



REPUBLIC OF KENYA



Mbarak & 3 others v Mohamed & 4 others (Environment & Land Case 71 of 2021) [2024] KEELC 7224 (KLR) (31 October 2024) (Judgment)

Neutral citation: [2024] KEELC 7224 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 71 OF 2021
LL NAIKUNI, J
OCTOBER 31, 2024**

BETWEEN

**ZUBEDA NASSER MBARAK 1ST PLAINTIFF
UMU KULTUM MOHAMED KARAMA 2ND PLAINTIFF
SUMEYA MOHAMED KARAMA 3RD PLAINTIFF
HAMZA MOHAMED KARAMA 4TH PLAINTIFF**

AND

**AMINA SHEIKH MOHAMED 1ST DEFENDANT
ALI MOHAMED KARAMA 2ND DEFENDANT
KARAMA MOHAMED KARAMA 3RD DEFENDANT
KARIMA MOHAMED KARAMA 4TH DEFENDANT
BILAL MOHAMED KARAMA 5TH DEFENDANT**

JUDGMENT

I. Preliminaries

1. The Judgment of this court pertains to the suit that was instituted through filing of the Plaint dated 8th April, 2021 by Zubeda Nasser Mbarak, Umu Kultum Mohamed Karama, Sumeya Mohamed Karama and Hamza Mohamed Karama, the Plaintiffs herein. It was against Amina Sheikh Mohamed, Ali Mohamed Karama, Karima Mohamed Karama and Bilal Mohamed Karama the 1st, 2nd, 3rd, 4th & 5th Defendants herein.



2. Upon service of the pleading and summons to enter appearance, the 1st Defendant entered appearance through a Memorandum of appearance and subsequently filed their Statement of Defence dated 10th May, 2021 and the 2nd Defendant responded and filed their defence dated 18th May, 2022.
3. It is instructive to note that the dispute herein bedevils a polygamous family and thus over properties belonging to the Estate of the late Mohammed Karama (Hereinafter referred to as “The Deceased) who was their husband. During the pendency of the case, the Honourable Court attempted referring the parties to the Court – Annexed mediation to explore the Constitutional tenets of out of Court negotiation and thus settlement as founded under the Article 159 (2) (c) of the Constitution of Kenya, 2010 and Sections 20 (1) and (2) of the Environment & Land Act, No. 19 of 2011 but all in vain. Resultantly, the matter had to proceed to its logical conclusion before this Honourable Court.

II. Description of the Parties in the suit

4. The 1st Plaintiff was described in the Plaint as an adult female Muslim and widow of the late Mohamed Karama who died on 15th January 2015 at Mombasa; the 2nd and 3rd Plaintiff were described as a daughter of the late Mohamed Karama and a successor, heir and beneficiary entitled to a share of the estate of the late Mohamed Karama (deceased) her father. The 4th Plaintiff was described as a son of the late Mohamed Karama and a successor, heir and beneficiary entitled to a share of the estate of the late Mohamed Karama (deceased) his father. The 2nd, 3rd, 4th Plaintiffs and the 2nd Defendant are biological children born from the marriage between the 1st Plaintiff and the late Mohamed Karama (Deceased)
5. The 1st Plaintiff (the first wife of the deceased) and the late Mohamed Karama were married under Islamic Sharia in August 1984 and were blessed in their marriage with four children who are the 2nd, 3rd, 4th Plaintiffs and the 2nd Defendant.
6. The 1st Defendant was described as a female Muslim adult of sound mind and a widow of the late Mohamed Karama. The 2nd Defendant was described as a son of the late Mohamed Karama (deceased) and a successor, heir and beneficiary entitled to a share of the estate of the late Mohamed Karama (deceased). The 2nd Defendant was also one of the Administrators of the estate of his late father together with Karama Mohamed Karama who were duly jointly appointed by the Kadhi’s Court at Mombasa.
7. The 3rd Defendant was described a son of the late Mohamed Karama and a successor heir and beneficiary entitled to a share of the estate of the late Mohamed Karama (deceased). The 3rd Defendant was also an Administrator jointly appointed with 2nd Defendant by the Kadhi’s Court to administer, manage, operate and oversee the affairs of the estate of the late Mohamed Karama.
8. The 4th Defendant was described a daughter and female adult of sound mind and the 5th Defendant was described as a son to the late Mohamed Karama and a male adult of sound mind. The 3rd, 4th and 5th Defendants are the biological children of the 1st Defendant and the 1st, 3rd, 4th and 5th Defendant shall hereinafter be collectively referred to as the deceased “Second Family”.

III. Court directions before the hearing

9. Nonetheless, on 26th May, 2022, the Honourable Court fixed the hearing dated on 3rd November, 2022 with the parties having fully complied on the Provisions of Order 11 of the Civil Procedure Rules 2010 and the matter proceed for hearing by way of adducing “Viva Voce” evidence with the Plaintiffs’ witness (PW1) testifying in Court on 3rd November, 2022 at 2.00 pm after which their case was adjourned to various days and they subsequently caused their case on 1st November, 2023 and the Defendants



calling their witnesses (DW - 1 to 10) on 6th November, 2023 and 20th February, 2024 after which they marked their cases closed

IV. The Plaintiffs' case

10. From the filed pleadings, at all material times prior and subsequent to the death of the late Mohamed Karama, the 1st and 2nd Families were successors, heirs and beneficiaries entitled to a share of the estate of the late Mohamed Karama in accordance with Muslim Law. The deceased Mohamed Karama was a Muslim and all the Plaintiffs and Defendants are Muslim by faith. The deceased Mohamed Karama possessed and was the legal owner, beneficial and or trustee of a large estate which he controlled, operated, managed and/or supervised for his benefit and that of his 1st and 2nd Families.
11. Among the assets in the vast deceased estate which the deceased managed, controlled, owned and supervised were:-
 - i. Plot No. 3870/Sec.1/MN-Nyali House.
 - ii. Plot No. 1630/III/MN-Barani Mtwapa.
 - iii. Plot MN/1/8502-Bustani in Nyali.
12. Upon the death of Mohamed Karama, the above assets namely:-
 - a. Plot No. 3870/Sec.1/MN.
 - b. Plot No. 1630/III/MN.
 - c. Plot MN/1/8502.
13. These properties formed and consequently constituted part of the deceased distributable estate assets to which both the Plaintiffs and the Defendants herein are entitled to share in accordance with Islamic Law applicable in addition to all other properties that constitute the estate of the deceased Mohamed Karama. Contrary and in breach of applicable Islamic Law practice and procedure of inheritance, share, determination and estate assets distribution, the 1st, 3rd, 4th and 5th Defendants jointly and/or severally unlawfully and/or fraudulently have alienated and/or threaten to alienate Title Numbers 1. Plot No.3870/Sec.1/MN 2. Plot No. 1630/III/MN 3. Plot MN/1/8502 to themselves exclusively in deprivation of the estate of the late Mohamed Karama thus denying the Plaintiffs including the 2nd Defendant from their lawful and legitimate share inheritance of the said three properties upon distribution in accordance with Islamic inheritance law doctrines and principles.
14. The Plaintiffs relied on the following particulars of alienation, fraud and illegality on the part of the 1st, 3rd, 4th and 5th Defendants severally and jointly:-
 - a. Illegally alienating guest house built on Title No. 3870 Section 1 MN lawfully registered in favour of the late Mohamed Karama;
 - b. Fraudulently making documents purporting to be executed by the deceased Mohamed Karama in respect of the guest house;
 - c. Unlawfully fraudulently concealing the titles of the said properties to facilitate unlawful alteration of the same.
 - d. Forging entries registered in the titles of the properties;
 - e. Creating false narrative in regard to the titles to defraud the estate;



- f. Refusing and declining to table and tender the lawful titles to the Plaintiffs for inspection and verification upon request;
 - g. Defying to comply with Court Orders to present and surrender the titles which were detained and in possession of the 1st Defendant;
 - h. Fraudulently transferring titles of Plot No.1630 Section III Mainland North after death of Mohamed Karama;
 - i. Fraudulently making false documents and executing illegal unlawful transfer of Title No.1630 Section 1 Mainland North
 - j. Fraudulently and unlawfully withholding lawful title of Plot No.1630 Section III Mainland North registered in the name of Mohamed Karama;
 - k. Fraudulently tampering and with intent to deceive altering entries of title CR 2300 Section 1 Mainland North.
 - l. Fraudulently and unlawfully manipulating title documents of title CR 2300 Section 1 Mainland North in complicity with 3rd parties.
 - m. Making false documents in respect of title CR 2300 Section 1 Mainland North with intent to disinherit the Plaintiffs and the 2nd Defendant;
 - n. Laying false fraudulent claims to over the properties to defraud the Plaintiffs and 2nd Defendant in breach and violation of Islamic inheritance Law, doctrine and principles.
 - o. The 1st Defendant unlawfully and illegally collecting and receiving rent and income from Plot No MN/I/8502 since January 2015 when the deceased died and exclusively appropriated it to the detriment of the estate.
 - p. Acting dishonestly and dishonorably to unjustly in the circumstances enrich themselves in violation of Islamic Law of Inheritance and to the detriment of the Plaintiffs and 2nd Defendant
15. According to the Plaintiffs the 2nd and 3rd Defendants the duly appointed administrators of the estate of the late Mohamed Karama have failed and/or neglected to discharge their obligations and duties as administrators and failed to claim or in any other manner take measures to recover, reclaim and protect the alienation and wasting of title numbers Plot No. MN/1/3870, Plot No. MN/III/1630 and Title No. CR 2300 Section MN/1/8502 which by the 1st,3rd,4th and 5th Defendants are part and parcel of the estate of the deceased Mohamed Karama and which ought to be distributed and shared both by the Plaintiff and the Defendants in accordance with Islamic Law of inheritance.
16. In the premises the Plaintiffs stated that they have suffered loss and damage and would continue to do so and would be disinherited of their legitimate share of the distributable estate of the late Mohamed Karama. The three properties are situated in Mombasa and Mtwapa where the cause of action derived within the jurisdiction of this Honourable Court.
17. According to the Plaintiffs inspite of demand made and notice of intention to sue given the Defendants have neglected and failed to surrender, restore and protect the three properties namely Plot No. 3870/ I/MN, Plot No. 1630/III/MN and Plot No. MN/I/8502 to the properties of the deceased Mohamed Karama and available for distribution to both the Plaintiffs and the Defendants in accordance with the provisions and doctrines of Islamic Inheritance Law.
18. The Plaintiffs prayed that Judgment be entered against the Defendants jointly and severally for:-



- i. An Order that title Nos. Plot No. 3870/I/MN, Plot No.1630/III/MN and Plot No. MN/I/8502 together with all rents and income received therefrom by the 1st Defendant since the death of Mohamed Karama be accounted for and be declared to belong to the distributable assets in the estate of the late Mohamed Karama (deceased).
 - ii. An Order and/ or Declaration that Land Title No Plot No.3870/Sec.1/MN, Plot No. 1630/III/MN and Plot MN/1/8502 be shared and distributed to the Plaintiffs and the Defendant in accordance with the established shares provided in the Islamic Inheritance Law.
 - iii. A Order that any transfer registration and/or alienation of title No. Plot No. 3870/Sec.1/MN, Plot No. 1630/III/MN and Plot No.MN/1/8502 other than to the estate of the late Mohamed Karama be invalid and void and be cancelled and annulled by the Registrar of Lands Mombasa County.
 - iv. Costs of this suit;
 - v. Any other further relief the Court deems just and fit to grant.
19. The Plaintiff called their 1st witness PW - 1 on 3rd November, 2022 at 2.00 pm and she testified as follows:-

A. Examination in Chief of PW – 1 by Mr. Asige Advocate: -

20. PW - 1 was sworn and in Swahili. She identified herself as Zubeda Nasser Mbarak with all the particulars contained in her Kenyan national identity card. she testified that she was born on 1st January, 1958 and she lived at Nyali. She told the court that she was a housewife and a business - lady. She operated her school. The 2nd and 3rd Plaintiffs were her daughters and 4th was her son and 2nd Defendant was also her son. She was the wife to the late Mohamed Karama Abeid. Further her husband also married Amina Sheikh Mohamed – 1st Defendant – 3rd, 4th and 5th Defendants were children of the 1st Defendant.
21. She told the court that she lived with her husband in Nyali for 20 years and they were married pursuant to the Muslim law. They were both Muslims. All their children were Muslims and her co – wife was a Muslim as well. She filed the Plaint dated 8th April, 2021. PW - 1 adopted all she had stated in her witness statement dated 8th April, 2021 and filed in court on 13th April, 2021 (4) documents – “Plaintiff Exhibit 1 to 4”, She filed a further list of documents dated 9th December, 2021 and filed on 10th December, 2021 (15) “Plaintiff Exhibit 5 to 21” which were admitted.
22. PW - 1 averred that she was claiming from Paragraph No. 14 and 15 the properties named thereof (she was referred to them) belonged to her husband and she would like to be distributed to the beneficiaries and heirs of the Deceased in accordance to the Muslim Laws and Customs. The 3rd, 4th and 5th Defendants were claiming the property, but 1st Defendant was claiming that all the properties were her own. See Paragraph 14 and 15. They all live on the said properties. They all had title deeds. The Property 1630/III/MN Barani Mtwapa, belonged to the deceased it was an agricultural land. They would all go to visit it together but at the moment the land was not in the names of the 1st Defendant. The deceased died on 15th January, 2015.
23. According to the witness the transfer was done on 11th May, 2015; the deceased acquired it on 17th January, 2011. Entry No. 5 at page 7 and Entry No. 6 transfer on 11th May 2015 to Amina Sheikh Mohamed for a sum of Kenya Shillings Two Million Five Hundred Thousand (KShs. 2,500,000/-). At page 5 there was a certificate of death of the further list of documents – she had knowledge of Plot No. 8502/MN/1 which was at Nyali which belonged to her husband who had bought it from



- Bahari Advocate. She had been to the house, when it was still new and complete. The 1st Defendant was claiming it's her property. It was leased to Bayusuf. He used to pay for the monthly rent. The witness' son Hamza Karama 4th Plaintiff would pick the cheque in the names and style of Mtwapa Meat Supply Limited. It was incorporated by her husband.
24. PW - 1 stated that the 1st Defendant never claimed the house to be hers when the deceased was alive. She started claiming it was her house when he died and to be paid the rent. She was now the one who received the rent up to day. It was a sum of Kenya Shillings Ninety Thousand (Kshs. 90,000/-) every month. He had never seen the title deed. It was in the custody of the 1st Defendant. She did not know how she got the title in her possession.
 25. The witness further stated that additionally she had knowledge that the other Nyali House – 3870 Section 1/MN belonged to the deceased. She had lived on the property with her children but she did not have the original title which to her knowledge was in the possession of the 1st Defendant. The witness said she had a copy of the title. It was produced and was in her further list of documents at page 1 and 3. Entry No. 2 showed the names of Mohamed Karama Abeid the same having been transferred on 23rd December, 1996.
 26. PW - 1 stated that the Nyali Plot had 3 houses – Massionate for residential for 1st Defendant and herself. Her massionate had 4 bedrooms and 1st Defendant had 4 bedrooms. They had a compound. They were all about same colour. There was a third house where the adopted son called Badar Mohamed lived, it was built by the deceased. It's a smaller massionate of 3 bedrooms. They shared with the witness' daughter – Umu Kulthum Mohamed Karama – the 2nd Plaintiff with her husband - Bader Mohamed. There was no blood relation. They had children. She told the court that she was claiming all these 3 properties as her husband's properties.
 27. According to the witness, she was claiming and urging court that they all get the shares equally in accordance with the Muslim Law. This had not been possible as the 1st Defendant had been adamant. The 3rd Defendant had tried reconciling them but in vain. That is all.

B. Cross examination of PW - 1 by Mr. Mukanzi Advocate.

28. PW - 1 confirmed that she was the 1st Plaintiff and there were 3 other Plaintiffs. She sued the 1st, 2nd, 3rd, 4th and 5th Defendants claiming the property was theirs. The 2nd Defendant was a duly appointed Legal Administrator of the estate of the Deceased herein. Before the families lived together and they ate together; they had a cordial relationship. Apart from the three properties; the deceased had other property which were the subject before i.e. Succession Cause No. 167 of 2015. Before the Kadhi's Court and there was no dispute.
29. She had a school in Ganjoni Intergrated School; she got profits which she used for her benefits. The school was a property owned by her husband. Before his death, they had gotten married on 19th August, 1984 to 15th January, 2015 which was 30 years together. She never inherited/acquired anything. Even after his death, 7 years after she never did, if she wanted to acquire any property nothing would stop her. The plot in Nyali was close to ½ acre. The 2 Maisonette – built 22 years ago and there was space left behind the house of the 1st Defendant. After the 3rd house was constructed there was no space left enough to build another house.
30. The witness told the court that she was sure that the two title deeds were in the names of the deceased. She refuted the fact that it was the 1st Defendant who build the house on the land. It was the deceased who would be building while building the deceased he never shared the documents such as plan, approvals receipts. The deceased never had the character of sharing information. At Paragraphs 14,15



and 16 of the Plaintiff – the claim of the funds used by the 1st Defendant to the extension was not true and was refuted, as per her paragraph 1 of her witness statement.

31. According to PW - 1 Bustani was in Nyali and it belonged to the deceased. She had never seen the title. When the deceased was alive they would visit the land and her son would collect rent from the property. The 1st Defendant brought the title deed but the same did not have a date nor pin number, the rate showed bought (referred to the sub – lease) – “DMF - 1 dated 24th July, 2009 by Stamford Property Limited to Bustani Management Co. i.e. Land Reference No. 8502 – dated 6th August, 2009. They did a search but it was not available. But they had gotten the rate which showed Bahari Forwarders Limited. (Page 57 of the Plaintiff’s supplementary list of documents). When they visited Bustani, it had many Masionettes belonging to many people. She did not know how many titles were there and that everyone paid the rate for their houses. He son Hamza Mohamed Karama used to collect the rent because the property belonged to the Deceased. But any child could collect the rent. The deceased would give her money but she would never give him money cause she never got money.
32. The witness was stood down and on 1st November, 2023 she was cross examined and she proceeded to state that:-

C. Continuation of cross examination of PW - 1 by Mr. Noor Advocate.

33. PW - 1 reiterated that they were demanding for their assets – the house and land in Mtwapa and the guest wing Nyali. She was not aware that there was an agreement for sale of Bustani. Even if she saw the agreement she did not agree with it. She did not have the title to show the property belonged to her husband. In the year 2008, the deceased was still alive; he died in the year 2015. There was no case filed by the deceased against Mama Amina Karma. There was no declaration indicating that he sold the land to Mama Amina. There was no probate written will by the deceased. As a Muslim lady she could own property in her name. There were copies of cheques to Awadh and Company Limited indicating payment of rent.
34. PW - 1 stated that the Mtwapa Meat supplies company – she had not produced to show that the deceased was a Director such as CR-12 Form. There were documentary evidence such as tenancy Lease/ agreement between the family of the deceased and Awadh was a tenant to the suit property. The guest wing is in the name of the Mzee, as far as she was concerned there were no forgery of documents from Mzee to Mama Amina Karma. There was forgery done for the documents for the land by the Defendants, but she had not sued the land registrar especially being the one that dealt with the land. They had never written to the Defendant to produce the documents i.e. decline to table and tender titles for verification. She did not have any court order presented to the Defendants for them to surrender the titles which they had detained. There was no demand letter written to the Defendants. She had claimed the reliefs as found from the Plaintiff (i), (ii), (iii) and (iv).

D. Re - examination of PW - 1 Mr. Asige Advocate.

35. PW - 1 recalled the case at the Kadhi’s Court. The case was decided. She had the decision by the Kadhi’s; the 1st Defendant was ordered to produce the title deed she never produced and up to now. The witness told the court that she was demanding for the plot at Bustani, her son Hamiza went to the Tenant when collecting the cheque from Awadhi – Bayusuf and they would deposit the same to the bank. The cheques would be written Mtwapa Meats Suppliers. Mtwapa Meats suppliers was a company owned by her husband and her son Ali Karama, the cheques would be deposits in account of Mtwapa Meat Supply. Amina Sheikh was not a part of this company. There were three houses at Nyali Estate. She was the 1st wife and she had four children. Amina was the 2nd wife and she had three children with the deceased who was a dedicated Muslim – Islam does not allow any discrimination over the married



wife. The houses at Nyali – are all the same. The land at Mtwapa was in the name of Amina at the time of her testimony.

36. PW - 1 reiterated that she knew it was meant for the deceased as the property was transferred to Amina after Mzee's death. Before his death, the property was in Mzee's name. He died in January and the property was transferred in May. She was claiming that the property belonged to Mzee and was part of his estate.

37. The 2nd Plaintiff testified as follows:-

A. Examination in Chief of PW - 2 by Mr. Asige Advocate.

38. PW - 2 sworn and in Swahili language. She identified himself as Ummu Kulthum Mohamed Karama and provided the particulars as founded in the Kenyan National identity card. She was born on 25th August, 1986 and was the 2nd Plaintiff herein. She was the daughter to the Plaintiff herein who was her mother. She had heard PW - 1's testimony in this proceedings. She signed an authority for her to plead and act and she had recorded a witness statement dated 8th April, 2021 and which she adopted relied on as her evidence in this case thereof.

B. Cross examination of PW - 2 by Mr. Noor Advocate.

39. PW - 2 confirmed that it was the son who resided in the guest wing who was her husband and they resided there together.

40. On the same day, the Plaintiffs called the PW - 3 who testified as follows:-

A. Examination in Chief of PW - 3 by Mr. Asige Advocate.

41. PW - 3 was sworn and testified under oath in English language. She identified herself as Summeiya Mohamed Karama with all the particulars founded in her Kenyan National identity card. She was born on 22nd February, 1990 and thus was 33 years old. She had heard her mother PW - 1's testimony and she adopted her witness statement dated 8th April, 2021 as her evidence.

42. The Plaintiffs called PW - 4 who testified as follows:-

A. Examination of PW - 4 by Mr. Asige Advocate.

43. PW - 4 gave sworn testimony in English language. He identified himself as Hamza Mohamed Karama and provided all the details as founded in the Kenyan national identity card. That the 1st Plaintiff was his mother. He was the 4th Born in the family. He recorded his witness statement dated 8th April, 2021 and he was adopting the testimony of his mother as he had heard her testimony and he wished to adopt it 100%. He knew the deceased very well, he used to work for him and he was his father; who run a butchery. He would get involved in all his business. His father owned Mtwapa Meat Suppliers and the Nyali Meat Suppliers i.e. Bustani. The witness used to be the collector of cheques by Mr. Bayusuf – who was a tenant of the premises. The witness used to be at the passenger seat – monthly rent. The rents were paid in form of cheques and not cash and the cheques drawn in the name of Mtwapa Meat Suppliers by Awadhi and deposited at DTB. Mtwapa Meat Suppliers – the directors Mr. Ali Karama and Mr. Mohamed Karama and PW - 4 personally collected and deposited the cheques.

B. Cross examination of PW - 4 by Mr. Noor Advocate.

44. PW - 4 confirmed that he was primarily limited to Bamburi Meat Limited. It was his brother Ali Karama who was the director of Mtwapa Meat Suppliers Ltd. He had no evidence of directorship;



the same was with his lawyer. He had no evidence of a tenancy agreement, the cheques paid by the tenants were for investment of the growth of the business. There were bank slips. He only relied on the cheques deposited.

45. On 1st November, 2023, the Plaintiffs closed their case through their counsel Mr. Asige Advocate.

V. The Defendants' case

46. The 1st Defendant filed a Statement of Defence where she admitted the contents of paragraph 14 and 15 of the Plaintiff in as far as the same assert that the property number 3870/I/MN, is registered in the name of Mohamed Karama (deceased). The 1st Defendant however contends that there were two houses on plot No. MN/I/3870. The two houses were built for each widow by the deceased. The 1st Defendant had used her own funds built an extension to the guest wing to one of the houses which she occupied which guest-wing belongs to her.
47. In regard to paragraph 14 and 15 of the Plaintiff, the 1st Defendant denied that the property known as 8502/I/MN belonged to the deceased and asserted that the same was the property of UXBRIDGE LIMITED. The 1st Defendant contended that she acquired one of the maisonettes on plot number 8502/I/MN and was subsequently granted a sublease title to the same dated 24th July, 2009 and registered on title CR. NO 23006. The said maisonette had never belonged to the deceased at any point and could not form part of his estate for purposes of distribution.
48. In regard to paragraph 14 and 15 of the Plaintiff, the 1st Defendant further denied that the property known as Plot No. 1630/III/MN C.R 21776 belongs to the deceased and asserted that the said property was her property and was duly registered in her name. The aforesaid property was therefore not part of the deceased Estate. The 1st Defendant denied each and every particular of illegality and of fraud alleged in paragraph 16 of the Plaintiff. The 1st Defendant further denied any fraud or illegality in the alienation (if at all) of any of the plots no.s 3870/I/MN,1630/III/MN and 8502/I/MN.
49. In regard the guest wing on plot Number 3870/I/MN, the same belongs to 1st Defendant who was duly authorized to build the extension by the deceased and the said guest wing did not form part of the deceased's estate. There was no Court order that was made to surrender any titles. The 1st Defendant denied any fraud in the registration or transfer of any of the disputed properties in her name. The 1st Defendant denied having fraudulently transferred/acquired the title in respect of Plot No. 1630/I/MN, the said title was duly transferred in her name after all requisite procedures under the law had been complied with. The 1st Defendant denies all allegations of fraud in the acquisition of Title CR. NO. 2300, MN/I/8502. This was a maisonette the 1st Defendant bought and was registered in her name. It did not form part of the deceased's Estate.
50. Further the 1st Defendant denied the contents of paragraph 17 of the Plaintiff and the Plaintiff is put to strict proof thereof. The 2nd and 3rd Defendants could not distribute property which did not form part of the Estate. The 1st Defendant further denied the contents of paragraphs 18 and 21 of the Plaintiff and reiterated that all the suit properties herein were legitimately owned by the 1st Defendant and did not form part of the Estate of the deceased for purpose of distribution. The 1st Defendant prayed that the Plaintiffs' suit be dismissed with costs.

A. The 2nd Defendant's defence

51. The 2nd Defendant filed a Statement of Defence and response where he admitted what was stated in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20 and 21 of the Plaintiff. The matters stated by the Plaintiffs therein are true and factual. The 2nd Defendant in response to what was stated



in paragraph 17 of the Plaintiff stated that it was the 1st Defendant who had perpetually hindered and meddled with the proper and orderly administration and management of the assets of the deceased estate as disclosed in the Plaintiff and falsely and unlawfully claimed the exclusive ownership of the properties stated in Paragraphs 14 and 15 of the Plaintiff to disinherit the heirs and beneficiaries of the estate of the late Mohamed Karama.

52. In further answer to what was stated above the 1st Defendant contrary to Islamic law and sharia principles and practice relating to the ownership and distribution of the deceased estate assets as identified in Paragraphs 14 and 15 of the Plaintiff fraudulently and unlawfully as pleaded in the Plaintiff claimed unlawfully to enrich herself contrary to Islamic Law outlined in the Koran. The 2nd Defendant admitted and supported the orders prayed for in paragraph 21 of the Plaintiff. The 2nd Defendant therefore prayed that the suit be allowed as sought in the Plaintiff.

B. The 3rd, 4th and 5th Defendants' case

53. The 3rd, 4th and 5th Defendants filed a Statement of Defence where they admitted the contents of Paragraphs 14 and 15 of the Plaintiff in as far as the same assert that the property number 3870/I/MN, is registered in the name of Mohamed Karama (deceased). The 3rd, 4th and 5th Defendants however contended that there were two houses on plot No. MN/I/3870. The two houses were built for each widow by the deceased. The 1st Defendant had using her own funds built an extension to the guest wing to one of the houses which she occupies which guest-wing belongs to her.
54. In regard to Paragraphs 14 and 15 of the Plaintiff, the 3rd, 4th and 5th Defendants denied that the property known as 8502/I/MN belonged to the deceased and asserts that the same is the property of UXBRIDGE LIMITED. The 1st Defendant contended that she acquired one of the Maisonettes on the property known as 8502/I/MN and was subsequently granted a sublease title to the same dated 24th July, 2009 and registered on title CR. NO 23006. The said maisonette had never belonged to the deceased at any point and could not form part of his estate for purposes of distribution.
55. In regard to paragraphs 14 and 15 of the Plaintiff, the 3rd, 4th and 5th Defendants further denied that the property known as Plot No. 1630/III/MN C.R 21776 belongs to the deceased and was asserts that the said property belonged to the 1st Defendant and was duly registered in her name. The aforesaid property was therefore not part of the deceased Estate. They denied each and every particular of illegality and of fraud alleged in paragraph 16 of the Plaintiff and any fraud or illegality in the alienation (if at all) of any of the plots no.s 3870/I/MN, 1630/III/MN and 8502/I/MN.
56. In regard the guest wing on plot Number 3870/I/MN, the same belonged to 1st Defendant who was duly authorized to build the extension by the deceased and the said guest wing did not form part of the deceased's estate. There was no court order that was made to surrender any titles. The Defendants denied having fraudulently transferred/acquired the title in respect of Plot No. 1630/I/MN, the said title was duly transferred in the name of 1st Defendant after all requisite procedures under the law had been complied with.
57. The 3rd, 4th and 5th Defendants further denied all allegations of fraud in the acquisition of maisonette on Title CR. NO. 2300, MN/I/8502. This was a maisonette the 1st Defendant bought and it was registered in her name. It did not form part of the deceased's Estate. The 3rd, 4th and 5th Defendants denied the contents of paragraph 17 of the Plaintiff and the Plaintiff is put to strict proof thereof. The 2nd and 3rd Defendants could not distribute properties which do not form part of the Estate. The Defendants denied the contents of paragraph 18 and 21 of the Plaintiff and reiterated that all the suit



properties herein were legitimately owned by the 1st Defendant and did not form part of the Estate of the deceased for purpose of distribution.

58. The 3rd, 4th and 5th Defendants prayed that the Plaintiffs suit be dismissed with costs.

59. The Defendants called their first witness on 6th November, 2023 where DW - 1 testified that: -

A. Examination in Chief of DW - 1 by Mr. Mummin Advocate.-

60. DW - 1 was sworn and she testified in Swahili language. She identified herself as Amina Sheikh Mohamed with all the particulars as founded in the Kenyan identity card. She was born on 1st January, 1963. She was the wife to Mohamed Sheikh Karama. She was the owner of Bustani Property which she bought the property from the proceeds of a business which she carried out. She had been married before and had a child. Her former husband paid a sum of Kenya Shillings Fifteen Thousand (Kshs 15,000,000/-) and she had proof of that property. Bustani was a house; she was not a proprietor to the Mtwapa Meat Suppliers Limited. Her properties were Bustani, Mtwapa and Nyali. She was given Nyali as a gift. She had an agreement before an advocate and transfer dated 11th May, 2015 for a sum of Kenya Shillings Two Million Five Hundred (Kshs. 2,500,000/-) for purposes of stamp duty.

61. DW - 1 stated that she never paid money. They signed it on 11th May, 2014 but was registered in the year 2015 as it delayed due to the documents taken back and forth. When she bought the Bustani property she was issued with a certificate of title. On the Nyali Property – she had a guest wing. She incurred the expenses - a sum of Kenya Shillings Three Million (Kshs. 3,000,000/-) for the construction of the house and that she had furnished the court with receipts amounting to a sum of Kenya Shillings One Million Two Hundred Thousand (Kshs. 1,200,000/-). because there were many other items – which were not accountable e.g. sand, labour. The owner of the Nyali House was her husband. The deceased never claimed the guest wing. It was her son and wife who were in occupation of the guest wing. These plots were:-

- a. Plot No. 3870/Sec. I/MN – Nyali.
- b. Plot No. 1630/III/MN – Barani Mtwapa.
- c. Plot No. MN/I/8502 – Bustani Nyali.

B. Cross examination of DW - 1 by Mr. Asige Advocate.

62. DW - 1 confirmed that the property at Mtwapa was hers. She was the proprietor as she had been gifted by her husband - Mohamed Sheikh Karama. She never bought it Plot No. 21776 – from the Transfer – (page 116 of the Defendant’s bundle). She never paid a single certificate. The amount shown thereof was a sum of Kenya Shillings Two Million Five Thousand (Kshs. 2,500,000/-) was for purposes of stamp duty it was not true that she paid the amount. It was done by her advocate.

63. The transfer was signed on the face of it 11th May, 2015 – by the vendor and purchaser was not correct as the deceased died on 15th January, 2015. on the second page the registration was done on 12th May, 2015. This was true. By that time the deceased had already died. The transfer indicated that she appeared before the Advocate and she executed it on 11th May, 2014, it was before Adhoch Advocate. From her copy the names of Adhoch Advocate were not visible.

64. The witness stated that she appeared before the advocate on 11th May, 2014; it must have been on a working day. She did not think it was a public or on a Sunday. Her advocate may appear to verify this fact if needed to do so. But what she was sure about the documents were signed in his presence. There was an agreement for this transfer.



65. DW - 1 asserted to the Court that with regards to the Nyali property – Page 118 it registered in the name of the deceased. The land is $\frac{1}{2}$ acre – $\frac{1}{4}$ is for Amina and $\frac{1}{4}$ for Zubeda. It was not written as such on the title. There were two houses which were identical, she build the structure herself through the finances were from the deceased husband. It was not true that it was the deceased was the one who built the guest wing; she was the one who built it. Her evidence was on Exhibit No. 1 - Page 118 written 13th September, 2010. The document did not refer to Ref. Plot No. CR - 23006 Nyali – LR No. MN/1/3870.
66. She told the court that there were receipts to that effect – Page 125 receipts were in the name of Badar Mohamed – Badal Mohamed was her first born son whom she would be sending to buy for him the items, from the shop she will not summon him as a witness unless there was an order to come and produce the said receipt. The witness told the court she only got the documents from to construction the Guest Wing otherwise she never applied nor obtained any approvals to construct the Guest Wing.
67. With reference to the Notification of approval of development dated 21st April, 2010 by Director Town Planning and Architecture addressed to Mr. Mohamed Karama, DW - 1 stated that she did not remember seeing this letter. The Guest room was self-contained – one bedroom and sitting room, and kitchen, she constructed it she spent a sum of Kenya Shillings Thirty Five Million Thousand (Kshs. 35,000,000/-), she had only demonstrated an expense of Kenya Shillings One Million Two Hundred Thousand (Kshs. 1,200,000/-). There were the expenses of labour, building block, sand, she never applied for approvals as it was a small structure. The approval was for her husband as he was her.
68. With regard to Bustani Plot – Sub Division No. 8502 (original No. 5785/23), the witness stated that she bought it from Stanford Properties Limited on 20th July, 2009. She bought it at a sum of Kenya Shillings Eight Million (Kshs. 8,000,000/-) by then she was married to her husband. At the time of her testimony it was over thirty (30) years in marriage. When she got married she was a business lady. She bought plots and once she developed them she sold them. She also tailor clothes; she was also married to her husband – Zubedi – with whom they had a child called Badar (42 years). He gave her a sum of Kenya Shillings Fifteen Million (Kshs. 15,000,000/-) for the child upkeep and care.
69. DW - 1 confirmed that she did not write the statement she was being shown in court. With reference to paragraph 3 of the Defendant Defence, she did not know a company by the names of UX Bridges Limited. She had leased it from the year 2010 and she got a sum of Kenya Shillings Eighty Five Thousand (Kshs. 85,000/-); she had no proof of the same in court but she had several receipts that she had been receiving the rent.
70. With reference to page 47 and 54 being copies of the cheque, she told the Court that the same were drawn in the names of Mtwapa Meat Supply Limited. They were not for rent but for his own meat business. The cheques were not connected to the rental payment. She did the payment of the rates by Saidi every year. With reference Page 57, the witness stated that it showed the payers of rate was Bahari Forwarders Limited; she did not know the company and she would find out which company that was.
71. DW - 1 reiterated that before her marriage to Mohamed Sheikh Karama, she had properties in Garissa, Mombasa and elsewhere. She refuted that all the three property belonged to her husband. All these properties were her properties. She had the title for the 3 property(ies) and they were with her Advocate. The deceased wrote a letter to the Advocate of the Plaintiff it was not true that she was trying to self-enrichment. It was the Plaintiff who was greedy. They wanted to deprive her of her property. She was in full agreement that the Property for her husband should be distributed along the Muslim law. She was also in agreement that the 2nd and 3rd Defendants were Co-Legal Administrator to the Estate of the



Deceased – i.e. Ali Mohamed Karama and Karama Mohamed Karama. She disowned the signatures on the statement of the 4th and 5th Defendants being her own. She never signed these documents

72. On 20th February, 2024 the 2nd Defendant took the stand testified as follows:-

A. Examination in Chief of DW – 2 acting in person.

73. DW - 2 acting in person was sworn and he testified in English language. He identified himself as Ali Mohamed Karama with all particulars found in his Kenya identity card. He was born 22nd August, 1987. On 1st November, 2022 he filed witness statement dated 28th October, 2022 which he adopted as his evidence in support of his case. He was the son of the 1st wife to the deceased M/s. Zubeda Nasser Mbarak and worked at a butchery called Mombasa Premier Mix as a Butcher; he lived in Nyali. The 2nd, 3rd and 4th Plaintiffs were his siblings.

74. DW - 2 further told the court that he was fully committed to the statements and evidence adduced by his mother – the 1st Plaintiff to the effect the inheritance of the Late Mohamed Karama to be distributed equally among the two (2) households of his father in accordance to the Islamic Law. He was aware that his mother and 3 siblings have sued him as the 2nd Defendant in this case and they were seeking for the prayers against him.

75. DW - 2 confirmed that he supported them as he had lived with his late father and worked with him in different capacities and he knew he was the breadwinner for the family. Indeed, he was the duly appointed Legal Administrator of the Estate together with the 3rd Defendant. He was appointed as duly Co-Legal Administrator to the Late Mohamed Karama – Deceased from the Kadhi's Court they were given Grant Letters of Administration. He did not have these documents in court but he would avail them given the chance.

VI. Submissions

76. On 8th May, 2024 after the Plaintiffs and Defendants marked the close of their cases, the Honourable court directed that the parties file their submissions within stringent timeframe thereof on. Pursuant to that on the Honourable court reserved a date to deliver its Judgement on 31st October, 2024.

A. The Written Submissions by the Plaintiffs

77. The Plaintiffs through the Law firm of Messrs. Asige Keverenge & Anyanzwa Advocates filed their written submissions dated 3rd May, 2024. Mr. Asige Advocate commenced the submission by stating that the Plaintiffs' filed a Plaint dated 8th April 2021 on 13th April 2021 seeking for the above stated orders.

78. The Learned Counsel further averred that the Plaintiffs filed Verifying Affidavit sworn by the 1st Plaintiff on 8th April 2021; 1st, 2nd, 3rd and 4th Plaintiffs Witness Statements dated 8th April 2021; Plaintiffs List of Witness dated 8th April, 2021 and Plaintiffs List of Documents dated 8th April 2021. The Plaintiffs' further filed Plaintiffs' Further List of Documents dated 9th December 2021 on 10th December 2021. In addition, the 1st Plaintiff testified on 3rd November 2022 and 4th April 2023 in support of the Plaintiffs' claim and the 2nd, 3rd and 4th Plaintiffs' adapted the 1st Plaintiffs' Witness Statement dated 8th April 2021.

79. The 1st Plaintiff also produced Plaintiffs' List of Documents dated 8th April 2021 and Plaintiffs' Further List of Documents dated 9th December 2021 and produced the same as Plaintiffs' Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19. The 1st Plaintiff was then cross-examined



- and re-examined. The 2nd, 3rd and 4th Plaintiffs’ testified on 4th April, 2023, adapted their statements and the evidence of the 1st Plaintiff. The Plaintiffs closed their case on 4th April 2023. They reiterated and adapted the evidence produced by the Plaintiffs’ in support of the Plaintiffs’ claim.
80. According to the Learned Counsel Defendants’ claim is that the 1st, 3rd, 4th and 5th Defendants filed Written Statement of Defence dated 10th May 2021 on an even date. The 2nd Defendant filed Written Statement of Reply and Defence and Witness Statement both dated 28th October 2022 and filed on 1st November 2022. The 2nd Defendant further filed a List of Documents dated 27th February 2024. The 1st Defendant testified on 6th November 2023 and was stood down to testify further on 20th February 2024. On 20th February 2024, the 1st Defendant did not appear in Court. The 3rd, 4th and 5th Defendants did not also appear in Court. The 1st, 3rd, 4th and 5th Defendants’ case was closed on 20th February 2024.
81. The 1st, 3rd, 4th and 5th Defendants did not consequently tender any evidence in support of their Defence. They did not consequently contest the 1st, 2nd, 3rd and 4th Plaintiffs’ claim. On 20th February 2024 the 2nd Defendant who appeared in Court and testified but stood down and was ordered to produce Order of Letters of Administration obtained from the Kadhis Court (Kadhis Succession Cause No. 167 of 2015) and proceeded to testify on 9th April 2024.
82. The 2nd Defendant filed Defence and Witness Statement both dated 28th October 2022. The 2nd Defendant’s Defence and Witness Statement admit the Plaintiffs’ claim. Upon this admission the Plaintiffs’ claim against the 2nd Defendant is admitted and Judgment should be entered against the 2nd Defendant as prayed in the Plaint with costs. As regards the 1st, 3rd, 4th and 5th Defendants who had tendered no evidence to support the allegation in their Defences, the Learned Counsel submitted that the Plaintiffs’ claim has been proved on a balance of probability and Judgment should be entered in favour of the Plaintiffs as prayed in the Plaint.
83. The Learned Counsel further went on to rely on the following issues for determination:-
- i. Whether the 1st, 3rd, 4th and 5th Defendants jointly and/or severally unlawfully and/or fraudulently have alienated and/or threaten to alienate Land Title Numbers Plot No. 3870/ Sec. I/MN, Plot No. 1630/ Sec. III/MN and Plot No. MN/I/8502 to themselves exclusively in deprivation of the estate of the late Mohamed Karama thus denying the Plaintiffs including the 2nd Defendant from their lawful and legitimate share inheritance of the said three properties upon distribution in accordance with Islamic inheritance law doctrines and principles.
 - ii. Who shall bear the cost of this suit
84. On the issue of whether the 1st, 3rd, 4th and 5th Defendants jointly and/or severally unlawfully and/or fraudulently have alienated and/or threaten to alienate Land Title Numbers Plot No. 3870/Sec. I/ MN, Plot No. 1630/ Sec. III/MN and Plot No. MN/I/8502 to themselves exclusively in deprivation of the estate of the late Mohamed Karama thus denying the Plaintiffs including the 2nd Defendant from their lawful and legitimate share inheritance of the said three properties upon distribution in accordance with Islamic inheritance law doctrines and principles, the Learned Counsel submitted that the 1st, 3rd, 4th and 5th Defendants jointly and/or severally unlawfully and/or fraudulently have alienated and/or threaten to alienate Land Title Numbers Plot No. 3870/SEC.I/MN, Plot No. 1630/ SEC.III/MN and Plot No.MN/I/8502 to themselves exclusively in deprivation of the estate of the late Mohamed Karama thus denying the Plaintiffs including the 2nd Defendant from their lawful and legitimate share inheritance of the said three properties upon distribution in accordance with Islamic inheritance law doctrines and principles and they relied upon the following grounds, inter alia by:-



- i. Illegally alienating guest house built on Title No. 3870 Section I Mainland North lawfully registered in favour of the late Mohamed Karama (see Plaintiffs' Further List of Documents item nos. 1 and 2 marked as Plaintiffs' exhibit nos. 5 and 6);
- ii. Fraudulently making documents purporting to be executed by the deceased Mohamed Karama in respect of the guest house (see 1st, 3rd, 4th and 5th Respondents List of Documents item no. 12 and marked as 1st, 3rd, 4th and 5th Respondents' exhibit no. 12). The said document which is alleged to be a Consent did not disclose particulars of the Plot Number it related to. Further the alleged Consent was not registered against Land Title No. 3870/Sec. I/MN. The Consent was accordingly unenforceable and void ab initio and should be ignored.
- iii. Unlawfully fraudulently concealing the titles of the said properties to facilitate unlawful alteration of the particulars of the said titles;
- iv. Fraudulently transferring title of Plot No. 1630 Section III Mainland North after death of Mohamed Karama
 - a. (see Plaintiffs' Further List of Documents item no.3 and 4 marked as Plaintiffs' exhibit no. 7 and 8 showing alleged transfer dated 11th May 2015 of the said parcel of land to the 1st Defendant and registered on 12th May 2015 and death certificate of Mohamed Karama. Mohamed Karama (deceased) had died on 15th January 2015). The late Mohamed Karama could not have transferred Plot No. 1630 Section III Mainland North to the 1st Defendant on 11th May 2015 because he had died on 15th January 2015;
 - b. (see Plaintiffs' Further List of Documents item no. 6 and marked as Plaintiffs' exhibit no. 10 showing 1st Defendant's Further Affidavit dated 19th May 2016 together with annexures). The 1st Defendant admits in the 3rd Paragraph of the Further Affidavit that the alleged Transfer was indeed registered on 12th May 2015.
- v. Fraudulently making false documents and executing illegal unlawful transfer of Title No. 1630 Section III Mainland North (see 1st, 3rd, 4th and 5th Respondents' List of Documents item no. 11 and marked as 1st, 3rd, 4th and 5th Respondents' exhibit no. 11). The alleged Transfer between Mohamed Karama (deceased) and the 1st Defendant is manifestly fraudulently as the Transferor (Mohamed Karama) was already deceased on 15th January 2015;
- vi. Fraudulently and unlawfully withholding lawful title of Plot No. 1630 Section III Mainland North registered in the name of Mohamed Karama (deceased).
- vii. Fraudulently tampering and with intent to deceive altering entries of title CR No. 23006 Section I Mainland North. The Maisonette on Title No. CR No. 23006 MN/I/8502 belonged to the late Mohamed Karama as he was the one who had purchased the Maisonette. (see Plaintiffs' Further List of Documents item no. 8 marked as Plaintiffs' exhibit no. 12 showing cheques written by Abdulhalim Bayusuf and Awadh Omar Bayusuf, tenants of the property, who paid the deceased rent in respect of tenancy of the same. Furthermore, the 1st Defendant was an unemployed housewife and of separate income to purchase the said property.
- viii. Fraudulently and unlawfully manipulating title documents of title CR - No. 23006 Section I Mainland North in complicity with 3rd parties (see Plaintiffs' Further List of Documents item no. 7 marked as Plaintiffs' exhibit no. 11 showing the 1st Defendant's Replying Affidavit together with alleged Sub Lease Title which was not fully executed);



- ix. Making false documents in respect of title CR - No. 23006 Section I Mainland North with intent to disinherit the Plaintiffs and the 2nd Defendant;
 - x. Laying false fraudulent claims over the three properties to defraud the Plaintiffs and 2nd Defendant in breach and violation of Islamic Inheritance Law, doctrines and principles;
 - xi. The 1st Defendant unlawfully and illegally collecting and receiving rent and income from Plot No. CR. No.23006 MN/I/8502 since January 2015 when the deceased died and exclusively appropriated it to the detriment of the estate (see Plaintiffs' Further List of Documents item numbers 9, 10, 11 and 12 marked as Plaintiffs' exhibit numbers 13, 14, 15 and 16);
 - xii. Acting dishonestly and dishonorably to unjustly in the circumstances enrich themselves in violation of Islamic Law of Inheritance and to the detriment of the Plaintiffs and 2nd Defendant
85. It was the humble submission of the Learned Counsel that among the assets in the vast deceased estate which the deceased owned and supervised were:-
- i. Plot No. 3870/Sec. I/MN-Nyali House;
 - ii. Plot No. 1630/Sec. III/MN-Barani Mtwapa;
 - iii. Plot No. MN/I/8502-Bustani in Nyali.
86. They humbly submitted that upon the death of Mohamed Karama the above assets namely:-
- a. Plot No. 3870/Sec. I/MN;
 - b. Plot No. 1630/Sec. III/MN;
 - c. Plot No. MN/I/8502.
87. Formed and consequently constitute part of the deceased distributable estate assets to which both the Plaintiffs and the Defendants herein were entitled to share in accordance with Islamic Law applicable in addition to all other properties that constitute the estate of the deceased Mohamed Karama. The provision of Section 2(3) of the Law of Succession Act, Cap. 160 provides that the applicable law in relation to a deceased Muslim shall be Muslim law. The provision is reproduced below: -
- “Subject to subsection (4), the provision of this Act shall not apply to testamentary or intestate succession to the estate of any person who at the time of his death is a Muslim to the intent that in lieu of such provisions the devolution of the estate of any such person shall be governed by Muslim law.”
88. The Learned Counsel humbly argued that the 2nd and 3rd Defendant the duly appointed administrators of the estate of the late Mohamed Karama have failed and/or neglected to discharge their obligations and duties as administrators and failed to claim or in any other manner take measures to recover, reclaim and protect the alienation and wasting of Land Title Numbers Plot No. MN/SEC.I/3870, Plot No. MN/SEC.III/1630 and Title No.CR NO.23006 SECTION MN/I/8502.
89. Further the Learned Counsel asserted that the Plaintiffs had suffered loss and damages and will continue to do so and will be disinherited of their legitimate share of the distributable estate of the late Mohamed Karama if the said Orders sought in the Plaint dated 8th April 2021 were not granted. On a balance of probabilities, the Plaintiffs had proved their case against the Defendants jointly and severally and judgment should be entered in favour of the Plaintiffs as prayed in the Plaint.



90. On which party should bear the costs, the learned Counsel averred that they had demonstrated that the Plaintiffs are entitled to the orders sought in the Plaint dated 8th April, 2021, they humbly submitted that the Plaintiffs were entitled to an award of costs. Accordingly, the Learned Counsel urged this Honourable Court to grant the costs of this suit to the Plaintiffs.

B. The Written Submissions by the Defendants

91. The Defendants through the Law firm of Messrs. Sachdeva, Nabhan & Swaleh Advocates filed their written submissions dated 7th May, 2024. Mr. Noor Advocate commenced their submission by stating that Plaintiffs' filed a Plaint dated 8th April 2021 on 13th April 2021 seeking the above Orders.
92. The 1st Defendant filed her defence dated 10th May, 2021 on the same date in which:-
- a. She denied owing the property known as Plot no. 8502/I/MN but only owned one Maisonette which was registered as CR. NO. 23006/8 and is situated on 8502/I/MN among other Maisonettes.
 - b. The 1st Defendant also denied that Plot no. 1630/III/MN CR. 21776 belonged to the late Mohamed Karama as alleged and that the same was legally transferred to her by the deceased.
 - c. The 1st Defendant admitted that Plot No. 3870/I/MN belongs to the deceased estate and contends she has never at any time alleged ownership of the same. The 1st Defendant only claimed ownership of the guest wing built on Plot No. 3870/I/MN which ownership is not challenged in this suit.
93. They humbly submitted as follows on the issues raised by the Plaintiff. On the issue of ownership of Plot No.3870/I/MN they humbly submitted that the Defendants have never claimed ownership of the plot. What was disputed in the Kadhi's Court was ownership of the GUEST WING which the 1st Defendant had claimed to be hers and which the Kadhi's Court confirmed to be hers.
94. The Learned Counsel submitted that the Plaintiff's herein had not challenged the issue of ownership of the guest wing. The Plaintiff therefore were bound by their pleading. Be that as it may, the Plaintiff did provide/produce a copy of the judgment of the Kadhi in Succession Petition No. 1670/2015 delivered on 25th April, 2017 and listed as number. 17 on the Defendant List of Documents filed on 25th May, 2022 whenever the issues of the guest wing were determined by the Kadhi and it was held that the same belonged to the 1st Defendant. The 1st Defendant had produced the bundle of receipts listed as item number 15 on the 1st Defendant list of Documents as evidence of expenses she incurred in construction of the guest wing. The Plaintiff did raise in cross examination the question as to why some of the receipts were in the name of Badar Mohamed, the 1st Defendant did explain that Badar Mohamed was his son and she would time to time send him to buy some of the construction materials for her.
95. They further note the 1st Defendant did produce the consent letter dated 13th September, 2010 produced as item number 12 on the Defendant's list of Documents. The said consent was signed by the late Mohamed Karama (Deceased) who authorized Amina Karama (the 1st Defendant) to build the Guest Wing extension on the plot no. 3870/I/MN. It was their humble opinion that despite the fact that Plot No. 3870/I/MN does not belong to the 1st Defendant, the Guest Wing thereon belongs to the 1st Defendant and not the Estate of Deceased.
96. It was notable according to the Learned Counsel that the signature of the Deceased on the consent dated 13th September, 2010 was not challenged nor any evidence produced to prove the signature did not belong to the deceased. Further the Plaintiffs did not produce any evidence to show the deceased in



signing the consent was referring to any other property other than the guest wing on Plot No.3870/I/MN. The Plaintiff further produced the notification of approval of the guest wing which they claimed was in the name of the deceased (Mohamed Karama) the 1st Defendant explained that as the land was registered in the name of the deceased, it followed that all approvals had to be procured in his name.

97. On the maisonette at Nyali Plot No. 8502(Original Number 5785/23) of section I Mainland North (Bustani property), the Learned Counsel submitted that the Plaintiffs in prayer 1 of the plaint claim that Plot No. 8502/I/MN should be declared to belong to the estate of Mohamed Karama. The Learned Counsel went further to state that the Plaintiff had not produced any evidence to show the deceased Mohamed Karama, ever owned the said property at any time. It was trite principle of law that who ever alleged must prove. According to the Learned Counsel, the Plaintiff misinformed or confused as to the law relating to issuance of sub-lease titles. The 1st Defendant was not the registered owner of plot no. 8502/I/MN. This title was owned by Stamford Properties Limited. Stamford properties vide sub lease dated 20th July 2009 granted the long term lease to the 1st Defendant for the Maisonette number 2. The Plaintiff produced a copy of the sublease title in their bundle of document on page 23 running to page 46. On page 45 of the Plaintiff's document, the sublease was confirmed to be in respect of Maisonette number 2.
98. The Learned Counsel also contended that the 1st Defendant also produced in her list of document at item number 5 the agreement for sale dated 18th July, 2008. The agreement was in respect of sale of Maisonette number 2 on Plot No. 8502/I/MN/ on page 1 of the agreement clause (2) provides: -
- “The vendor has caused to be built on the said premises a development consisting of seven (7) Maisonettes and two apartments together with other an all or any services.”
99. According to the Learned Counsel, Clause (1) of the agreement on page 1 also clearly indicated that the registered owner of the plot no. 8502 (org. no. 5785/23) of section I mainland north was Stamford Properties Limited. They submitted that the 1st Defendant was not the registered owner of the plot no.8502/I/MN she was just a beneficiary of a long term lease for one of seven Maisonettes on the said plot. They further submitted that the 1st Defendant had produced evidence of how she acquired the property through the agreement for sale and subsequent sublease registered in her favour.
100. The Plaintiff had not produced any evidence of ownership of the maisonette or Plot No. 8502 as claimed. Further the Learned Counsel argued that the law was clear in the manner in which the court should treat the production of a title deed in a claim of ownership of land. This was to be found in the provision of Sections 27 and 28 of the Registered Land Act Cap. 300 (now repealed) and replicated in the provision of Sections 24 and 25 of the Land Registration Act No.3 of 2012 which provide as follow: -

“24.

- (a) 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; and

25.

- (1) the right of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provide 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-

- (a) To the leases, charges and other encumbrances and to the conditions and restriction, if any, shown in the register; and
- (b) To such liabilities, rights and interest as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.”

101. The courts are required under provision of Section 26 to take title deeds as prima facie evidence. Section 26 provides that: -

26(1) 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 court as prima facie evidence that the person named as proprietor of the land is the absolute and 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 the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b) Where the certificate of title has been acquired illegally, no procedurally or through a corrupt scheme.

102. The 1st Defendant had therefore established a prima facie ownership of the suit property. It was their humble submissions that the 1st Defendant’s title was indefeasible. There was no evidence of fraud that has been produced in court to defeat the title. The Plaintiff produced on page 47 to page 54 of the Plaintiff’s bundle of documents copies of cheques drawn by Awadh Omar Bayusuf and sons Limited in favour of Mtwapa Meat Supply Limited. The cheques did not indicate the purpose for which they were drawn. The cheques were drawn by one company in favour of another company none of which were part of this suit. The claim of the Plaintiff’s that the cheques are evidence of payment of rent for the Bustani Property are unsupported. The 1st Defendant in her testimony confirmed that she had always been the owner of the Maisonettes and has always collected rent from the same.

103. On Mtwapa Plot. No. 1630 (original number 146/4) Section III Mainland North, the Learned Counsel submitted that this property belonged to the 1st Defendant not the deceased as claimed by the Plaintiff the 1st Defendant had produced a copy of the certificate of title CR. 21776 which was registered in the name of the 1st Defendant. A copy of the title was filed in court by the Plaintiff page 6 of their bundle of documents.

104. The 1st Defendant further filed a copy of the transfer of the property in her documents proof that indeed this property was transferred by the deceased to the 1st Defendant. Several issues have been raised as to the legality of the transfer document: -

- i. The Plaintiff questioned the reason why the transfer was registered five months after the death of the deceased. In response 1st Defendant testified that the reason for the delay was that despite the deceased having signed the transfer prior to his death on 11th May, 2014, they had applied for exemption of stamp duty which was normal practice where transfer was between husband and wife. The Plaintiff produces on page 10 of their bundle of documents a further affidavit



which annexed letters sent by the advocate Ameli Inyangu & Partner Advocates then acting for the deceased and the respondent to KRA requesting for exemption of stamp duty. It is evident that indeed the two had applied for exemption but exemption was denied. The event that followed is that the deceased died in January 2015 and the respondent as required by Islamic sharia had to observe Edda for four months and ten days before she could instruct advocates to move forward with the transfer.

- ii. Another issue raised in regard to the transfer was that the transfer indicated that the Respondent had paid a supply of Kenya Shillings Two Million Five Hundred Thousand (Kshs. 2,500,000.00/=) to the deceased for the plot while the 1st Defendant had in her testimony stated that she had not paid the deceased any money.
105. The Learned Counsel averred that they would like the Court to take judicial notice of the common practice in conveyancing transactions. Practice dictated that there must be a consideration on the transfer on which stamp duty will be assessed. If the respondent did not indicate any figure on the transfer, then stamp duty would have been assessed at any figure deemed appropriate by the valuer. To save on the amount of stamp duty paid, it is therefore common practice to insert a figure on the transfer for purposes of assessment of stamp duty.
106. It was their humble submission of the Honourable Court that upon rejection of the exemption for stamp duty the Respondent did pay stamp duty on the transfer at the stated amount. This does not in any way disturb her title to the property. Therefore the 1st Defendant had proved that indeed this property belongs to her and accordingly the same ought to de-jure be excluded from the estate of the deceased. The allegations laid by the Plaintiffs had not been supported with any evidence to warrant this court cancelling the title of 1st Defendant. The Plaintiff had claimed ownership of properties but had failed to provide any evidence of ownership of the plots save for mere allegations. The 1st Defendant on the other hand had produced evidence of title registered in her name and explained how she acquired the titles. They therefore submitted that the Plaintiff had failed to discharge their burden of proof and this suit ought to be dismissed with costs.

VII. Analysis and Determination

107. I have keenly assessed the filed pleadings by all the Plaintiff and Defendants herein, the written submissions and the cited authorities, the relevant provisions of the Constitution of Kenya, 2010 and the statutes.
108. In order to reach an informed, reasonable and just decision in the subject matter, the Honourable Court has crafted the following five (5) issues for its determination. These are: -
- a. Whether this Honourable Court has the jurisdiction to hear and determine the matters raised in this suit
 - b. Whether the 1st, 3rd, 4th and 5th Defendants jointly and/or severally unlawfully and/or fraudulently have alienated and/or threaten to alienate Land Title Numbers Plot No. 3870/ Sec. I/MN, Plot No. 1630/ Sec. III/MN and Plot No. MN/I/8502 to themselves exclusively in deprivation of the estate of the late Mohamed Karama?
 - c. Whether the 1st Defendant can claim Property Plot No. 3870/Sec. I/MN which is a guest wing under the definition of a house without land using a consent that failed to mention the Suit Property number and was not witnessed.
 - d. Whether the Plaintiffs are entitled to the orders sought in the Plaintiff?



- e. Who bears the costs of the suit and the counter claim?

ISSUE No. a). Whether this Honourable Court has the jurisdiction to hear and determine the matters raised in this suit

109. Under this Sub heading, the main substratum is on the issue of the Court’s Jurisdiction. It is evident that jurisdiction is everything, and without jurisdiction, the court has no option, but to down its tools. See the case of “Owners of Motor Vessel “Lilian S” – Versus - Caltex Oil (Kenya) Limited (1989) IKLR”, where the Court held:

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction.....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given”.

110. The properties herein were subject of a succession matter that was decided but upon Appeal of the Kadhi Court; the Honourable Justice W. Musyoka in FAMILY CIVIL APPEAL NO. 16 OF 2017 opined that the jurisdiction conferred in the Kadhi’s Court was limited and it did not include determination of questions relating to land even when such land may be held under Muslim tenure. According to the Appellant court even when land questions arose in a succession matter, the Court ought to down its tools and let the parties move the dispute over the title or right to land to the Court with the jurisdiction to determine those issues. The Court proceeded to find the Appeal merited and rendered the resultant orders made in the Kadhi’s Court in the judgment delivered on 25th April, 2017 in Mombasa KCSC No. 167 of 2015 with respect to the suit properties in this current case.
111. Having said as much, in this matter the Plaintiffs prayed for Judgment against the Defendants as follows:-
- i. An Order that title Nos. Plot No. 3870/I/MN, Plot No.1630/III/MN and Plot No. MN/I/8502 together with all rents and income received therefrom by the 1st Defendant since the death of Mohamed Karama be accounted for and be declared to belong to the distributable assets in the estate of the late Mohamed Karama (deceased).
 - ii. An Order and/ or Declaration that Land Title No Plot No.3870/Sec.1/MN, Plot No. 1630/III/MN and Plot MN/1/8502 be shared and distributed to the Plaintiffs and the Defendant in accordance with the established shares provided in the Islamic Inheritance Law.
 - iii. An Order that any transfer registration and/or alienation of title No. Plot No. 3870/Sec.1/MN, Plot No. 1630/III/MN and Plot No.MN/1/8502 other than to the estate of the late Mohamed Karama be invalid and void and be cancelled and annulled by the Registrar of Lands Mombasa County.
 - iv. Costs of this suit;
 - v. Any other further relief the Court deems just and fit to grant



112. Perusing the prayers, it is clear that the orders seem probative in nature. I find support for this view in the case of “Salome Wambui Njau (suing as Administratrix of the Estate of Peter Kiguru Njuguna (Deceased) – Versus - Caroline Wangui Kiguru, ELC (2013) eKLR” where it was held:

“In matters of succession disputes touching on land, Environment and Land Court Pursuant to Article 162(2) of the Constitution and the High Court as the Succession Court under Section 47 of the Law of Succession Act would appear to have a concurrent jurisdiction. It would thus depend on the circumstances of each case which court is best suited to hear and determine the dispute.” (Emphasis added).

113. The dominant issue herein is a claim over land, but not succession, and therefore, this court finds that it has jurisdiction to hear and determine this suit as stipulated in the provision of Section 13 (1) & 2(a) of Environment and Land Act, No. 19 of 2011 which provides;

13. Jurisdiction of the Court

(1) The Court shall have original and appellate jurisdiction to hear and determine all 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 exercise 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, valuations, mining, minerals and other natural resources;

114. Consequently, this Court finds and hold that it has a limited jurisdiction to determine the suit at hand save for any matters on succession and distribution of the assets and liabilities belonging to the Estate of the Deceased.

ISSUE No. b). Whether the 1st, 3rd, 4th and 5th Defendants jointly and/or severally unlawfully and/or fraudulently have alienated and/or threaten to alienate Land Title Numbers Plot No. 3870/ Sec. I/MN, Plot No. 1630/ Sec. III/MN and Plot No. MN/I/8502 to themselves exclusively in deprivation of the estate of the late Mohamed Karama and whether the 1st Defendant can claim Property Plot No. 3870/Sec. I/MN which is a guest wing under the definition of a house without land using a consent that failed to mention the Suit Property number and was not witnessed

115. As already indicated, this a matter involving a family. Under this sub - title the legality of the transfers that took place in the registers of the suit properties herein and who is the legal proprietor of the suit properties. Before indulging into the issue though I would like to point out that with the promulgation of the Constitution of Kenya, 2010, all the legal regime of land legislation were condensed into a few legal framework, Significant, after the repealing of several legislation, two of them were sustained being - The Land Registration Act, No. 3 of 2012 and the Land Act, No. 6 of 2012.

116. The Honourable Court takes cognizance of the fact that It is instructive to note that the suit land was registered under the Registration of Title Act, Cap. 281 (now Repealed). As already correctly pointed out by the Learned Counsel for the Defendant, based on the provisions of Section 107 of the Land Registration Act No. 3 of 2012 provided that any right, interest, title, power, or obligation acquired, accrued, or established under the repealed Acts would continue to be governed by the law applicable to it immediately prior to the commencement of the new Act. This Legal position finds grounding in



the provisions Section 23 (3) (c) of the Interpretation and General Provisions Act, Cap. 2 which provides:-

“Where a written law repeals in whole or in part another written law, then unless a contrary intention appears the repeal shall not affect a right, privilege, obligation or liability acquired, accrued or incurred under a written law so repealed”

117. Ideally, I wish to point out that the Land Registration Act makes provision on the effect and efficacy of registration of title and its indefeasibility. The provision of Section 24 (a) of the Land Registration Act provides as follows: -

“Subject to this Act, 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.”

118. When a person’s ownership to a property is called into question, it is trite that the said proprietor has to show the root of his ownership. In the case of “Hubert L. Martin & 2 Others – Versus - Margaret J. Kamar & 5 Others [2016] eKLR”, where the Court held that;

‘A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one’s case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.’

119. Further to this, the Honourable Court is guided by the Court of appeal in the case of: “Munyu Maina – Versus - Hiram Gathiha Maina, Civil Appeal No.239 of 2009”, the Appeal Court held that: -

“We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”

120. The law is clear that, the Certificate of Title issued by the Registrar upon registration shall be taken by all courts as ‘the prima facie’ conclusive evidence that the person named as proprietor of the land is the absolute and legal owner with indefeasible title, rights and interest on the land and the proprietor shall not be subject to challenge except – On the ground of fraud, mistake, omission or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

121. This court in considering this matter referred to the case of:- “Elijah Makeri Nyangw’ra – Versus - Stephen Mungai Njuguna & Another (2013) eKLR” where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally,



unprocedurally or through a corrupt scheme. The court in the case while considering the application of provision of Section 26(1) (a) and (b) of the Land Registration Act holds as follows:-

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

122. Now turning to the issues from the instant case. The golden question and the elephant in the room here is simple and straightforward and I shall discuss the same as per the respective suit property beginning with: - Land Title Numbers Plot No. 3870/Sec. I/MN and the owner of the Guest wing?” To respond to this deep query, the Honourable Court would require more than the Solomonic wisdom anchored and founded from the Scriptures of 1 Kings 3 Verses 16 to 28 on the decision by King Solomon over the dispute of the parentage of the child being claimed by the two Harlots and the law. From the said scripture it upon King Solomon making the decision, it was stated that: “and all Israel heard of the Judgement which the King had rendered; and they stood in awe of the King, because they perceived that wisdom of God was in him, to render Justice...”. That should be the case in this matter herein.

123. It is trite that he who alleges must prove, as provided by Section 107 of the Evidence Act. The Defendants have alleged fraud on the part of the Plaintiffs, and they had a duty to prove the existence of such fraud. It is trite that fraud must be specifically proved. See the case of “Vijay Morjaria – Versus - Nansingh Madhusingh Darbar & Another [2000] eKLR”, where the Court held:

It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

124. The Plaintiffs have alleged that the guest house in the suit Plot No. 3870/Sec. I/MN is part of the estate of the deceased. According to the Plaintiffs this property formed part of the deceased distributable estate assets to which the Plaintiffs and the Defendants herein are entitled to share in accordance with Islamic Law applicable in addition to all other properties that constitute the estate of the deceased Mohamed Karama.

125. According to the 1st Defendant in her Statement of Defence and her testimony stated that she built the said property by herself; however during cross examination she intimated that she used funds given to her by the deceased to do so. Further she stated that the deceased consented to her putting up the guest wing and even produced a consent which has been greatly disputed by the Plaintiffs. The Plaintiffs contended the ownership of the guest wing by producing a letter by the municipal council of Mombasa which was a notification for the approval of the application for development permission issued to the deceased indicating that the same was by virtue of this part of the estate of the deceased.

126. I shall examine the concept of house without land, the requirements and legality of consents pertaining to the disposition of land and gifts in land. On the concept of house without land, in case of:- “Christopher Baya and 2 Ors. – Versus - Philip Kiluko and Another Mombasa HC Civil Appeal No. 64 of 2004”, Khaminwa, J. correctly understood the concept as follows:

“This arrangement is known as “House Without Land” meaning the right to build on another’s land under agreement which does not pass title to the land.”



127. In the Kenyan coastal region, the concept of owning a house-without-land is a valid historical and legal concept to be found in the Mohameddan law. This concept was addressed and captured by the Honourable Mr. Justice in the case of:- “Murtahar Ahamed Dahman & Another – Versus - Athuman Sudi (2013) eKLR” Angote J. cited with approval in case:- “Juma Mzee Ali & 43 others – Versus - Al Mohamed Hatimy & another [2018] eKLR” (Yano J.) had the following to say regarding the concept of a house without land:-

“The land question within the coastal region is complex due to its peculiar historical and legal origins. The region is in a very unique position because of its geographical positioning and with it the peculiar historical ties unlike the other part of the country. It is common knowledge that were a person is the registered owner of a parcel of land, there is a conclusive presumption that he is also the owner of all buildings of whatever kind thereon. Indeed, the Registration of Titles Act Cap 281 has defined land to include thing embedded for the permanent beneficial enjoyment of that to which it is so attached. However, the Land Title Act Cap 282 which is applicable to the coastal region, and which has since been repealed, abrogated partly the Mohammedan Law.

Under the Mohammedan law and the Land Titles Act, Cap 282 a building erected by one person, even by a trespasser on the land of another does not become attached to the land but remains the property of the person who erected it. Such interests are, however, supposed to be noted in the certificate of title. It is therefore not uncommon in this region for the buildings of the type with which the present case is dealing with to be erected upon the land of another person in consideration of a monthly rent.

The concept of owning a house or coconut trees by a person who is not the owner of the land was and still being used by absentee landlords to either generate an income for themselves or to forestall the claim of adverse possession by people who would have stayed on such parcels of land for more than twelve years. This interesting concept of “owing a house or coconut trees without land” as recognized under the Land Titles Act, which was enacted in 1908, was followed up by the enactment of the Eviction of Tenants (Control) (Mombasa) Ordinance Cap 298 which came into effect on 31st December 1956 and lapsed on 31st December 1969. Section 2 of the Ordinance defined a “house” to mean any building or erection used as a piece of residence and constructed on land which is not owned by the owner of such building or erection. Although the Ordinance lapsed in 1969, many people in the coastal region and especially within Mombasa Municipality still own houses without land. The owners of those houses pay a monthly rent to the owner of the land.

128. As can be gleaned from the above authority, the question of ownership of the house-without land was wholly a question of physical possession of the subject house. By such arrangement, there would be no title deeds issued for the houses in question. The evidence of ownership of the house was two-fold

- a. Actual physical possession of the house-without-land
- b. Recognition of the physical possession by the true owner of the ground upon which the house stood

129. In as much as the 1st Defendant did not pay rent on the said house; the same if she claims it to be house is a land which is in the land of the deceased which forms part of the estate of the deceased. Further, the 1st Defendant did not reside therein it was the son who was according to PW 2 was her husband and she resided with him in the guest wing. Therefore the 1st Defendant was not the one residing in the guest wing.



130. On the second evidence of ownership with regards to the recognition of the physical possession by the true owner of the ground upon which the house stood; the 1st Defendant produced a consent gotten into by the deceased allowing her to build the guest wing and that the guest wing being hers. In as much as this was not financial transaction but a transition between a husband and a wife it pushes the court to dwell abit on disposition of matrimonial properties which form part of land transaction in terms of obtaining spousal consents. I take cognisance that the deceased obtained a consent in the modification of the suit property according to the law from the Municipal Council at that time but is should have also been imperative to obtain a consent from his spouse as well being that he was in a polygamous marriage and both wives had stakes in the property.
131. The difficult question in this matter is whether one spouse can proceed to alienation or modification of matrimonial property, or part of matrimonial property, without the consent of the other spouse. The issue in this case is in fact a little bit more complicated than the above question, because the registered owner of the property is polygamous, and a new and more pronounced question now arises as to whether in such union, all spouses have to give consent to the alienation of matrimonial property, or whether consent from any spouse will be sufficient, or indeed, whether a case of no consent at all will still allow the proprietor to dispose of the property.
132. The provision of Section 12 of the Matrimonial Property Act, attempts to address this situation, albeit partly, for it provides as follows:-
- Special provisions relating to matrimonial property
- (1) An estate or interest in any matrimonial property shall not, during the subsistence of a monogamous marriage and without the consent of both spouses, be alienated in any form, whether by way of sale, gift, lease, mortgage or otherwise.
 - (2) A spouse in a monogamous marriage, or in the case of a polygamous marriage, the man and any of the man's wives, have an interest in matrimonial property capable of protection by caveat, caution or otherwise under any law for the time being in force relating to the registration of title to land or of deeds.
 - (3) A spouse shall not, during the subsistence of the marriage, be evicted from the matrimonial home by or at the instance of the other spouse except by order of a court.
 - (4) Subject to subsection (3), a spouse shall not be evicted from the matrimonial home by any person except—
 - (a) on the sale of any estate or interest in the matrimonial home in execution of a decree;
 - (b) by a trustee in bankruptcy; or
 - (c) by a mortgagee or chargee in exercise of a power of sale or other remedy given under any law.
 - (5) The matrimonial home shall not be mortgaged or leased without the written and informed consent of both spouses.
133. I have set out the whole of Section 12, to put it into context, but it will be seen that only Section 12 (1) is relevant, in determining the question whether a spouse must give consent for the sale of matrimonial property. However, the same only makes provision for a monogamous union, and in such instance, there needs to be consent of both spouses for matrimonial property to be alienated including an alienation by way of sale. I have not seen any explicit provision in the Matrimonial Property Act



that relates to the sale of matrimonial property in a polygamous union. Probably this is a lacuna that Parliament needs to address so that the issue is clear and not left in doubt.

134. It will of course be well and good if all spouses consent to any disposition of land, but what if one of the spouses does not consent to the sale yet the other/s have no problem; or one spouse who on the face of it does not appear to have any interest in such property, refuses to give consent to the other spouse to dispose the land. My own interpretation of the law is that if it is the position that consent is required of the other spouse in a monogamous union, then by analogy, consent would be required of all spouses in a polygamous union, unless there is clear demonstration that the property does not constitute matrimonial property, or that through custom.
135. The 1st Defendant told the court that the guest wing was a gift by her deceased husband. The concept of gifts is divided into two categories. First gifts “intervivos” and gifts causa mortis. Gifts “intervivos” as contemplated in the Law of Succession are such that the owner of the property or asset donates it to another without expectation of death. In any event the person who makes such a gift must have the capacity and competency to gift the property and the gift must be perfected. In the case of inter vivos the gift must go to the donee absolutely during the lifetime of the donor. It is also well established that where the gift has been made, delivery to the beneficiary is necessary to consummate the gifts. Further, it is fundamental to understand the intention of the parties and their acts done sufficient to establish the passing of the gift to the donee.
136. The requirement of the law for such gifts are that they may be settled by a deed or an instrument in writing by delivery, by way of a declaration of trust by the donor or by a resulting trust or transfer and registration. In other words, the gift must have passed from the deceased to the recipient for it to be valid. This means that the gift is no longer the property of the deceased but for the purpose of distribution of the estate to the dependants it will be traced and taken into account when distributing the estate with respect to the beneficiary who received the gift.
137. The test on whether or not properly was gifted was stated in the decision. In the case of “Re Estate of the late Gedion Manthi Nzioka (Deceased)(2015) eKLR”; which the 1st to 8th Defendants have cited in their submissions. In the said case, the Learned Judge summed up, the requirements of a gift intervivos as follows; -
- “for gifts intervivos the requirements of the law are that the said gift may be granted by deed, an instruments in writing or by delivery, by way of declarations of trust by the donor, or by the way resulting trusts or presumptions of trust. Gifts of land must be a way of registered transfer, or if the land is not registered transfer it must be in writing or by a declaration of trust in writing. Gifts intervivos must be complete for the same to be valid.”
138. From the above decision, it follows that the gift in the land can either be perfect or imperfect but must be in writing by a deed or transfer. This court adopted the above approach in two recent decisions in the case of “Wilson Kiprop Sirtich – Versus - Richard Kiptarbei Rono Kapsabet 38/2021” as well as the decisions in “Maichi Tamining Kerich – Versus - County Government of Nandi Kapsabet ELC No. 41 of 2022”.
139. Applying the above elements the consent dated 13th September, 2010 does not reach the threshold of a perfect gift as the same was not witnesses especially taking into account that the property in which the deceased allowed the 1st Defendant to build on belonged to both him and his two wife by way of succession. Therefore the guest wing forms part of the estate of the deceased. As they progress to the Family court she can seek remedies of how to recover her investment in the suit property but from this end the property forms part of the suit property as it was an imperfect gift.



140. While still on gifts; the 1st Defendant contended that the deceased gifted her Plot No. 1630/III/MN – Barani Mtwapa. The transfer was signed on the face of it 11th May, 2015 – by the vendor and purchaser was not correct as the deceased died on 15th January, 2015. on the second page the registration was done on 12th May, 2015. By that time the deceased had already died. The transfer indicated that she appeared before the Advocate and she executed it on 11th May, 2014, it was before Adhoch Advocate. From her copy the names of Adhoch Advocate were not visible. The witness stated that she appeared before the advocate on 11th May, 2014; it must have been on a working day. She did not think it was a public or on a Sunday. Her advocate may appear to verify this fact if needed to do so. But what she was sure about the documents were signed in his presence. There was an agreement for this transfer
141. The rights to property the world over is protected and safeguarded by the highest laws in the land. In Kenya property rights are elevated to the bill of rights. Under Article 40 the Constitution offers property rights protection from arbitrary deprivation and restriction from the enjoyment of the same without cause. Under Article 40(6) of the Constitution the said protections are not available to property that has been found to have been unlawfully acquired.
142. In line with the guarantees aforesaid section 24 and 25 of the Land Registration Act stipulates the registration of a person as a proprietor of land vest in that person the absolute ownership together with rights and privileges thereto and the rights of a proprietor shall not be defeated except as provided for by the Act. The rights can only be limited by the conditions restrictions encumbrances permitted by the Act. Section 26 in particular mandates all Courts to take a certificate of title issued to a proprietor by the Land Registrar as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner subject to easements restrictions and conditions endorsed on the title. The section provides two instances in which a title may be impugned; on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
143. I have earlier stated in this judgment that the 1st Defendant stated that the property was given to her by the deceased as a gift. In “Re Estate of the late Gideon Manthi Nzioka (Deceased) [2015] eKLR” Nyamweya J now Judge of the Court of Appeal held gifts of land must be by way of registered transfer or if the land is not registered it must be in writing or by a declaration of trust in writing and for it to be complete, it is not necessary for the donee to express acceptance, which acceptance is presumed until and unless dissent or disclaimer is signified. It is this transfer that has been contested by the Plaintiffs as having been obtained fraudulently.
144. The Black’s Law Dictionary 9th Edition at page 131 fraud is defined as:-

“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, in the sense of a Court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another”



145. In the case of “Arthi Highway Developers Limited – Versus - West End Butchery Limited & 6 others [2015] eKLR”, the Court held that

“It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. One of the authorities produced before us has this passage from Bullen & Leake & Jacobs, Precedent of pleadings 13th Edition at page 427:

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (Wallingford v Mutual Society (1880) 5 App. Cas.685 at 697, 701, 709, Garden Neptune V Occident [1989] 1 Lloyd’s Rep. 305, 308).

146. The Court is curious as to how the 1st Defendant was able to obtain the deceased’s signatures after his death. The Court is also curious as to how the affidavit that bequited her the property was obtained. It should also be noted that 11th May, 2014 fell on a weekend. Can land transactions be done over the weekend?

147. Lets understand what a transfer is. The Court’s understanding is that a transfer is a legal document that acknowledges the passing of land, lease or charge from one party to another. Transfers are governed under the Land Act, 2012, Land Registration Act, 2012, and Land Registration General Regulations, 2017. A transfer takes effect immediately and is completed by registration of the transferee as the proprietor of the land, or lease. The Court is not satisfied with the 1st Defendant’s explanation that the transfer was done on different time and that the error of dates was just due to the technicalities of obtaining the necessary documentation.

148. The Court notes that the letters dated 12th May, 2015 by Ameli Iyangu & Partners Advocates were done after the death of the deceased. Further the subtitle of the letter read sale of property; I believe if the said property was a gift as indicated by the 1st Defendant, the Learned Counsel who dealt with that transfer would not indicate the same as a sale but rather as a gift from the donor the deceased to the donee the 1st Defendant.

149. There is an English saying that dead men tell no tales. I am afraid we are this junction in this case. There are documents signed by the deceased and the 1st Defendant and it is only the side of the deceased that the Court has been left to hear as the said transactions had no witnesses neither were they consented by the other wife of the deceased. I am still amiss as to how one transfer can be authored on two different dates and indicate two different dates, in two different years and more so a date that fell on a weekend. On that basis I find the transfer of CR. No. 21776 Plot No. 1630/III/MN – Barani Mtwapa and therefore order the same to revert back to the deceased and subsequently the estate of the deceased.

150. On the last property; Plot No. MN/I/8502 – Bustani Nyali, the 1st Plaintiff stated that she had knowledge of Plot No. 8502/MN/1 which was at Nyali which belonged to her husband who had bought it from Bahari Advocate. She had been to the house, when it was still new and complete. The 1st Defendant was claiming it’s her property. It was leased to Bayusuf. He used to pay for the monthly rent. The witness’ son Hamza Karama 4th Plaintiff would pick the cheque in the names of Mtwapa Meat Supply Ltd which business was incorporated by the deceased. PW - 4 confirmed this and stated that his father owned Mtwapa Meat Suppliers and the Nyali Meat Suppliers i.e. Bustani. The witness used to be the collector of cheques by Mr. Bayusuf – who was a tenant of the premises. The rents were paid in form of cheques and not cash and the cheques drawn in the name of Mtwapa Meat Suppliers



by Awadhi and deposited at DTB. Mtwapa Meat Suppliers – the directors Mr. Ali Karama and Mr. Mohamed Karama and PW 4 personally collected and deposited the cheques

151. The 1st Defendant on the other hand confirmed that she was the owner of Bustani Property which she bought the property from the proceeds of a business which she carried out. She had been married before and had a child. Her former husband paid a sum of Kenya Shillings Fifteen Thousand (Kshs. 15,000,000/-) and she had proof of that property. Bustani was a house; she was not a proprietor to the Mtwapa Meat Suppliers. She told the court that she bought it from Stamford Properties Ltd. on 20th July, 2009. She bought it at a sum of Kenya Shillings Eight Million (Kshs. 8,000,000/-) by then she was married to her husband.
152. According to the payment receipts for rates for the property in question as produced by the Plaintiff the same indicate that the property belonged to Bahari Forwarders Ltd Plot No. IMN/8502. According to the 1st Defendant, she was not the registered owner of plot no. 8502/I/MN. This title was owned by Stamford Properties Limited. Stamford properties vide sub lease dated 20th July 2009 granted the long term lease to the 1st Defendant for the Maisonette number 2. The Plaintiff produced a copy of the sublease title in their bundle of document on page 23 running to page 46. On page 45 of the Plaintiff's document, the sublease was confirmed to be in respect of Maisonette number 2.
153. I take note that the said documents was only signed by the 1st Defendant and the alleged directors of Stamford Properties. So was the sub lease agreement properly executed and attested? The provision of Section 3 of the Law of Contracts Act which states that no suit shall be brought under any contract for the disposition of land unless the contract: -
1. Is in writing,
 2. Is signed by all the parties thereto,
 3. The signature of each party signing has been attested by a witness who is present when the contract was signed by such party.
154. Further, the provision of Section 44 of the Land Registration Act provides that every instrument effecting any disposition shall be executed by each of the parties consenting to it appending his/her signature on it or affixing the thumbprint or other mark as evidence of personal acceptance of that instruction. A sub lease being an agreement should have been attested by witnesses who were not parties to the transaction. The upshot of this is that, I discern that the sub - lease and the ownership of Plot No. MN/I/8502 – Bustani Nyali by the 1st Defendant null and void.

ISSUE No. c): Whether the Plaintiffs are entitled to the orders sought in the Plaint

155. Under this Sub - heading, the Plaintiffs have sought for various Reliefs as contained at the foot of the plaint. Before proceeded with whether the Plaintiffs are entitled to the prayers sought; it is important for this Court to note that all the transfers and titles allegedly owned by the 1st Defendant were improperly acquired. Section 45 of the Law of Succession Act, Cap. 160 provides as follows: -
- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - (2) Any person who contravenes the provisions of this section shall—
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and



- (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.
156. In the case of “Bahola Mkalindi – Versus - Michael Seth Kseme & 2 others [2012] eKLR” the court held that:-
- “The Law of Succession Act, Cap. 160 is concerned with the administration of the estate of deceased persons. The estate of a deceased person has been defined by the Act as property which the deceased person was legally competent to freely dispose of during his lifetime, and in respect of which his interest has not been terminated by his death.
157. In the case of:- “Veronica Njoki Wakagoto (Deceased) (2013)eKLR” that:-
- “ The effect of [section 45]...is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”
158. Further, in the case of:- “Re Estate of M’Ngarithi M’Miriti (2017) eKLR” the term “intermeddling” was elucidated to mean as follows:
- “ Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”
159. The provision of Section 55 of the Law of Succession Act, Cap. 160 stipulates that: -
- “No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property unless and until the grant has been confirmed as provided by section 71.”
160. Having considered the evidence before me as well as the exhibits herein produced, it clearly emerges that Section 55 of the Law of Succession Act was not complied with before these properties were transferred. The provision of Section 80 of the Land Registration Act No. 3 of 2012 which provides as follows:
1. Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.



2. The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.”
161. From the evidence I am satisfied the only way to remedy the mistake herein before us is by the cancellation of the transfer to the 1st Defendant and the title to revert back to the original owner the deceased and his estate for proper distribution.
162. The provisions of Section 26 of the Land Registration Act, Act No.3 of 2012 provide as follows:
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 and 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 the ground of fraud or misrepresentation 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.
163. As it may be observed, the law is extremely protective of title but the protection can be removed and title impeached, on two instances. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
164. The import of provision Section 26 of the Land Registration Act was considered in the case of “Elijah Makeri Nyangwra – Versus - Stephen Mungai Njuguna & Another [2013] eKLR” where Munyao J, answered the question as to whether title is impeachable under section 26 (1) (b) of the said Act as follows:-
- “First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.”
165. I therefore find that the said transfers and registration of the 1st Defendant as the legal proprietor of the suit properties was a nullity as the estate of deceased could only have been dealt with under the Law of succession Act after his death and not otherwise. I find that the ownership of the suit properties reverts back to the deceased Mr. Mohamed Karama. Since this court has no jurisdiction to determine issues touching on succession and distribution of property belonging to an Estate of a deceased person, it will be prudent for the parties herein to raise issues raised herein in the appropriate court for the grant of prayer 2.



ISSUE No. d). Who bears the costs of the suit

166. 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.
167. In case “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 (Fripp vs Gibbon & 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.”
168. In the present case, I reiterate that the Plaintiffs have been able to establish their case as pleaded from the filed pleadings against the Defendants therefore, I proceed to award them the costs of their suit to be borne by the 1st, 3rd, 4th and 5th Defendants. The 2nd Defendant shall bear his own costs.

VIII. Conclusion and Disposition

169. Ultimately, having caused such an in-depth analysis to the framed issues herein, the Honourable Court on the Preponderance of Probabilities and the balance of convenience finds that the Plaintiffs have established their case against the Defendants herein. Thus, the Court proceeds to make the following specific orders:
- a. THAT Judgment be and is hereby entered in favour of the Plaintiffs as pleaded in the Plaint dated 8th April 2021 on 13th April 2021 with costs.
 - b. THAT an order be and is hereby issued directing the 1st Defendant to account or and declare any rent and/or income received in respect to Suit properties Plot No. 3870/I/MN, Plot No.1630/III/MN and Plot No.MN/1/8502.
 - c. THAT an order be and is hereby issued directing that any transfer registration and/ or alienation of the Suit properties title Plot No. 3870/I/MN, Plot No.1630/III/MN and Plot No.MN/1/8502 other than to the estate of the late Mohamed Karama be invalid and void and be cancelled and annulled by the Registrar of Lands Mombasa County.
 - d. THAT so as for this Honourable Court to perform and deliver itself on an issue that it is not equipped to determine Law of Succession matter and the sharing and distribution of the Estate



of the late Mohammed Karama (Deceased), the parties are hereby directed to pursue PRAYER 2 on the foot of the Plaint through the correct legal forum.

- e. THAT the Plaintiffs shall have the costs of the suit to be borne by the 1st, 3rd, 4th and 5th Defendants. The 2nd Defendant shall bear his own costs.

It is so ordered accordingly

JUDGMENT DELIVERED THROUGH THE MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 31ST DAY OF OCTOBER.....2024.

.....

HON. MR. 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. Mr. Asige Advocate for the Plaintiffs.
c. No appearance for the 1st, 2nd, 3rd, 4th and 5th Defendants.

