertake to pay a sum of a sum of Kenya Shillings One Hundred Thousand (Kshs. 100, 000/-) in cash to the Plaintiff to offset the outstanding rent arrears within 24 hours from the time of the consent order which she never did so. The provision of Article 40 of *the Constitution* provides for the protection of the right to property and forbids any person from arbitrarily depriving a person of his or her property.
45. The Plaintiff is entitled to the rent she could have earned from the suit premises had the Defendant been paying rent. There was no tenancy agreement filed to show the relationship between the parties but being that the Defendant neither called any witness or testified and being that she did not contest the same, the Court is of the opinion that it existed. Therefore the mense profits should be calculated with the amount from the balance from September 2020 to date minus what the Defendant has already remitted.
46. The Plaintiff in her testimony told the court that she was not desirous of maintaining the landlord tenant relationship, and therefore she prayed for vacant possession of the property. Vacant possession in this present situation meant that the suit property was to be made available to the Plaintiff to take possession. The Plaintiff therefore requires the Defendant to remove all her property from the property to enable the Plaintiff possess it. The consequences of failure to give the said vacant possession would therefore only lead to one thing and that would be the eviction of the Defendant from the suit premises.
47. Thus, in my own opinion vacant possession in the current scenario meant that the suit land be returned to the Plaintiff. There is no any other way to define vacant possession.

#### **ISSUE No. b). Who bears the costs of the suit**

48. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.



49. In “Machakos ELC Pet No. 6 of 2013 Party of Independent Candidate of Kenya & another – Versus - Mutula Kilonzo & 2 others [2013] eKLR” quoted the case of “Levben Products – Versus -Alexander Films (SA) (PTY)Ltd 1957 (4) SA 225 (SR) at 227” the Court held;

“It is clear from authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is matter in which the trial Judge is given discretion (FrippvsGibbon & Co., 1913 AD D 354). But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at....In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”

50. In the present case, the Plaintiff has been able to establish her case as pleaded from the filed pleadings. Hence, I proceed to award the her the costs of this suit.

### **VIII. Conclusion and Disposition**

51. In the end, having caused such an in-depth analysis to the framed issues herein, the Honourable Court on the Preponderance of Probabilities finds that the Plaintiff has established her case against the Defendant herein. In the given circumstances, the Court proceeds to make the following specific orders: -

\_\_\*\*a. THAT\_\_ Judgment be and is hereby entered in favour of the Plaintiff as pleaded in Plaintiff dated 7<sup>th</sup> July, 2021.\*\*

\_\_\*\*b. THAT the Defendant, Rukia Vasant and/or agents an servants pursuant to the provision of Section 152E of the *Land Act, No. 6 of 2012* be and should WITHIN THE NEXT 30 days\_\_ from the date of the delivery of this Judgment henceforth vacate the suit property in title number Mombasa/Block XXX1/34. Upon default, the registered proprietor of the property being the Plaintiff, Tahera Mohamed Hussein Moledina shall be at liberty to evict the said Defendant, Rukia Vasant, and eviction orders to issue.\*\*

\_\_\*\*c. THAT\_\_ the mense profit be and are hereby awarded to the Plaintiff against the Defendant; the mense profits should be calculated with the amount of a sum of Kenya Shillings Eight Thousand (Kshs. 8,000/-) per month from the balance from September 2020 of a sum of Kenya Shillings Six Thousand Five Hundred (Kshs. 6,500/-) until date of this Judgement and until vacant possession is given minus what the Defendant has already remitted.\*\*

\_\_\*\*d. THAT\_\_ the costs of this suit to be borne by the Defendant and be awarded to the Plaintiff.\*\*

JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS .....15<sup>TH</sup> .. .....DAY OF .....MAY.....2024. \_\_

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**HON. JUSTICE L.L. NAIKUNI**

**ENVIRONMENT AND LAND COURT AT**

**MOMBASA**

**Judgement delivered in the presence of:-**



- a. M/s. Firdaus Mbula – the Court Assistant.
- b. M/s. Kasmani Advocate for the Plaintiff.
- c. No appearance Advocate for the Defendant.

JUDGMENT ELC. 132 OF 2021 Page 7 of 7 **JUSTICE L.L. NAIKUNI**

