



Skyview Properties Limited & another v Njoroge & 4 others (Environment & Land Case 605 of 2012) [2025] KEELC 568 (KLR) (13 February 2025) (Judgment)

Neutral citation: [2025] KEELC 568 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 605 OF 2012
MD MWANGI, J
FEBRUARY 13, 2025**

BETWEEN

SKYVIEW PROPERTIES LIMITED 1ST PLAINTIFF

SCENIC COURT LIMITED 2ND PLAINTIFF

AND

KENNEDY AMOS NJOROGE 1ST DEFENDANT

IRENE NDUGI NJOROGE 2ND DEFENDANT

LINET ANGONGO SHIUNDU 3RD DEFENDANT

SALIM BAKARI 4TH DEFENDANT

SCENIC COURT MANAGEMENT COMPANY LIMITED 5TH DEFENDANT

JUDGMENT

Background

1. The Plaintiffs instituted this suit vide the Plaint dated 28th December, 2012. The said Plaint was amended on the 21st April, 2022. The Plaintiffs pray for Judgement against the Defendants jointly and severally for;
 - a. A declaration that the Plaintiffs are the rightful owners of the three basement units, flats/ Apartments erected on the parcels of Land Reference Number 209/ 8879/9 and 209/8879/10 located herein Nairobi comprised in a lease registered at the Land Registry as number 52787/1.
 - b. An order of injunction restraining the Defendants, their servants and/or agents from entering, leasing, blocking and/or dealing in any manner whatsoever likely to interfere with the Plaintiffs quiet possession over the three basement units, flats/apartments erected on the parcels of land



Reference Number 209/8879/9 and 209/8879/10 located herein Nairobi comprised in a Lease registered at the Land Registry as Number 52787/1.

- c. General damages for trespass.
 - d. Costs of the suit.
 - e. Such other or further relief as this Honourable Court may deem just to grant.
2. It is averred that the 1st Plaintiff is the registered owner of the parcel of land reference Number 209/ 8879/9 located in Nairobi and has erected thereon ten apartments. On the other hand, the 2nd Plaintiff is the registered owner of parcel of land reference number 209/ 8879/10 located in Nairobi and has equally erected buildings consisting of ten apartments. The two parcels are comprised in a lease registered at the land registry as number 52787/1. The apartments are adjacent to the other.
 3. The Plaintiffs further state that they built three (3) basement flats on which the said apartments were constructed. After completion of the Apartments, the Plaintiffs allege that they leased 16 out of the 20 Apartments and remained with four (4) Apartments on the ground floor and the three (3) basement units which are yet to be leased.
 4. The Plaintiffs aver that by a-Lease Agreement dated 20th July, 2006, the 1st Plaintiff transferred its proprietary interest in Apartment Number A8 to the 1st and 2nd Defendants. The 2nd Plaintiff on the other hand transferred Apartment Number B7 to the 3rd Defendant. They assert that they transferred proprietary interests to the Purchasers as reflected on the official search. The Plaintiffs maintain that they never transferred the basement units. The basement units remain their properties and that they do not form part of the common areas belonging to the 5th Defendant having not been expressly provided for in the Leases. Therefore, the Defendants attempts to take possession of the suit premises is an act of trespass and blatant interference with the quiet possession of the Plaintiffs' use of the properties.
 5. The Plaintiffs further allege that they are yet to transfer the reversionary interest over the suit premises to the management company as provided under the Leases they retain proprietary interests over the suit premises. They argue that after transferring the reversionary interest to the Management Company, the Defendants shall even then have no basis of claiming the basement units as the leaseagreements excludes the basement units from being part of common areas. The Defendants' claim of proprietary interests over the basement units has no basis. The Plaintiffs allege that they had been in possession of the said units long before the Defendants purchased their units
 6. It is further alleged that the Defendants broke and attempted to enter into one of the units claiming ownership, which matter was duly reported to Kileleshwa Police Station. The Plaintiffs further allege that the 4th Defendant is in occupation of the suit property without paying the monthly rent of Kshs. 10,000/= resulting in loss of the rental income.
 7. The Plaintiffs state that despite numerous warnings from Kileleshwa Police Officers and demands, the Defendants have threatened to continue with the interference of the Plaintiffs' quiet possession over the suit premises. It is on this basis that the Plaintiffs seeks the orders stated above.

Defendants' Defence

8. The Defendants filed a joint Statement of Defence dated 13th September, 2018 amended on 21st August, 2019 and Further Amended on the 27th April, 2022. In their Further Amended Defence, the Defendants deny the Plaintiffs' allegations leveled against them. The 1st, 2nd and 3rd Defendants aver that they are the owners of Apartments located on LR Nos. 209/8879/9 and 209/8879/10 within Nairobi County.



9. They assert that they and other purchasers purchased 16 apartments out of the 20 apartments offered for sale by the Plaintiffs. The 5th Defendant was subsequently incorporated for the sole purpose of managing the apartments and holding the reversionary interests of the suit properties. They state that each purchaser was to be issued with a share certificate representing one twentieth (1/20) part of the share capital. At the time of purchase, the shares in the management company were held equally between Gilbert Gachihi Nderitu and Susan Nyambura Wachira. Although Gilbert transferred his shares to the purchasers, Susan Nyambura refused to transfer 4 shares contrary to Clause 4 (g) of the Articles of Association of the Company.
10. The Defendants state that they are entitled through the 5th Defendant, as members and directors of the 5th Defendant alongside other apartment owners, to the quarters/units at the basement as they form part of common areas meant to be used by the caretaker of the Management Company. As such, the Plaintiffs have no right to the basement quarters in their corporate capacities.
11. The Defendants contend that although the Plaintiffs are yet to transfer the reversionary interests over the suit premises to the management company, the said actions are illegal and fraudulent as the reversionary interests ought to have been transferred to the management company as the beneficial owner thereof for the good of all occupiers.
12. They argue that the Plaintiffs have no proof of ownership of the basement units. That they further lack absolute ownership of the reversionary interests to the suit premises. They assert that the 3 basement units ought to be used as quarters and store for the Management Company. The Defendants insist that their claim is on the 3 basement flats on behalf of the Management Company not over Apartments 1, 2, 3 and 4 which are on the ground floor.
13. The 1st and 2nd Defendants further deny the Plaintiffs' accusation of breaking into the units and aver that on the alleged date of the incident, they had travelled out of the country. That the 3rd and 4th Defendants too could not have broken into the units; reason being that the 4th Defendant is a gardener at the property and was away on leave. They instead allege that the Plaintiffs broke into the 4th Defendant's unit at the basement and maliciously destroyed his household effects and work equipment. The 4th Defendant avers that he is not a trespasser as alleged.
14. The Defendants therefore pray that the Plaintiffs' suit be dismissed with costs. The said costs to attract interest at court rates until payment in full.

Defendants' Counterclaim

15. In their Counter-claim, the Defendants restate their assertions that they purchased, with other persons, 16 apartments out of the 20 apartments offered for sale by the Plaintiffs. Subsequently, and pursuant to Paragraph 1 of the Lease Agreement, the 5th Defendant was incorporated as the management company. The sole mandate of the management company was managing the Apartments and holding the reversionary interests of the two parcels of land as provided at Clause 4 of the Lease Agreement.
16. However, the Plaintiffs have deliberately refused to transfer the reversionary interests over the two parcels of land contrary to terms of the Lease Agreement. The Plaintiffs are therefore illegally and fraudulently holding the reversionary interest instead of having it transferred to the Management Company for the good of the occupiers.
17. They argue that the 5th Defendant is for all intents and purposes the beneficial owner of the reversionary interests. The Defendants therefore seek for Judgement against the Plaintiffs as follows;



- a. An Order do issue against the Defendants in the Counter-claim compelling them to execute all necessary documents and transfer the Reversionary Interest over the two properties LR Nos. 209/8879/9 and 209/8879/10 Kileleshwa Nairobi, to the Management Company known as Scenic Court Management Company Limited, being the 5th Plaintiff in the Counterclaim within 30 days of the Order of this Court. In default of which, the Deputy Registrar of the Environment and Land Court be and hereby authorized to sign and or execute any necessary deed of transfer to give effect to this Order.
- b. An Order do issue against the Defendants in the Counterclaim compelling them to hand over the Original Title Deed to properties LR Nos. 209/8879/9 and 209/8879/10 Kileleshwa Nairobi, to the Management Company known as Scenic Court Management Company Limited, being the 5th Plaintiff in the Counterclaim within 30 days of the Order of this Court. In default of which, the Land Registrar at the Ministry of Lands and Physical Planning be and is hereby authorized to issue replacement title deeds to Scenic Court Management Company Limited in order to give effect to this Order.
- c. A declaration do issue that the three basement units within LR Nos. 209/8879/9 and 209/8879/10 located in Nairobi comprised in a lease registered at the Land Registry as Number 52787/1 constitute the common areas within the said properties and are to be managed and or administered by Scenic Court Management Company Limited.
- d. General damages for breach of Agreement.
- e. Costs of the Counterclaim.
- f. Interest on (d) and (e) above at Court rates until payment in full.

Plaintiffs' Reply to Further Amended Defence & Defence to Counterclaim

18. The Plaintiffs restate that the lease agreements clearly indicate the common areas as outlined therein and does not include the basement units.
19. The Plaintiff argue that prior to the purchase of the said apartments, the basement units, which are in contention, had been put up as income generating projects by the Plaintiffs. They maintain that the lease and sale agreements signed by the Defendants did not transfer the basement units to them. Neither do the agreements provide that the basement units were intended to be used by the management company or its workers.
20. Regarding the transfer of the reversionary interests, the Plaintiffs aver that they are ready and willing to transfer the same on condition that the Defendants cater for the costs.

Defence to Counterclaim

21. The Plaintiffs in the main suit denies the averments levelled against them in the Counterclaim. They restate their readiness and willingness to transfer the reversionary interest to the 5th Defendant. They accuse the Defendants of refusing to pay the costs of transferring the reversionary interests. Therefore, the Defendants cannot turn around and accuse them of illegally or fraudulently holding the same.
22. The Plaintiffs further state that pursuant to the new *Sectional Properties Act*, there is a requirement that each unit should have a sectional title. They aver that the Defendants should be obligated to provide for costs to facilitate compliance with the new regulations.



23. The Plaintiffs in the main suit therefore pray that their suit as stated in the Amended Plaintiff be allowed as prayed and the Defendants' Counter-claim be dismissed with costs.

Evidence adduced on behalf of the Plaintiff

24. At the hearing, Susan Nyambura Wachira testified as PW1. She averred that she manages properties on behalf of the Plaintiffs and that she is also a former director of the companies. She confirmed that she had a resolution and authority to act on behalf of the Plaintiffs. She adduced the minutes and the authority to appear marked as PE (a) and (b). The witness adopted her witness statement dated 21st April 2022 as her evidence in chief.
25. She further testified that they sold to the 1st and 2nd Defendants Apartment A8 vide the Lease dated 26th July 2006, whereas the 3rd Defendant bought Apartment B7 in the Scenic Court Limited vide the Lease dated 18th August 2006. She averred that the Defendants are unlawfully claiming ownership of basement units which were never leased to them. She also adduced the documents on the Plaintiffs' List of Documents dated 28th December 2012 which were marked as PE 2-7 in the order which they are listed.
26. In cross examination, PW1 stated that there are 23 units on the two parcels; LR 209|8879|9 and LR 209|8879|10. The disputed basement units are 3 and which are occupied by 4 Tenants who are their employees. She confirmed that the 5th Defendant as the property manager, has been managing the units sold. The Plaintiffs are only managing units that are yet to be sold; A1, A2, B1 and B2 and the 3 basement units. It was her evidence that they are yet to transfer the reversionary interests to the 5th Defendant.
27. In re- examination, the Witness stated that they have never intended to transfer the basement units to the Defendants. She confirmed that they are yet to transfer the reversionary interests to the 5th Defendant.
28. John Wachira Wambugu testified as PW 2. He stated that he negotiated the sale of the suit properties. He adopted his Witness Statement dated 22nd May, 2023 as his evidence in chief.
29. PW 2 further testified that there were 10 developed apartments and the basement flats. The apartments were all leased to Tenants except the ones they sold to the Defendants. They remained with a few units in the basement. He stated that they only sold the units upstairs and executed Lease documents in favour of each purchaser quoting the specific units. He asserted that they never issued any leases to the units occupied by their Tenants and the basement units which belong to the Plaintiffs' companies.
30. In cross-examination, PW2 stated that the Apartments that were not leased out/sold are No. 1, 2, 3 and 4. He confirmed that it is only the basement units which are in contention. He averred that the 1st Plaintiff has title documents for the basement units exhibited in the Plaintiffs' List of Documents (Pages 30-37). That out of the total apartments, all those that have not been sold have been leased. He stated that the Plaintiffs' companies ought to have been allocated shares in the management company.
31. He confirmed that there have been people staying in the basement units including his driver. However, he could not name the other Tenants staying in the basement units. Further, although he alleged in his Witness Statement that the Defendants broke into one of the units, he had no evidence to substantiate the assertion. The matter was reported at Kileleshwa police station. An inventory was prepared after reporting the matter to Kileleshwa Police Station and items that were lost are listed on the list at Page 66.



32. PW 2 further stated that although he states in his Witness Statement that the 4th Defendant has been occupying the unit premises without paying rent, he could not adduce a Tenancy Agreement requiring the 4th Defendant to pay rent. Further, he could not verify that the rent payable was Kshs. 10,000/=.
33. He further testified that the Management Company was to take care of the common areas as well as the reversionary interests. However, the reversionary interests have not been transferred to the management company. It was his evidence that the costs of transferring the reversionary interests had not been agreed upon in the Lease Agreement although it is standard practice. He averred that currently everyone manages their own units as there is no specific person managing the apartments. He denied being involved in the registration of the 5th Defendant.
34. During re-examination, PW2 stated that the reversionary interest was not transferred because considerations had not been agreed. He also confirmed that there is no record of payment of rent by the 4th Defendant. He averred that under the Sectional Properties Act, Leases should be prepared in favor of the Plaintiffs for the remaining units.

Evidence adduced on behalf of the Defendants

35. Francis Kamau Njoroge, testified as DW 1 on behalf of the Defendants. He confirmed that he is a director of the 5th Defendant company. He adopted his Witness Statement dated 3rd November 2018 as his evidence in chief. He further adduced the documents on the Defendant's List of Documents dated 3rd November 2018 and marked them as DE 1-12 in order in which they are listed.
36. He averred that the suit properties comprise of 2 buildings (blocks) in the same compound referred to as Block A and B. Block A is in the name of Skyview Properties Limited while Block B is in the name of Scenic Court Limited. Each block has 10 apartments. In Block A, there are two basement workers' units, a store and a sanitary facility for the workers. These are the basement units which are in contention. They are accessed from the rear side of block A.
37. DW 1 stated that the workers were to be hired and paid by the management company. The basement units were not to be sold.
38. After incorporation of the management company, the Plaintiffs did not transfer the reversionary interest to it. There is no justification why the transfer of the reversionary interest has not been effected.
39. He asserts that the Plaintiffs managed the buildings up to October 2008 but stopped suddenly without informing the buyers. The buyers subsequently formed a committee to run the affairs of the buildings on behalf of the management company. He averred that he was elected as the Chairman of the Committee. The Plaintiffs have however not been supportive in payment of the service charge. They also stopped paying for electricity for the general common areas including the basement units.
40. In cross examination, DW1 averred that the 1st and 2nd Defendants were issued with leases upon purchase of Apartment A8. The 3rd Defendant only purchased and paid for Apartment B7. The Defendants did not purchase the apartments on the ground floor. They were not for sale. They were intended for workers of the management company. This was not in the documents but they are part of the common areas. It is not stated so in the lease.
41. He further stated that each purchaser has been issued with a lease certificate. DW 1 admitted that the Plaintiffs retained proprietary interest of the 4 apartments that were not sold. He however asserted that the Plaintiffs did not retain proprietary interests in the basement units. He could not adduce any document showing that the basement units are common areas.



42. During re-examination, DW 1 averred that they visited the Registrar of Companies and found out that all the shares of the management company were registered in the names of Susan Nyambura: - 10 shares and Gilbert Nderitu: - 10 shares. Later on, Gilbert transferred his 10 shares to the 10 buyers of the apartments. He averred that they moved to court seeking to have the 6 shares transferred from Susan Nyambura. A consent judgement was arrived at in court transferring the 6 shares to the 6 buyers.
43. He maintained that they need the basement units for the management of the buildings, accommodation of the workers and a store.

Court's directions

44. Upon the close of the hearing, the court directed Parties to file written submissions in support of their respective cases. Parties complied. The Plaintiffs' submissions are dated 2nd September, 2024 whereas the Defendants' submissions are dated 12th September, 2024.
45. The Plaintiffs' submissions are dated 2nd September 2024. In their submissions, the Plaintiffs identify 2 issues for determination as follows;
 - a. Whether the Plaintiffs are the owners of the four remaining apartments; and
 - b. Whether the Defendants are entitled to the four remaining apartments and the three remaining basement units.
46. On the first issue, the Plaintiffs submit that in total, the Plaintiffs owned and erected 20 apartments on the two parcels of land adjacent to one another and proceeded to lease 16 out of the 20 apartments to various Lessees. After selling the 16 apartments, the Plaintiffs retained proprietary interests over the four apartments which were not sold.
47. On the 2nd issue, the Plaintiffs submit that the whole idea about sectional ownership is that a person may own an individual unit within a building without necessarily owning the land upon which the development is located. They assert that even after the transfer of the reversionary interest to the management company, the Defendants would still have no basis in law for claiming the basement units as the lease agreements are clear that the basement units do not form part of the common area and thus the same cannot be said to be part of the Defendants' proprietary interests in the building.
48. It is the Plaintiffs' case that under Section 6 and 7 of the *Sectional Properties Act*, common areas are considered as common properties. According to the Plaintiffs, the common areas include passage of water, sewerage, drainage, electricity, garage and telephone radio services, and the free and uninterrupted access and use of urgent doors for reasonable enjoyment of the common property or unit.
49. The Plaintiffs further affirm that during the purchase of the units, the developer provided the purchasers with a copy of the sectional plan as required under Section 43 of the *Sectional Properties Act* to enable the purchasers make an informed decision. Meaning that the purchasers were aware of the particulars of the development as they were purchasing their individual units.
50. On the issue of reversionary interest, the Plaintiffs submit that it is a non-issue. They state that the Defendants have not placed before the court any agreement between themselves and the Plaintiffs as to consideration and when it will take effect.



Defendants' submissions.

51. On their part, the Defendants filed their submissions dated 12th September 2024. They identified 6 issues for determination, namely;
 - i. Whether the Plaintiffs breached the leases and are illegally holding the reversionary interest over the two properties, L.R. No. 209/8879/9 and 209/8879/10;
 - ii. Whether the orders sought by the Defendants should be granted;
 - iii. Whether the basement units form part of the common areas that is to be utilized by the 5th Defendant;
 - iv. Whether the Defendants have suffered and continue to suffer prejudice;
 - v. Whether the Plaintiffs are entitled to general damages for trespass; and
 - vi. Who should bear the costs of the suit.
52. On the 1st issue, the Defendants submit that the Plaintiffs have admitted that they have not transferred the reversionary interests over the suit properties to the management company in accordance with the provisions of the leases. The Defendants refer the court to clause (4) of the lease which expressly provided for the incorporation of the management company for purposes of holding the reversionary interests in the suit parcels on behalf of the Lessees and for purposes of managing the estate.
53. At clause 4 (e) of the lease, it was provided that the manager (meaning the management company) would within sixty (60) days after registration of the leases in respect of all the apartments in the 'estate' purchase the reversionary interest in the suit parcels together with the buildings and improvements thereon from the Lessor. From the date of transfer of the said reversionary interest all the obligations and like benefits contained therein on the part of the Lessor will vest in and be carried out by the manager. The Lessor agreed with the manager to sell the aforesaid reversionary interest to it at NIL consideration.
54. The Defendants submitted that all the unit holders have indeed had their leases registered. Therefore all that remained was for the Plaintiffs to surrender the mother titles and transfer the reversionary interests in accordance with the terms of the lease. The Defendants submit that the Plaintiffs are therefore in breach of the lease.
55. It is the Defendants' submissions that the Plaintiffs have no lawful justification for their failure to transfer the reversionary interests to the management company.
56. The Defendants submit that they are, as a result of the Plaintiffs' breach of the terms of the lease entitled to the prayers sought in their counter-claim to compel the Plaintiffs to execute all the necessary documents and transfer the reversionary interests over the suit property to the 5th Defendant within 30 days of the order. In default, the Defendants pray that the Deputy Registrar of this court be authorized to sign or execute any necessary deed of transfer to give effect to the order. Further they pray for orders compelling the Plaintiffs to hand over the original title deeds to the suit properties to the management company within 30 days of the order of this court. In default, the Land Registrar, Ministry of Land and Physical Planning be authorized to issue replacement title deeds to the 5th Defendant.



57. On the issue of whether the basement units form part of the common areas, the Defendants refer to the definition of common areas in the *Sectional properties Act*, as,

“So much of a parcel as is not comprised in a unit shown in a Sectional Plan.”

58. The Defendants interpret the definition to mean that common property does not appear in a Sectional plan. The Defendants point out that the Plaintiffs did not provide any evidence of ownership of the basement units. The units, according to the Defendants were not available for sale through long-term leases, as they were intended to serve as staff quarters and store for the management company.

Issues for determination.

59. The court has carefully considered the pleadings filed in this suit by both sides, the evidence adduced and the submissions filed which now form part of the court’s records.

60. As already noted earlier on, the Plaintiffs amended their initial plaint dated 28th December 2012 replacing it with the amended plaint amended on 21st April 2022. The Plaintiffs’ case therefore is as stated in the amended plaint amended on 21st April 2022.

61. In their amended plaint, the Plaintiffs dropped their prayer for a declaration that they are the rightful owners of the apartments numbers 1, 2, 3 and 4 (also known as A1, A2, B1 and B2). In any event, the Defendants were explicit that they have no claim over the said four apartments. The issue of ownership of the four apartments cannot therefore be an issue of determination by this court as framed by the Plaintiffs in their submissions.

62. That said, in this court’s opinion, the issues for determination in this matter are;

- a. Whether the Plaintiffs are obligated to transfer the reversionary interests in the parcels of land on which the twenty apartments are erected to the 5th Defendant;
- b. Whether the three basement units form part of the common areas under the mandate of the 5th Defendant company;
- c. Whether the Plaintiffs are entitled to the reliefs sought in their amended plaint;
- d. Whether the Defendants are entitled to the reliefs sought in their amended counter-claim; and
- e. What orders should issue in respect to the costs of the suit by the Plaintiffs and the counter-claim by the Defendants against the Plaintiffs.

Analysis for determination

i. Whether the Plaintiffs are obligated to transfer the reversionary interest in the parcels of land on which the twenty apartments, the subject matter of this suit are erected to the 5th Defendant.

63. At paragraph 19 of their amended plaint, the Plaintiffs acknowledge their obligation to transfer the reversionary interests over the suit premises to the “respective management companies in terms of the aforementioned lease agreements.” They however state that they are yet to do so since they still retain proprietary interests over the suit premises. In their submissions, they dismissed the Defendants’ claim of the reversionary interests alleging that the Defendants had not placed before the court any agreement between themselves and the Plaintiffs as to consideration and when the transfer would take effect.

64. I find the Plaintiffs’ submissions on the issue of the transfer of the reversionary interests escapist and hollow. I say so because the Plaintiffs have produced as part of their exhibits the sample of the lease



agreements entered into between themselves and the various purchasers of the 16 apartments out of the 20 apartments erected on the suit premises. The lease documents speak for themselves. Further, the submissions contradict their own pleadings particularly the Reply to the further amended statement of Defence and counter-claim where the Plaintiffs expressly restated their readiness and willingness to transfer the reversionary interests to the 5th Defendant on condition that the Defendants paid the costs of the transfer.

65. As correctly submitted by the Defendants, Clause 4 of the Lease expressly provided for the incorporation of the management company for the purposes of holding the reversionary interest on behalf of the Lessees in the estate...”. The ‘estate’ as defined in the lease comprises of the 20 apartments.

66. Clause 4 (e) of the lease further provided for the consideration and the time when the reversionary interests would be transferred to the management company. It provided that;

“The manager shall within sixty days after the registration of the leases in respect of all the apartments in the estate purchase the reversionary interest in the said land reference number 209/8879/10 and land reference number 209/8879/9 together with the buildings and improvements thereon and from the date of the transfer of the said reversionary interest all the obligations and like benefits herein contained on the part of the Lessor will vest in and be carried out by the manager and the Lessor hereby agrees with the manager to sell the transferor the Lessor’s aforesaid reversionary interest to it at NIL consideration.” (emphasis added)

67. The commitment to transfer the reversionary interest is contained in the lease and there is no need for any other agreement between the Defendants and the Plaintiffs in respect to the transfer of the reversionary interests. The consideration too was already agreed upon as NIL consideration. Meaning that no more money, other than the lease consideration was payable. The time too was also agreed upon and clearly stipulated in the lease. The 5th Defendant company is the duly incorporated management company as contemplated in the lease.

68. The assertion by the Plaintiffs’ 2nd witness that the reversionary interest was not transferred because consideration had not been agreed on is baseless.

69. The evidence by PW2 was to the effect that the Plaintiffs chose to retain the four apartments out of the 20 that were not sold. Ideally, and as he stated, the leases for the four units should be prepared under the *sectional properties act* in favour of the Plaintiffs.

70. A look at the form ‘CR 12’ of the 5th Defendant company - Scenic Court Management Company Limited, as at 3rd September 2012, on page six of the Defendants’ bundle discloses that Susan Nyambura Wachira, held ten out of 20 shares in the company. By a consent order dated 3rd May 2017, recorded in Milimani ELCMisc. 270 of 2017 (Janet Wangari Muhoro and 5 others -vs- Susan Nyambura Wachira), Susan Nyambura Wachira was compelled to transfer 6 out of the 10 shares to the purchasers of the apartments leaving her with only four (4) shares in the management company.

71. The agreement in the leases was that each purchaser was to be issued with a share certificate representing one twentieth (1/20) part of the share capital of the Management Company. Each of the 16 purchasers of the apartments therefore holds a share certificate representing one share in the Management Company. By holding four shares in the Management Company, it means that Susan Nyambura Wachira owns or represents the Plaintiffs’ interests in the four apartments numbers 1, 2, 3 and 4 (also known as A1, A2, B1 and B2). All the 16 purchasers of the units have indeed had their leases registered.



72. This brings me to the submissions by the Plaintiffs about the concept of sectional ownership of properties. The Plaintiffs submitted that the whole idea about sectional ownership is that a person may own an individual unit within a building without necessarily owning the land on which the development is located.
73. The submission by the Plaintiff is partially true but actually incomplete. The concept of sectional ownership as captured in the *Sectional Properties Act*, is that a building is divided into units to be owned by the individual proprietors. The individual proprietors however and in order to fully enjoy their proprietary rights own the common property (including the land) as tenants in common. That is why the statute provides that on registration of a section plan, the registrar shall close the register of the parcel described in it and open a separate register for each unit described in the plan. The registrar shall then, on payment of the prescribed fee issue in respect of each property, a certificate of lease if the property is leasehold and shall include its proportionate share in the common property.
74. From my reading of clause 4 (e) of the lease, that was the clear intention of the parties. After the registration of the leases of all the apartments, the obligations on the part of the Lessor were to vest in and be carried out by the manager, henceforth.
75. The Lessors herein, who are the Plaintiffs however seem not to have been keen on actualizing the provisions of the lease in respect of the transfer of the reversionary interests to the management company. That explains the reasons why they have for over ten years now, since they sold the sixteen units have failed to transfer and register the leases in respect of the four units they retained for themselves in an attempt to justify their failure and or refusal to transfer the reversionary interests.
76. The unwillingness to actualize the express provisions in the lease agreements is not unique to this case. It is indeed the reason for the enactment of the *Sectional Properties Act, Act No. 21 of 2020*. As Munyao J observed in the case of *Rehman -vs- Luhar* (Environment and Land Case No. 10 of 2016) {2022} KEELC 13714 (KLR)(28th September 2022) (Judgment);-
- “Under the original statute (*Sectional Properties Act, Act No. 21 of 1987*), it was not a must for one to register his/her property under the *Sectional Properties Act*, despite being property with sectional units. As a result, there evolved a practice that when sectional properties were being sold, what would be registered was a sublease that would go together with the reversionary interest in the leasehold interest held by the developer. There was little or no mention of the manner in which common areas would be held or whether the developer had a right to make additional units in the areas not already covered by the existing development. As a result, it was felt that the purpose of the *sectional properties act* was not being effectuated and that developers were circumventing the same.”
77. The intention of the *sectional properties act* is to bring under the Act all sectional properties for which units were sold to persons with the intentions of having them own these units. Section 13 (2) of the *Sectional Properties Act*, 2020 mandatorily requires all long term sub-leases intended to confer ownership of an apartment, like in this case, to be reviewed to conform to Section 54 (5) of the *Land Registration Act* within a period of 2 years of the commencement of the Act. The commencement date of the Act was the 28th December 2020.
78. From the totality of the evidence adduced before this court, the suit premises fall within the scope of those properties which were mandatorily required to have been converted under Section 13 (2) of the *Sectional Properties Act*, 2020. The implication is that the provisions of the *Sectional Properties Act*,



2020 are applicable in this case. Indeed the parties have extensively referred to the provisions of the said Act in their respective cases and submissions.

79. The Plaintiffs having divided the suit premises into units and issued long term sub-leases intended to confer ownership of the apartments to the purchasers and are therefore obligated not only to transfer the reversionary interests in the suit premises to the Management Company but further to register the sectional plans and surrender the original titles to the Registrar for purposes of closure of the register of the two parcels and opening of a separate register for each unit (read apartment). They cannot have their cake and eat it at the same time.

ii. Whether the three basement units form part of the common areas under the mandate of the 5th Defendant company.

80. In their submissions, the Plaintiffs at paragraph 25 and 26 thereof aver that during the purchase of the units in the suit property, the developer provided the purchasers with a copy of the sectional plan as is required under section 43 of the *Sectional Properties Act*, to enable them make an informed decision regarding the purchase. That allegation by the Plaintiffs would imply that the purchasers were aware of the particulars of the development they were purchasing into. The Plaintiffs insist that what was sold was indeed what was provided for under the sectional plan.

81. The Defendants in rejoinder submitted that the basement units form part of the common areas of the estate. They assert that the definition of common property in the Act goes further to justify their claim, since the three units do not appear in the sectional plans.

82. In making my determination on this issue, I have keenly studied the lease on page 38 of the Plaintiffs' bundle which is a replica of all the leases signed by the other purchasers of the apartments. In the lease at clause (2), it is noted that;

“The Lessor has caused to be erected on the said piece of land certain buildings consisting of ten (10) apartments (hereinafter referred to as “the apartments”) and the said piece of land, and an adjoining piece of land known as land reference number 209/8879/10 and all the apartments therein respectively built are hereinafter referred to as “the estate”.

83. It is further provided at clause (4) that;

“The manager has been incorporated for the purpose of holding the reversionary interest in the said land on behalf of the Lessees in the Estate and for managing the estate.”

84. I too need to highlight clause 4 (e) of the lease which is explicit that the manager would purchase the reversionary interest in the two parcels of land reference number 209/8879/10 and 209/8879/9 together with ‘the buildings and improvements thereon’.

85. The buildings definitely include the basement units. The manager according to the lease was expected to take charge and manage the entire estate without any exceptions. Nowhere was it provided in the lease that the Plaintiffs were to retain the basement units for themselves. On the contrary, it is clear that once they sold the twenty apartments comprising the estate as defined in the lease(s), they were to hand over the land parcels 209/8879/9 and 209/8879/10 together with all the buildings therein to the manager whose responsibility was to manage the estate on behalf of the owners of the apartments.

86. The action of the Plaintiffs of abandoning the three basement units and failing to pay electricity further demonstrates that they always knew and indeed always treated the three basement units as common



property. As the witness for the Defendants affirmed, the three units were intended to be workers' quarters and a store. That is why they were never offered for sale and were not in the sectional plan.

87. I am persuaded that the latter action of the Plaintiffs to claim the three basement units was an afterthought. Since the Plaintiffs retained four apartments, they own the three basement apartments as common tenants alongside the owners of the sixteen apartments. The three basement units form part of common property of the estate.

iii. Whether the Plaintiffs are entitled to the reliefs sought in their amended plaint.

88. The Plaintiffs in their amended plaint sought for a declaration that they are the rightful owners of the three basement units and an order of permanent injunction restraining the Defendants from entering, leasing, dealing in any manner or interfering with the basement units as well as general damages for trespass against the Defendants.
89. From the above findings of this court, the Plaintiffs' case fails in its entirety. They are not entitled to any of the prayers sought in their amended plaint.

iv. Whether the Defendants are entitled to the reliefs sought in their amended counter-claim.

90. From the foregoing, the court finds in favour of the Defendants against the Plaintiffs. Consequently, the court declares that the three basement units constitute common areas to be managed and administered by the 5th Defendant, Scenic Court Management Company limited. The court further orders the Plaintiffs to execute all necessary documents and transfer the revisionary interests over the two properties, L.R No. 209/8879/9 and 209/8879/10 to the 5th Defendant within 30 days of this judgment failing which the Deputy Registrar of this court is authorized to sign and execute the necessary deed of transfer to give effect to this order.
91. The Plaintiffs are further ordered to surrender the original title documents of the two properties L.R No. 209/8879/9 and 209/8879/10 to the 5th Defendant in the next 30 days. In default whereof, the Registrar shall act accordingly in accordance with the provisions of Section 13 of the [Sectional Properties Act, 2020](#).
92. The Defendants in their amended counter-claim had also prayed for general damages for breach of agreement.
93. For the umpteenth time, this court wishes to reiterate that general damages are not recoverable in cases of alleged breach of contract.
94. In the case of Kenya Tourist Development Corporation -vs- Sundowner Lodge Limited (2018) eKLR, the court was categorical that,
- “As a general rule general damages are not recoverable in cases of alleged breach of contract and that has been the settled position of law in our jurisdiction, and with good reasons.
- In Dharamshi –vs- Karsan (1974) EA 41, the former Court of Appeal held that general damages are not allowable in addition to quantified damages with Mustafa Judge expressing the view that such an award would amount to duplication ...”
95. I therefore disallow the Defendants' claim for general damages for breach of agreement as prayed for in the counter-claim.



v. What orders should issue on costs?

96. Undoubtedly, the court has the discretion as to whether costs are payable by one party to another, the amounts of costs and when they are to be paid. This discretion must be exercised judicially; it must not be exercised arbitrarily.
97. In the case of *Mayfair Holdings limited –vs- Ahmed* (1990) eKLR, the Court of Appeal cited with approval the holding by the court in the English Case of *Ritter –vs- Godfrey* (1920) 2KG 47, where the court (Lord Dale M.R) stated that,
- “There is a settled practice that in the absence of special circumstances, a successful litigant should receive his costs, that it is necessary to show some ground for exercising discretion by refusing an order which would give them to him. The discretion must be judiciously exercised, and therefore there must be some grounds for its exercise, for a discretion on no grounds cannot be judicial.”
98. Section 27 of the *Civil Procedure Act* provides that costs shall follow the event unless there are good reasons to do otherwise.
99. The Defendants having succeeded in their counter-claim against the Plaintiffs are awarded the costs of the counter-claim and of the suit against the Plaintiffs.

Final disposition.

100. Consequently, the court issues the following orders:-
- a. The Plaintiffs case is dismissed in its entirety.
 - b. An order is hereby issued declaring the three basement units within L.R. No. 209/8879/9 and 209/8879/10 in Nairobi comprised in a lease registered at the Lands registry as number 52787/1 constitute the common areas to be managed and administered by the 5th Defendant, Scenic Court Management Company limited.
 - c. An order is hereby issued directing the Plaintiffs to execute all necessary documents and transfer the revisionary interests over the two properties, L.R No. 209/8879/9 and 209/8879/10 to the 5th Defendant, Scenic Court Management Company limited within 30 days of this judgment failing which the Deputy Registrar of this court is authorized to sign and execute the necessary deed of transfer to give effect to this order.
 - d. An order is hereby issued directing the Plaintiffs to surrender the original title documents of the two properties L.R No. 209/8879/9 and 209/8879/10 to the 5th Defendant, Scenic Court Management Company limited in the next 30 days of this judgement. In default whereof, the Chief Land Registrar shall act accordingly in accordance with the provisions of Section 13 of the *Sectional Properties Act*, 2020.
 - e. The costs of the suit and the counter-claim are awarded to the Defendants against the Plaintiffs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 13TH DAY OF FEBRUARY 2025.

M.D. MWANGI



JUDGE

In the virtual presence of:

Ms. Addikah for the Plaintiffs

Ms. Radol for the Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

