



**Shah & another v Palm Healthcare International Limited (In Receivership)  
& 3 others (Commercial Case 448 of 2012) [2025] KEHC 12489 (KLR)  
(Commercial and Tax) (1 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12489 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 448 OF 2012  
JWW MONG'ARE, J  
SEPTEMBER 1, 2025**

**BETWEEN**

**RAMESHCHANDRA SOMCHAND SHAH ..... 1<sup>ST</sup> PLAINTIFF**

**SAVITA RAMESHCHANDRA SHAH ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PALM HEALTHCARE INTERNATIONAL LIMITED (IN RECEIVERSHIP) ... 1<sup>ST</sup>  
DEFENDANT**

**BENARD KOP ..... 2<sup>ND</sup> DEFENDANT**

**SANJEEV NAMAR SHASHIKANT GADHA ..... 3<sup>RD</sup> DEFENDANT**

**ANWAR MAJD HUSSEN ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The facts giving rise to this case are not in dispute. A lease agreement dated 29<sup>th</sup> November 2005 was executed between the Plaintiffs, as lessors and owners of Godowns constructed on LR. No. 209/8929, off Enterprise Road, Nairobi and the 1<sup>st</sup> Defendant (“Company”), as the lessee for a term of 6 years, from 15<sup>th</sup> December 2005 to 14<sup>th</sup> December 2011. The Lease obligated the Company to maintain the premises in good tenantable condition and, upon expiry, to restore it to its original condition. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants (“Sanjeev” and “Anwar”) were guarantors, agreeing to cover any default by the Company in rent payments or other lease obligations. On 6<sup>th</sup> April 2009, PTA Bank appointed the 2<sup>nd</sup> Defendant as Receiver and Manager of the Company due to its financial distress (“the Receiver”).
2. The Deed of Appointment provided that PTA Bank would indemnify the Receiver for claims, expenses, or damages incurred in his role, except in cases of fraud or negligence. The Receiver continued



operating the Company's business on the leased premises during the receivership and in a letter dated 9<sup>th</sup> April 2009, the Plaintiffs informed the Company and the Receiver that the lease expired on 14<sup>th</sup> December 2011, but they remained in possession until 31<sup>st</sup> March 2012, an overstay of 108 days and that no rent was paid for this period (15<sup>th</sup> December 2011 to 31<sup>st</sup> March 2012) by the Defendants. Through a plaint dated 5<sup>th</sup> July 2012 and orally amended on 21<sup>st</sup> July 2021, the Plaintiffs claim that the Defendants failed to restore or repair the premises to the required tenantable condition upon vacating, as mandated by the lease, that unauthorized alterations were made to the premises, including changes to toilets, mezzanine floors, partitions, doors, and drains and that the Plaintiffs undertook the necessary repairs and restoration at their own expense after the Defendants vacated.

3. The Plaintiffs state that meetings were held on 15<sup>th</sup> September 2011 and 15<sup>th</sup> October 2011 involving all parties to discuss repair and restoration costs and a Quantity Surveyor's report estimated restoration costs at Kshs.24,756,000/= . That a contractor, hired by the Defendants, estimated repairs at Kshs.20,000,000.00/= but despite these discussions, the Defendants did not undertake any repairs. The Plaintiffs claim that they restored the premises between July and December 2012, incurring costs of Kshs.15,238,582/= (net of withholding tax) and they now claim a total sum of Kshs.30,638,842.00/= including mesne profits and repair costs. In short, the Plaintiffs seek mesne profits for the unpaid rent during the overstay period and compensation for repair costs they incurred due to the Defendants' failure to restore the premises.
4. In response to the suit, the Defendants filed various statements of defence. The Receiver denies personal liability, claiming he acted solely as an agent of the Company and Sanjeev and Anwar, as guarantors, argue they were not liable for claims after the receivership began, as they no longer controlled the Company. Sanjeev disputes the restoration costs, noting the Plaintiffs' claim escalated over time, from Kshs. 3.4 million to Kshs. 24.7 million and confirmed no repairs were made by the Defendants due to the receivership. A jurisdictional challenge by Sanjeev and Anwar was dismissed by the court (Okwany J.,) on 3<sup>rd</sup> October 2019 paving way for the hearing of the matter. Let me also point out that during the course of the suit, the 2<sup>nd</sup> Plaintiff, unfortunately passed away, and her death was registered on the property title, making the 1<sup>st</sup> Plaintiff the sole registered owner.
5. At the hearing, the Plaintiffs presented 5 witnesses; the 1<sup>st</sup> Plaintiff Rameshchandra Somchand Shah(PW 1) who adopted his witness statement dated 24<sup>th</sup> November 2018 and produced the Plaintiffs' List and Bundle of Documents dated 5<sup>th</sup> July 2012(PExhibit 1), Supplementary List and Bundle of Documents dated 26<sup>th</sup> November 2018(PExhibit 2) and Further Supplementary List and Bundle of Documents dated 11<sup>th</sup> January 2022(PExhibit 3); Mr. Charles Kinyanjui Maingi(PW 2), a Quantity Surveyor who produced his report dated 20<sup>th</sup> July 2011; Mr. Rasik Vekaria(PW 3), a Contractor from Vekaria Property Developers who adopted his witness statement dated 24<sup>th</sup> November 2018; Mr. Stephen Marandu(PW 4) an employee of Steel Structures Limited who adopted his witness statement dated 16<sup>th</sup> February 2022 and; Mr. Tim Njehia (PW 5), a valuer with Crystal Valuers Limited who produced a Certificate of Value for the premises. On the Defendants' part, the Receiver testified on his own behalf and that of the Company (DW 1) where he adopted his witness statement dated 14<sup>th</sup> December 2012 and produced their List and Bundle of Documents dated 25<sup>th</sup> October 2012(DExhibit 1) and Supplementary List and Bundle of Documents dated 23<sup>rd</sup> November 2021(DExhibit 2). Sanjeev then testified on his own behalf and that of Anwar(DW 2) where he adopted his witness statement dated 24<sup>th</sup> August 2012 and produced the List and Bundle of Documents of the same date(DExhibit 3-6).
6. After the hearing, the court directed the parties to file written submissions which are on record. I have considered the same together with the evidence and since they mirror the parties' positions that I



have summarized above, I will not highlight them but will refer to them as needed in my analysis and determination below.

### **Analysis and Determination**

7. In making this determination, I am guided by the fact that the standard of proof in civil cases is on a balance of probabilities and that the burden of proof is on the party alleging the existence of a fact which he wants the Court to believe. This is anchored in section 107 (1) and (2) of the [Evidence Act](#) (Chapter 80 of the Laws of Kenya) which provides that “whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist” and that “When a person is bound to prove the existence of any fact it is said that he burden of proof lies on that person”. In *Miller .V. Minister Of Pensions 1947 ALL E.R. 372*, Lord Denning aptly summarised the application of the standard in the following terms:

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in criminal cases. If the evidence is such that the tribunal can say: We think it more probable than not; the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept, where both parties’ explanations are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”

8. The Court of Appeal in *James Muniu Mucheru v National Bank of Kenya Limited [2019] KECA 1058 (KLR)* simply put it that ‘Courts will make a finding based on which party’s version of the story is more believable.

9. With the above in hindsight, I will now proceed to determine this matter and I note that the parties have submitted on issues raised by the Plaintiffs in their submissions as follows:

- a. Whether the Receiver is liable for his actions owing to his capacity as the Receiver and Manager of the Company
- b. Whether the Company made alterations to the leased premises without permission/approval from the Plaintiffs as landlords
- c. Whether the Receiver and the Company reinstated the leased premises after vacating on 31<sup>st</sup> March 2012
- d. Whether the Receiver and the Company paid rent and related taxes between 15<sup>th</sup> December 2011 and 31<sup>st</sup> March 2012 when they vacated the leased premises
- e. Whether the Defendants are liable for the Plaintiffs’ claim in the plaint and whether Sanjeev and Anwar should indemnify the Receiver and the Company for any sums awarded to the Plaintiffs
- f. Whether the Plaintiffs’ claims have been proved
- g. Which party is liable for costs of the suit

### **Liability of the Receiver**

10. The Plaintiffs argue the Receiver is personally liable under section 348(2) of the [Companies Act](#) (repealed), as he continued occupying the premises and failed to pay rent, despite PTA Bank’s



undertaking to cover rental obligations. They dismiss the Receiver's claim of non-liability citing the case of *Top Time Enterprises Limited v P.V.R. Rao as Receiver/Manager appointed by Kenya Commercial Bank Limited to run Nyali Beach Hotel Limited in Receivership*) & another [2014] KECA 684 (KLR) where it was held that receivers are liable for contracts entered during their tenure.

11. On his part, the Receiver states that he is not liable to compensate the Plaintiffs in any way as he was never a party to the Lease and that it was never his duty through the instrument appointing him that he was to pay rent and/or actual costings of repairs and such other expenses on behalf of the Company. He submits that payment of rent was made by third parties and that he never entered into any contracts with the Plaintiffs to make him personally liable. Further, that there have been no allegations of fraud or negligence made against him and proved satisfactorily to warrant him being personally liable Plaintiffs. He submits that all he did was facilitate meetings and discussions by correspondence on the shareholders proposals on settlement of outstanding rent arrears and vacating the suit premises. That in any event, the securities document and the Deed of Appointment that appointed him Receiver clearly provided that he was an agent of the Company and therefore, his acts and omissions, if any were to be borne by the Company, its guarantors and also indemnified by PTA Bank.
12. In *Top Time Enterprises Limited v P V R Rao*(supra) the Court of Appeal held that "...the general legal position is simply put, that the receiver or manager of a company under receivership acts as a principal in entering into any contracts in the performance of his functions, and is therefore personally liable on the contracts entered into by him in his capacity as receiver, unless the contract provides otherwise."

Therefore, the Receiver can only be held personally liable in respect of contracts entered by him in the performance of his functions unless the same contracts provide otherwise. The question is thus, whether the Receiver entered into any contract with the Plaintiffs to remain in the premises post-lease expiry. I have gone through the evidence. It is not in contention that a decision was made by the Company to overstay in the premises after the lease expired by effluxion of time and that there was no formal renewal or new lease agreement. This decision was made when the Receiver was actively managing the Company's operations and that while there was no formal agreement (written or oral) between the Plaintiffs and the Receiver to extend the lease beyond 14<sup>th</sup> December 2011, the Company's decision to remain in possession, coupled with PTA Bank's prior undertaking to pay rent, could be interpreted as an implied contract to continue occupying the premises under similar terms. In my view, the Receiver's active management and failure to vacate by the lease expiry date suggests he adopted the lease obligations and that an implied contract by conduct was formed.

13. The said section 348(2) of the repealed *Companies Act* provided that "A receiver or manager of the property of a company appointed as aforesaid shall, to the same extent as if he had been appointed by order of a court, be personally liable on any contract entered into by him in the performance of his functions..."

DW 2 stated that when the Company was placed under receivership in April 2009, the shareholders played no active in the affairs of the Company. From PTA Bank's letter of 27<sup>th</sup> April 2009, the Bank, upon the request by the Receiver, undertook to pay the rental arrears. Thus, it would appear that the decision to stay in the premises was made by the Company and the Receiver and even without a formal contract, the Receiver's continued occupation constitutes a contractual obligation for which he is personally liable, as he acted as a principal in managing the Company's affairs when the Company extended its stay in the premises. It should not be lost that the Receiver's liability hinges on his actions during the receivership, not necessarily on a formal contract. The Plaintiffs' tolerance of the overstay and prior rent payments by the Company strengthen the argument for an implied contractual obligation that the Receiver was clearly a part of. It is therefore my finding that the Receiver entered into



a contract with the Plaintiffs by conduct when it acceded to the Company's overstay in the premises after the lease expired. This makes him personally liable for any claims arising out of the overstay.

#### **Alterations to the leased premises without permission/approval from the Plaintiffs**

14. It is not in contention that Clause (p) of the Lease obligated the Company to provide and submit to the Plaintiffs, their architects and the City Council of Nairobi (as it was then) for approval; drawings, plans, specifications and quality of material to be used in respect any partitions, installations, alterations and additions. The Plaintiffs have stated that from the evidence, there were various alterations made on the premises without prior approval by the Plaintiffs. The Plaintiff annexed various letters dated 9<sup>th</sup> May 2007, 30<sup>th</sup> May 2007, 25<sup>th</sup> October 2007, 22<sup>nd</sup> October 2009 and 14<sup>th</sup> December 2009 where the Company admits to making unauthorized alterations and seek regularization of the same from the Plaintiffs through approvals after the fact. PW 2, in his report also noted various unauthorized alterations. It is therefore my finding that there were alterations to the leased premises without permission/approval from the Plaintiffs.

#### **Reinstatement of the leased premises after vacating on 31<sup>st</sup> March 2012**

15. As stated, it is the Plaintiffs' position that the leased premises were not restored to the former good and tenable state by the Defendants before they yielded vacant possession as stipulated in the Lease. They produced evidence including letters by the Receiver and the Company dated 7<sup>th</sup> September 2011 and 10<sup>th</sup> January 2012 where they commit themselves to restore the premises to their original state of repair as at the time of commencement of the Lease. There was no evidence by the Defendants indicating that any restorative repairs were done by them. The Receiver in his testimony could not confirm whether the premises were restored and yielded back to its original position and DW 2 only testified that the rent deposit was supposed to be sufficient to restore the leased premises. It is therefore my finding that the leased premises were never reinstated by the Company and the Receiver.

#### **Payment of rent and related taxes between 15<sup>th</sup> December 2011 and 31<sup>st</sup> March 2012**

16. The Plaintiff's position is that no rent was paid for the 108-day overstay period, constituting mesne profits. In his testimony, the Receiver could not confirm whether the Company was up to date in its rent payments during this period. In sum, there was no evidence by the Defendants that rent was ever paid for this period and I therefore find that the Plaintiff's position remains that no rent and related taxes were paid between the overstay period.

#### **Liability of the Plaintiffs' claims and whether Sanjeev and Anwar should indemnify the Receiver and the Company for any sums awarded to the Plaintiffs**

17. The Plaintiffs maintain that the Company and the Receiver are primarily liable, with Sanjeev and Anwar liable as guarantors for any default under the lease terms. What is clear is that the Lease expired on 14<sup>th</sup> December 2011, but the Company and the Receiver remained in possession until 31<sup>st</sup> March 2012, an overstay of 108 days. No rent was paid for this period by the Defendants and they failed to restore or repair the premises to the required tenable condition upon vacating, as mandated by the Lease. The Defendants also made unauthorized alterations to the premises. The Plaintiffs have stated that after the Defendants vacated, they restored the premises between July and December 2012, incurring costs of Kshs. 15,238,582 (net of withholding tax), as confirmed by PW3. The Plaintiffs' total claim, including mesne profits and repair costs, amounts to Kshs. 30,509,242, adjusted after conceding Kshs.100,000/= and Kshs. 29,000/= (Rambaldo Associates costs).



18. I have already found that the Receiver is personally liable for the claims against the Company as he was the one who made the decision to extend the stay in the premises and that he failed to pay rent and ensure that the premises is restored to its original condition. Sanjeev And Anwar, as guarantors of the Company, are also responsible for the unpaid rent and the repair costs incurred by the Plaintiffs to restore the premises. As such, I am in agreement with the Plaintiffs' submissions that the Defendants are jointly and severally liable and that there is no basis for the Company and the Receiver to seek indemnity from SANjeev And Anwar. However, as submitted by the Plaintiffs, the Receiver is at liberty to seek indemnity from PTA Bank.

### **Proof of the Plaintiffs' claims**

19. As stated, the Plaintiffs' total claim, including mesne profits and repair costs, amounts to Kshs.30,509,242.00/=. On mesne profits, PW 5 estimated the rent payable as Kshs.760,000.00/= as per the Certificate of Value produced. The Plaintiffs also produced the Lease agreement with another lessee where the first rent payable was Kshs.1,250,000.00/= in December 2012. The Plaintiff seeks the sum of Kshs. 800,000.00/= per month for the period and considering the evidence produced, I find that this sum is reasonable and I therefore award it. The Plaintiffs also seek Defendants' share of site- value tax, ground rent and Insurance costs for the period calculated at Kshs.76,093.00/= which sums were payable under the Lease. The Plaintiffs have provided receipts evidencing payment of the same and I therefore award the same. The Plaintiffs also seek restoration and repair costs of Kshs.24,700,000.00/= where they produced reports, invoices, approvals and receipts as evidence of the repairs and payment for the same. The Defendants did not substantially dispute or controvert this evidence and I find that the Plaintiffs have proved to the required standard that they incurred the stated expenses. I would therefore allow the said sum of Kshs.24,700,000.00/= less the conceded costs of Kshs.129,000.00/= bringing the sum to Kshs. 24,571,000.00/=.
20. The Plaintiffs have also sought legal fees of Kshs.200,000.00/=: however, no basis was presented to justify this claim and I will therefore decline to issue the same. The Plaintiffs have also sought accrued interest on the unpaid rent as Clause 1 of the Lease provides for a late interest penalty of 16% per annum. I find that this claim is justified and the same is thus allowed. I see that the Plaintiffs also sought for Loss of mesne profits ( or any rental income) for 6 months needed to put the suit property in its original state@ Kshs. 800,000/= Per month plus VAT ....Kshs.5,568,000/=. However, I would agree with the Defendants that this would amount to double compensation considering I have already awarded mesne profits above. As such, I find that the Plaintiffs have been able to prove their claim for the total sum of Kshs.27,933,187.00/= comprising of mesne profits of Kshs.3,286,094.00/=, site- value tax, ground rent and Insurance costs of Kshs.76,093.00/=: restoration and repair costs of Kshs.24,571,000.00/=. They are also awarded late penalty interest on the mesne profits at a rate of 16% per annum. As they have largely succeeded in the suit, they are also awarded costs for the same.

### **Conclusion and Disposition**

21. In conclusion, I now issue the following final orders:
- a. Judgment be and is hereby entered for the Plaintiffs against the Defendants jointly and severally for the sum of Kshs.27,933,187.00/= plus accrued interest at the rate of 16% per annum to be applied from the date of filing suit until payment in full.
  - b. The Plaintiffs are awarded costs of the suit.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1<sup>ST</sup> DAY OF SEPTEMBER 2025**



**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Mr. Mwangi & Mr. Wanyoike for the Plaintiff.

Ms. Sandra Kavagi holding brief for the 1<sup>st</sup> & 2<sup>nd</sup> Defendants.

Mr. Patrick Rugo for the 3<sup>rd</sup> & 4<sup>th</sup> Defendants.

Amos- Court Assistant

