



**Schellekens & 2 others v Putte (Environmental and Land Originating Summons
E007 of 2024) [2025] KEELC 3023 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3023 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2024
YM ANGIMA, J
MARCH 27, 2025**

BETWEEN

MARINA SCHELLEKENS 1ST PLAINTIFF

MICHEL VAN DEN PUTTE 2ND PLAINTIFF

SAARJE VAN DEN PUTTE 3RD PLAINTIFF

AND

LUC VAN DEN PUTTE DEFENDANT

RULING

A. Plaintiff's Application

1. By an originating summons dated 2.4.2024 grounded on Order 37 Rule 8 of the *Civil Procedure Rules*, Section 96 of the *Land Registration Act* and all other enabling provisions of the law, the plaintiffs sought the following orders:
 - a. That a declaration that the joint ownership of the suit property known as Subdivision No. 2107 of Section 1, Mainland North between the Plaintiffs and the Defendant as Tenants in Common be severed/determined.
 - b. That a reputable valuer to be appointed by the Court within 7 days from the date hereof, shall carry out valuation of the suit property and file his report in Court within 7 days for the purposes of ascertaining the current market value of the property and a reserve price in the event of a forced sale.
 - c. That the valuation costs shall be shared between the Plaintiffs and the respondent equally failing which the cost shall be paid off from the proceeds of the sale.



- d. That following the valuation, the suit property known as Subdivision No. 2107 of Section 1 Mainland North be sold subject to the reserve price fixed by the valuer aforesaid and the proceeds thereof shall be shared equally between the Plaintiffs and the Defendant.
 - e. That in the event that any of the parties fails to co- operate in the sale of the suit property, the Deputy Registrar of this court shall be at liberty to execute any document that may be necessary to facilitate the sale of suit property known as Subdivision No. 2107 of Section 1, Mainland North and the distribution of the proceeds thereof in accordance with the orders made herein.
 - f. That the costs of these proceedings be provided for.
2. The application was supported by the supporting affidavit sworn by Michel Van Putte on 02.04.2024. It was deposed that the plaintiffs and defendants are joint owners of Subdivision No. 2107 of Section 1, Mainland North. Following the judgement of this court in Mombasa ELC 23A of 2024 on 28.09.2023 where the court ordered:
- a. Declaration that the Plaintiffs and the Defendant are the Legitimate Registered Proprietors as Tenants in Common of all that Parcel Reference known as Subdivision No. 2107 (Original No. 1669/1) of Section I Mainland North, situated in the Mombasa Municipality, containing by measurement Nought Dec Two Three Seven Seven (O .2377) of a Hectare or thereabouts, and all Developments thereon (the "Suit Property").
 - b. A declaration that the Defendant' s Occupation, Enjoyment and Derivative Use of the Suit Property w. e. f Year 2015 has therefore been in Trust for All Tenants in Common thereof.
 - c. A permanent injunction do issue restraining the Defendant, whether by himself, his Agents/ Servants/ Employees/ Assigns or whosoever Claiming through him, from Wasting, Disposing of the Suit Property, Interfering with the Plaintiffs' Possession, Occupation, Enjoyment and Derivative Use of the Suit Property, and/or in any manner whatsoever, Dealing with the Suit Property in a manner adverse to the Plaintiffs' Interest therein.
 - d. Each party to bear its own costs.
3. It was the plaintiffs' case that it has become untenable and difficult to own the suit property as tenants in common since the defendant insists on exclusive use. The plaintiffs urged the court to order the sale of the suit property and proceeds thereof to be shared amongst parties since the same was not capable of being partitioned.

B. Defendant's Response

4. The defendant filed a replying affidavit sworn on 25.10.2024 opposing the summons. It was stated that the plaintiffs had sent auctioneers to the suit property to execute the judgment as opposed to finding a suitable way forward. It was contended that the respondent stands to suffer great prejudice if the property is subjected to a forced sale as opposed to favourable market prices.

C. Directions on Submissions

5. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. Only the plaintiff filed submissions dated 24.10.2024.



D. Issues for Determination

6. The court has perused the application dated 02.04.2024, the responses thereto and the material on record. The court is of the view that the following key issues arise for determination herein:
 - a. Whether the plaintiffs are entitled to the orders sought
 - b. Who shall bear the costs of the applications

E. Analysis and Determination

a. Whether Plaintiffs are Entitled to the Orders Sought

7. From the material on record, the plaintiffs and defendant jointly purchased Land Parcel MN/I/2107 and developed a bungalow thereon as tenants in common. The relationship between the plaintiffs and defendant has irretrievably broken down causing difficulties in the management of the property, leading the plaintiffs to seek its termination. Section 96 of the Land Registration Act allow the severance of a common tenancy by way of partition or sale of the land and states:
 1. If for any reason the land sought to be partitioned is incapable of being partitioned, or the partition would adversely affect the proper use of the land, and the applicant for partition or one or more of the other tenants in common require the land to be sold, and the tenants in common cannot agree on the terms and conditions of the sale or the application of the proceeds of the sale, the tenants in common may make an application to the court for an order for sale and the court may—
 - a. cause a valuation of the land and of the shares of the tenants in common to be undertaken; and
 - b. order the sale of the land or the separation and sale of the shares of the tenants in common by public auction or any other means which appears suitable to the court; or
 - c. make any other order to dispose of the application which the court considers fair and reasonable.
 2. The court shall, in exercising its powers under paragraphs (b) and (c), have regard to any of the matters set out in section 94(3)(a) to (f) that may be relevant in the circumstances.
 3. A tenant in common shall be entitled to purchase the land or any share of it that is offered for sale, either at an auction or at any time by private sale.
8. The court has considered the material on record to the provisions of Section 96 (1) of the said Act which gives the court discretion to make such orders for the valuation and sale of land held in common either by public auction or any other means. It is apparent that the relationship of the parties is no longer cordial and they cannot agree on the terms and conditions of the sale. In the case of Shah & another v Haria & another (Environment and Land Case Civil Suit E340 of 2021) [2022] KEELC 2226 (KLR) (16 June 2022) (Judgment) which was cited by the plaintiffs it was held *inter alia* that:

“My reading of the section 96(2) is that, before making an order for sale of the land, the court must make an enquiry to establish amongst other things: -

 - a. The nature and the location of the land;



- b. Whether it may be feasible to partition the land (instead of a sale) considering the provisions of the law regulating subdivision of land and any covenants and conditions applicable to the land in question;
 - c. The number of co-tenants (co-owners) and the extent of their respective shares;
 - d. The value of any contribution made by any of the co-tenant to the improvements on the land or towards the maintenance of the Land or buildings thereon;
 - e. Where the tenants in common are spouses or are dependants of or related to any of the tenant(s) in common; whether they have been or will be adequately provided for as a consequence of or after the partition is effected, to ensure they are not rendered homeless; and
 - f. Where the Applicant to the court is a Judgment debtor in the execution of a decree; whether the interests of the spouse or dependants of the Judgment-creditor whose interest/share is to be sold will be adequately catered for and particularly that no spouse or dependant will not be rendered homeless.”
9. It is evident that the suit property is a single residential bungalow and is not capable of being partitioned and since their relationship is broken down beyond repair they cannot physically share the space. The only available option is for the property to be sold; either by one party buying out the other or sale to a third party and proceeds shared equally amongst the co-tenants. In his grounds of opposition the defendant agreed to commissioning a valuer for the sake of getting a favorable market value. As such, court is inclined to direct that the suit property be sold upon a valuation by a professional, duly registered Land valuer and that the net proceeds be shared equally amongst the co-tenants. Either of the parties will be at liberty to buy off the other’s share with the purchase price being the value set by the professional duly registered Land valuer.

b. Who shall Bear the Costs of the Application

10. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the [Civil Procedure Act](#) (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA. The court finds no good reason to depart from the general rule. As a result, the plaintiff shall be awarded the costs of the originating summons.

F. Conclusion and Disposal Order

11. The upshot of the foregoing is that the court finds and holds that the originating summons dated 02.04.2024 is merited. As a consequence, the court makes the following orders for the disposal of the application.
- a. The property known as Parcel Reference Subdivision No. 2107 (Original No. 1669/1) of Section I Mainland North jointly owned by the parties herein as tenants in common shall be sold upon valuation by a professional, duly registered land valuer and that the net proceeds shared equally between the co-tenants.



- b. Either of the parties is at liberty to buy off the other's share with the purchase price being the value set by the professional duly registered Land valuer.
- c. The valuation cost shall be shared amongst the Plaintiffs and the defendant equally failing which the cost shall be paid off from the proceeds of the sale.
- d. In case the parties do not agree on the valuer to undertake the valuation within 30 days from the date thereof, the Deputy Registrar of the court shall nominate one and notify the parties accordingly.
- e. The plaintiffs are awarded the costs of the originating summons.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 27TH DAY OF MARCH 2025.

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Y. M. ANGIMA

JUDGE

In the presence of

Court assistant Gillian

Mr. George Anangwe for the Plaintiffs

Mr. Ramadhan Salim for the defendant

