



**Hantoosh v Hantoosh & another (Environment and Land Case
396 of 2016) [2025] KEELC 7700 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7700 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 396 OF 2016
LL NAIKUNI, J
NOVEMBER 7, 2025**

BETWEEN

MOHAMMED SWALEH KARAMA HANTOOSH PLAINTIFF

AND

KHALID SWALEH KARAMA HANTOOSH 1ST DEFENDANT

HASSAN ABDUL KADIR 2ND DEFENDANT

RULING

I. Introduction

1. This Honorable Court was tasked to make a determination onto the filed two (2) applications. The first one being the Notice of Motion application dated 26th July, 2024 by Mohamed Swaleh Karma Hantoosh the Plaintiff herein. Whilst, the second one was the Notice of Motion application dated 28th January, 2025 filed by Anisa Swaleh Karma, Interested Party/Applicant herein.
2. Upon service of the application to the Defendants/ Respondents the Defendants responded through a Replying Affidavit sworn on 6th September, 2024. For good order, the Honourable Court will deal with these two (2) applications simultaneously but distinctly.

II. The Plaintiff/Applicant's case

3. The application was brought under the dint of Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Cap. 21 and Order 51 Rule 1 of the Civil Procedure Rules, 2010 of the Laws of Kenya and all enabling provisions.
4. The Plaintiff/Applicant sought for the following orders: -
 - a. Spent.



- b. That this Honourable Court be pleased to order the title issued by the Land Registrar to one ANISA SWALEH KARAMIA HANTOOSHI on the 31st July, 2023 be recalled and deposited in this Court for cancellation and revocation
 - c. That this Honourable Court be pleased to order the District Surveyor Mombasa District to carry out survey on Plot No. Mombasa/Block XVII/1223 and cause the issuance of two equal titles in the names of Mohamed Swaleh Karma Hantoosh and Mohamed Swaleh Karma Hantoosh.
 - d. The Land Registrar Mombasa Land District Registry be order to issue two equal titles in the names of Mohamed Swaleh Karma Hantosh and Anisa Swaleh Karma in terms of the survey conducted by the District Survey Mombasa district.
 - e. That costs of this application be borne by the Defendants.
5. The application by the Applicants herein was premised on the grounds, testimonial facts and averments made out under the 10th paragraphed Supporting Affidavit of – Mohamed Swaleh Karma Hantosh, the Plaintiff herein sworn and dated the same day with the application. The Deponent averred that:
- a. On or about the 7th March, 2024 this Court delivered its Judgment in this suit. Annexed in the affidavit was a copy of the Judgment marked as “MSKH – 1”.
 - b. Upon issuance of the judgment a decree was hereby drawn and an order issued respectively. Annexed in the affidavit a copy of the order and the decree respectively marked as “MSKH – 2”.
 - c. The Deponent effected service of the same upon the Defendants and required that they immediately call in surveyor for the necessary sub – division of the suit land into two equal titles. Annexed in the affidavit was a copy of a letter marked as “MSKH - 3”.
 - d. As the deponent expected a reply for his said letter he decided to conduct a search with a view of tracing out whether there were any restriction in the title that would delay the survey process.
 - e. On the 14th May, 2024, the deponent applied for an official search and he was shocked to learn that the Defendants together with Mohamed Swaleh Karma Hantoosh had moved to the land registry and caused the land registrar to issued another title on the same land. Annexed in the affidavit was a copy of the search marked as “MSKH - 4”.
 - f. The Defendants and the said Mohamed Swaleh Karma Hantoosh were holding an illegal title of the said land and were not willing to have the implementation of this Judgments allowing the suit land be sub - divided into two equal shares as ordered by this Court.
 - g. Taking into account of the above it was fair and just that this Court recalls the said illegal title for cancellation and also order the District land survey to conduct sub division of the said land so that he could receive his title and end this unnecessary court litigation.
 - h. The Affidavit was sworn in support of the Application to have the land be sub divided as soon as possible.

II. The Responses by the Defendants.

6. The Defendants filed a reply to the application vide a Replying Affidavit sworn on the 6th September, 2024. In a nutshell, it wanted the Honourable Court to execute the decree of this court by the Plaintiff the Defendants.



7. The Defendants vehemently opposed the sub – division of the title deed to the suit property. It referred to the exercise as being malicious and impossible to carryout.
8. The Defendant averred that for the court to come into the decision took into account of several factors of the dispute and the suit land and thoroughly examined the size of the suit land, its location, the nature of the dispute and the available remedy to the parties.
9. Further, the Defendants argued that once the suit property was sub – divided into two, the Plaintiff would have an edge of the Defendants.

II. The Further Affidavit

10. With the leave of Court, the Plaintiff through MOHAMMED SWALEH KARAMA, Plaintiff filed a 20 paragraphed further affidavit to the Application sworn on 12th September, 2024 where he averred that: -
 - a. The Affiant obtained the said land together with the later Omar Awadh Karama in equal shares.
 - b. The Affiant was not interested in any part of the said Omar Awadh Karama share of the suit land neither was the Affiant interested on sharing corridors of the suit land with the Defendants or the wife of the Late Omar Awadh Karama.
 - c. The Affiant had the right under the law and the Constitution to own his own land without sharing the same with the Defendants or the wife of the late Omar Awadh Karama.
 - d. The Affiant equally had the right under the law and the constitution to manage, operate, stay and occupy and/ or control his land without the instructions of the Defendant or the wife of the late Omar Awadh Karama.
 - e. Anisa Swaleh Karama filed a Replying Affidavit to his Application and annexed a copy of an Order from the Kadhi Court which provides as follows that:-
 - i. The 1st Petitioner Anisa Swaleh Karama was hereby appointed as the Administrator of the deceased estate.
 - ii. The Officer of Lands Mombasa County to substitute the name of the deceased on the title deed of Plot No. Mombasa /Block /XVII/1323 with that of Anisa Swaleh Karama.
 - iii. The Officer of Lands Mombasa County to issue two copies of title deeds for the said plot for both Anisa Swaleh Karama and Mohamed Swaleh Karama to have a copy.
 - iv. The appointed Administrator Anisa Swaleh Karama and the Respondent Mohamed Swaleh Karama to pay land rates of the plot in equal shares.
 - v. Since this is a family matter, each party shall bear own costs.
 - f. The Annexed copy of an order by the said Anisa Swaleh Karama demonstrated fraud on the party of the Defendants in that;
 - i. The Order was not directed to the Land Registrar Mombasa Land District Registry for registration execution and or implication therefore any entries entered and or altered by the said Order are illegal, null and void in law.



- ii. The Order was directed to the Officer of Lands Mombasa County, which falls within the Department of Lands and Housing at the County Government offices of Mombasa.
 - iii. The Land Officer was required to issue two Titles of the same land, which by law is irregular, null and void and does not fall within the mandate of the said officer.
 - iv. There was nowhere the Land Registrar Mombasa Land District Registry was ordered to cancel, revoke, nullify and or interfere with the existing Title of the suit land.
 - v. The Order was specifically directed to the Officer of Lands County Government of Mombasa who has no capacity to deal with registered Titles.
 - vi. The Land Registrar Mombasa Distract Land Registry had no capacity whatsoever to execute the said order unless and until a review or correction of the same was done in accordance of the law in that regard.
- g. This Court was duped to believe that the said Anisa Swaleh Karama or her husband the deceased Omar Awadhi Karama to have built two storey houses on the suit land which is untrue and as a matter of fact the 1st Defendant trespassed and constructed the same without my consent but nonetheless he was not consenting or interested in being issued with titles Under Sectional Property Act as that preserve was for his family to agree on their fathers half share and on which floor each should occupy once a title has been issued in his name.
 - h. The Affiant was not selling any portion or party of his land, he wanted his property, the half share of the suit land whereby his children should put up their structures in style they may wished free from any interferences from the Defendants or Anisa Swaleh Karama or her family.
 - i. The Affiant had had enough experience in living, engaging and or dealing with the Defendants or Anisa Swaleh Karama and he could not expect his children to go through the same process and the only thing for me to do is to live on his own title with his children as per the decree of this Court.
 - j. One Sofia Awadhi Salim the mother of the deceased Omar Awadhi Karama to whose her daughter in law is Anisa Swaleh Karama has suffered greatly under the hands of the Defendants and her daughter in law to the extent that moved to the Kadhi Court seeking her rights and obtained orders for the subdivision of the suit land. (Annexed in the affidavit a copy of the Order and the Supporting Affidavit depicting how her life has been so hard since the death of his son marked as “MSK - 1”).
 - k. The said Anisa Swaleh Karama visited my house and before his daughters confirmed and bragged having been compromising Courts so as to get favorable Orders or Judgments so as to protect the 1st Defendant and further the Land Registrar so as to interfere with the suit land though she complained that the exercise was expensive and no meaningful results in their possession.
 - l. The Affiant’s consciousness was clear and in the face of justice before this Court and God he needed his portion so that he could be safe with his land as he did not trust the Defendants with his children as at now and future of the suit property.
 - m. The Affiant chose not to appeal against the judgment of this Court because it allowed him his own portion of the land and it was necessary that the sub-division of the said land is done as per the Order of this Court.



- n. The Defendants were deliberately interfering with the records at the land registry with a view of denying him the right of his property.
- o. The Judgment of the court had not been varied, set aside and the Orders are in force and the Defendant's assertion that they were holding the title of the suit land is confirmation of an irregularity since he held the original Title and there were no Orders from any Court directing the Land Registrar to revoke, alter, interfere with the entries and or the title of the suit land in his possession.
- p. The dispute in this land to come an end each party should have its title of the half share of the suit land.
- q. The Affiant urged this Court to grant his application as prayed

II. The Notice of Motion application dated 28th January, 2025 by the Interested Party

11. The Interested Party filed this application under the provision of Section 80 of the Civil Procedure Act, Cap. 21 and Order 45 of the Civil Procedure Rules, 2010. It sought for the following orders:-
 - a. That the Honourable Court be pleased to review its Judgement delivered on 7th March, 2024.
 - b. That this Honourable Court do set aside and/or vary the said Judgement as may be just and equitable to vary Order (c) in the Judgement to read Plot No. Mombasa/Block/XVII/1323 be submitted to the Registrar and each unit to have a Certificate of Lease under the Sectional Title instead of the same being sub – divided into equal titles between Mohamed Swaleh Karma Hantooshand Anisa Swaleh Karama.
 - c. Costs of the Application be provided for.
12. The application was premised on the grounds, testimonial facts and the averments made out under the 13 Paragraphed Supporting Affidavit of Anisa Swaleh Karama together with two (2) annexures marked as “ASK – 1 & 2” annexed hereto. He averred as follows:-
 - a. He was the Applicant herein and participated in this suit as a witness after the Plaintiff refused and/or ignored to include him as a Defendant in the matter.
 - b. He had read and understood the Judgement delivered by this Court on 7th March, 2024.
 - c. Immediately thereafter the delivery of the Judgement, the Plaintiff extracted the Decree and served upon the Applicant's Advocate.
 - d. He was in agreement with the Judgement and the Decree except where the Court ordered that the suit property to be sub – divided into two portions between the Plaintiff and the Applicant.
 - e. Indeed, he informed the Court that the Kadhi's Court had already ordered that the property be registered in both names of the Plaintiff and the Applicant.
 - f. Unfortunately, the Court never had an opportunity to evaluate that the suit property was very small in size and had two floors put up on the suit property.
 - g. Therefore, the best way for all parties to get their rightful investment was to order for the surrender of the title and convert it into a Sectional Property where all the units would have their own Certificate of Lease.



- h. The Estate of the deceased where the Applicant was a legal Administrator consisted of the ground floor, 1st floor and half share. Yet, the Plaintiff only owned half share of the suit property and the Upper floor of the suit property.
- i. The order ought to be varied to reflect the true ownership “vis – a – vis” the investments of all the parties.
- j. He urged the Court to allow the application as prayed.

II. Submissions

- 13. On 30th October, 2024 while all the parties were present in Court, they were directed to have the two (2) applications – the Notice of Motion application dated 20th July, 2024 and 28th January, 2025 respectively be disposed of by way of written submissions. Subsequently, the ruling was deferred to 24th October, 2025. However, there was a further ruling delivered on 7th November, 2025 upon considering the second application dated 28th January, 2025 accordingly.

A. The Written Submissions by the Plaintiff/ Applicant

- 14. The Plaintiffs through the law firm of Messrs. Bunde Mangaro & Co. Advocates field their written submission dated 15th November, 2024. Mr. Mangaro Advocate, commenced by stating that the following was the Plaintiff/ Applicant submission to his Notice of Motion application dated 20th July, 2024 which sought the following orders;
 - a. Spent
 - b. That this Honourable court be pleased to order the title issued by the land registrar to one Mohamed Swaleh Karma Hantoosh on the 31st day of July, 2023 be recalled and deposited in this court for cancellation and revocation.
 - c. That this Honourable court be pleased to order the District Surveyor Mombasa District to carry out survey on Plot No. Mombasa/Block XVII/1323 and cause the issuance of two equal titles in the names of Mohamed Swaleh Karma Hantoosh and Mohamed Swaleh Karma Hantoosh.
 - d. The Land Registrar Mombasa Land District Registry be order to issue two equal titles in the names of Mohamed Swaleh Karma Hantosh and Anisa Swaleh Karama in terms of the survey conducted by the District Surveyor Mombasa district.
 - e. That costs of this application be borne by the Defendants.
- 15. The Learned Counsel submitted that the Application was supported by the following grounds and as well as the Applicant supporting affidavit;-
 - a. This Honourable court issued Judgment on the 25th day of January, 2024 ordering the suit property be sub - divided and two equal titles be issued in the name of Mohamed Swaleh Karma Hantoosh and Mohamed Swaleh Karma Hantoosh.
 - b. The Plaintiff was holding the original title of the suit land registered in the names of Mohamed Swaleh Karma Hantosh and as well as OMAR AWADH KARAMA.
 - c. Upon issuance of the said judgement and the applicant being interested to have the dispute resolved by conducting the sub - division moved to the Land Registrar and conveyed a service of the suit land so that the process could proceed as ordered by this court.



- d. By a search issued on the 14th day of May, 2024 it revealed that the said Mohamed Swaleh Karma Hantoosh had voided the Land Registrar and without the consent of the Plaintiff a second title of the suit land.
 - e. On the issuance of the 2nd illegal title it had been difficult for the Plaintiff/Applicant to obtain his rightful share of title of the suit land. Therefore it became necessary for this court to issue orders for the said Anisa Swaleh Karma Hantoosh to produce the said title for cancellation before this court and the District Surveyor do carry out the process of survey by the suit land and two separate tithes be issued in the name of Mohamed Swaleh Karma Hantosh and Mohamed Swaleh Karma Hantoosh as per the Judgement of this court.
 - f. This court issued a decree and an order for implementation of the Judgement but the said Anisa Swaleh Karma had interfered with the entries at the land office and therefore there was need for correction and have the dispute solved at once.
16. On the brief case background, the Learned Counsel submitted that this suit was heard before this court and Judgment was delivered on the 7th day of March, 2024 setting out the following orders
- a. That Judgement be and is hereby entered partially in favour of the Plaintiff as pleaded in the Plaint dated 14th December, 2016 as against the 2nd Defendant.
 - b. That a Declaration be and is hereby made that the interest in the property is a leasehold interest by virtue of first registration on the 15th April 1994.
 - c. That a Permanent injunction restraining the 2nd Defendant their agents, jointly and severally from trespassing, entering, dumping materials, construction on Plot No. Mombasa/Block XVII/1323.
 - d. That there are orders as to general damages for trespass as against the Defendants as the Plaintiff has not proved any interference or barring by the Defendants on the peaceful enjoyment of his property.
 - e. That the parties shall bear their own costs of the suit
17. The Learned Counsel averred that pursuant to the Judgment of this court the Plaintiff proceeded to extract the court order and the decree of this court. He further served it upon the Defendants. He wrote a letter requesting the Defendants to agree on a date for the sub - division of the suit land to be carried out. On or about 14th July, 2024, the Plaintiff moved to the land office to conduct search of the suit property while awaiting the confirmation from the Defendants. It was then that he discovered that the Defendants colluded with the Land Registrar and were in possession of a 2nd title of the suit land contrary to the law. The Plaintiff pleaded that the Defendant to produce the title they obtained for sub - division but refused. Hence it left the Plaintiff in limbo as the entries related to the original title had been removed from the records at the land office despite the pendency of this suit.
18. Referring to the Exhibit marked as “MSKH - 1”, being a copy of the Judgment delivered by this court while Exhibit “MSKH - 2” were copies of the order and decree of this court respectively, they demonstrated that this court evaluated the evidence before it. It came to the finding that for the dispute to be resolved the only way was for the suit land to be sub - divided and each party to own equal title of the suit land. The Learned Counsel informed Court that the Exhibit “MSKH - 3” was a copy of a letter requesting the Defendants for an amicable date for execution of the decree of this court. Whist, the Exhibit “MSKH - 4” was a copy of search from the land office showing illegal issuance of 2nd title of the suit by the Defendants.



19. According to the Learned Counsel taking into account the actions of the Defendants and the circumstances therein there was no other way the parties could live under the same roof in such a manner and behavior demonstrated by the Defendants. He opined that, the only way was to have the suit property sub - divided and for the parties to move their ways as per the Judgment of this court. The Defendants filed a reply to the application vide an affidavit sworn on the 6th September, 2024, the Honourable Court in wanting to execute the decree of this court by the Plaintiff. The Defendants referred the exercise as malicious and impossible to carryout, it was their submission that for the court to come into the decision took into account of several factors of the dispute and the suit land and thoroughly examined the size of the suit land, its location, the nature of the dispute and the available remedy to the parties, your lordship no appeal was preferred by any of the parties or a review that was ever filed after issuance of the judgment or any report from the survey department has been filed. The particular sub - division was made under the orders of this court and was therefore legal and binding to the parties.
20. The Learned Counsel submitted that the Defendants admitted having created a second title of the suit land and were holding the same to subvert justice by refusal to execute the court order, the Defendants alluded that the obtained the said title vide a court order issued in Kadhi Court No. 164 of 2018, the said Order was Exhibit "ASK-1" which the Counsel urged the Court to look and examine whether it was executed in the manner suggested in the said order. According to the Learned Counsel, the Respondents were suggesting to the Plaintiff in the manner and style they wished him to stay on his land while holding the illegal title and having interfered with the suit land.
21. The Learned Counsel stated that in their reply the Defendants further argue in their reply that once the suit property was sub - divided the Plaintiff would have an edge of the Defendants. On this issue, the Counsel submitted that this was the only reason the Defendants were deliberately refusing to comply with the court order.
22. The Learned Counsel submitted that they filed a further affidavit sworn on the 12th September, 2024. From it, they had demonstrated how the order aforesaid by the Defendants could not be executed in law. They had also carefully demonstrated the character of the Defendants. They urged the Honourable Court to consider the same and come to the finding that the relationship of the parties in so far the dispute was concern was to have the suit land be sub - divided in equal titles so as to have the dispute settled for now and in future.
23. The Learned Counsel submitted that the Defendants attempted to defraud the Plaintiff of his rightful ownership of the suit land. This formed the basis of the Plaintiffs' Application.
24. The Learned Counsel relied on one issue for the Court's determination - Whether the Plaintiff's application was merited and the orders sought should be granted so as the Judgment of the court was complied with and the dispute settled once and for all. To buttress on this issue, the Learned Counsel submitted that the Applicants relied on the case of:- "Republic – v – the County Government of Kitui & Another JR NO. E045 OF 2021", the Court of Appeal stated as follows: -
- “it was the open and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it and unless or until it was discharged and disobedience of such an order would as a general rule result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he has purged the contempt.”
25. The Learned Counsel submitted that the Applicant herein were deliberately hindering the execution of the Judgment of this court by interfering with the records at the land office and holding the title so as to



subvert justice. There was no other way save onto having the orders being complied with and execution be done. For the implementation of the court order it was necessary that the title in possession by the Defendants be deposited in court for cancellation and the District Surveyor to be ordered to subdivide the suit land in terms of the Judgment of this court. The court further held that: -

“A party who walks through the justice door with a court order in his hands must be assured that the order would be obeyed by those to whom is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it in any other way is to open the door to chaos and anarchy and this court will not be the one to open that door. If one is dissatisfied by an order of the court, the avenues of challenging it are also set out in the law. Defiance is not an option.”

26. The Learned Counsel asserted that they had demonstrated at length that they were deserving of the orders sought, the orders should open the window for execution and were paramount in settling the dispute. The court further held as follows:-

“it is essential for the maintenance of rule of law and order that the authority and dignity of the courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors.

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The constitution states that the rule of law and supremacy of the constitution are fundamental values of our society. It vests the judicial authority of the state in the court. And requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively have the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

27. The Learned Counsel concluded in the foregoing that there was existence in this suit special circumstances which merit the issue of granting the orders sought. The Applicant had indeed demonstrated the threshold in “Giella – v - Cassman Brown” and thus prays that this Honorable court allows the applicants motion and grant prayers in support of the Plaintiff.

II. Analysis & Determination.

28. I have carefully read and considered the pleadings herein, the written submissions and the cited authorities by the Learned Counsels and the relevant provisions of the Constitution of Kenya, 2010 and the statutes. In order to arrive at an informed, just, fair and reasonable decision, the Honorable Court has crafted two (2) following salient issues for its determination.

- a. Whether the Notice of Motion application dated 26th July, 2024 by the Plaintiff/ Applicant is merited?
- b. Whether the Notice of Motion application dated 28th January, 2025 by the Interested Party/ Applicant is merited?
- c. Whether the parties herein are entitled to the reliefs sought.



- d. Who meets the costs of the two (2) Notice of Motion applications dated 26th July, 2024 and 28th January, 2025 respectively?

IssueNo. a) Whether the Notice of Motion application date 26th July, 2024 by the Plaintiff/ Applicant is merited.

29. Under this Sub – heading, the main substratum is on causing the Honourable Court to consider the Application by the Plaintiff. The jurisdiction of this Court to grant the orders sought is not in doubt. Section 13 (7) of the *Environment and Land Court Act*, No. 19 of 2011 empowers this Court to make any order it deems fit to give effect to its decisions. Furthermore, the provision of Section 24 (a) of the *Land Registration Act*, No. 3 of 2012 is explicit: the Court may order the cancellation of a title that has been acquired illegally, unprocedurally, or through a corrupt scheme. I will reiterated that Judgment in this matter was delivered on 7th March, 2024 and I set the following orders: -
- a. That Judgement be and is hereby entered partially in favour of the Plaintiff as pleaded in the Plaint dated 14th December, 2016 as against the 2nd Defendant.
 - b. That a Declaration be and is hereby made that the interest in the property is a leasehold interest by virtue of first registration on the 15th April 1994.
 - c. That a Permanent injunction restraining the 2nd Defendant their agents, jointly and severally from trespassing, entering, dumping materials, construction on Plot No. Mombasa/Block XVII/1323.
 - d. That there are orders as to general damages for trespass as against the Defendants as the Plaintiff has not proved any interference or barring by the Defendants on the peaceful enjoyment of his property.
 - e. That the parties shall bear their own costs of the suit.
30. A Judgment alone does not automatically change land titles. The Judgment (e.g., for specific performance, declaratory relief, or based on fraud) is one's legal right to have the title changed. A party then take active steps to enforce that Judgment through the land registry system. The Judgment creates a legally enforceable right 'in rem' (a right against the property itself) in favor of the Plaintiff. It is a conclusive determination of the parties' rights regarding the property. However, the land registration system operates administratively. The Land Registry's register is the definitive record of ownership and can only be altered upon a proper application supported by requisite evidence. The court order is the foundational authority for this application but is not self-executing within the registry system.
31. The specific mechanism is often called an Application to Revoke and Cancel a Title or an Application Based on a Court Order. The Party is asking the Land Registrar to give effect to the court's Judgment by: -
- a. Revoking the existing, faulty title.
 - b. Cancelling the existing title.
 - c. Issuing a new title in the name of the proper owner (likely you or your client)
32. This application is governed by the provisions of Sections 79 and 80 of the *Land Registration Act*, No. 3 of 2012 which empowers the Chief Land Registrar to rectify the registry, cancel a title and issue a new one upon being satisfied of the validity of a court order directing such an action. For such an application as the one presently in court to be successful it should include the following legal parameters: -



- a. Finality of the Decree: The Judgment must be final and conclusive. If an appeal is pending or the time for appealing has not expired, the Registrar will likely refuse the application or stay proceedings.
 - b. Default by the Defendant: the Applicant herein has deposed that there has been a failure, refusal, or neglect by the Defendants to comply with the court orders to facilitate the process voluntarily.
 - c. Specificity of the Order: The court order must be clear and unambiguous in its mandate. It must explicitly order the revocation of the existing title and the issuance of a new one in a specified name. A declaratory judgment stating our client is the owner may need to be coupled with a specific order for the Registrar to act.
 - d. Necessity of the order: The Applicant avers that the Order is necessary to break a deadlock and ensure that they enjoy the fruits of their Judgment.
 - e. Protection of Third-Party Interests: The Registrar has a duty to consider the interests of any third parties recorded on the register (e.g., chargees/mortgagees, caveators). The application may need to demonstrate that these interests have been addressed, extinguished, or that the relevant parties have been notified
33. Crucially, the ELC is not “functus officio” (its duty completed) after delivering Judgment. The provision of Section 13 (7) of the Environment and Land Court Act, No. 19 of 2011 explicitly grants the Court the power to “make any order or grant any relief as the Court may deem just and appropriate”. This includes the power to issue mandatory orders and injunctions to enforce its own decrees after it has delivered a Judgement.
 34. Furthermore, the provision of Section 26 (1) & (2) of the Land Registration Act, No. 3 of 2012 empowers the Court to order the cancellation of a title that has been obtained illegally, unprocedurally, or through a corrupt scheme. This application is essentially inviting the Court to exercise this statutory power in the Plaintiff’s favour. The Judgment of this Court was clear and unambiguous. I reiterate and as has already stated above, a court decree is not a mere suggestion, cosmetic, a formality nor an opinion. It is a binding order that must be obeyed. If aggrieved by it, the only option in law is to prefer an appeal at a superior Court or seek for its review by the Court that issued it. The Respondent’s attempt to circumvent its effect by [e.g., filing a notice of appeal which does not operate as a stay of execution] or simply by refusing to cooperate, is an affront to the authority of this Court.
 35. The Law provides clear mechanism for this eventuality. Where a party refuses to execute documents to give effect to a court Judgment, the Court can appoint one of its officers to do so in their stead. This is a well-established principle aimed at preventing a Judgment Debtor from rendering a court order nugatory. The Judgment of this Court specifically addressed the status of the title and declared it nullity ab initio (from the beginning). A title that is a nullity cannot form the basis of a legal interest for any party claiming under the Respondent.
 36. Based on the foregoing reasoning, therefore, I am satisfied that the Applicant/Judgment Creditor has demonstrated that the decree herein remains unsatisfied due to the Respondent’s non-compliance. The application is merited and is a necessary step to give practical effect to the Judgment of this Court. It must allow the successful litigant to enjoy the fruits of their Judgment.
 37. On the order of the Court to issue issuance of two equal titles in the name of Mohamed Swaleh Karama and Anisa Swaleh Karama has been sought the court shall examine its viability. The sole issue for this



Court's determination is whether the Applicant has made out a case for the grant of mandatory orders to compel the sub - division of the suit property and the issuance of two separate titles.

38. The Judgment of this Court was clear and unequivocal. It declared the interests of the parties in the suit property as being held without any interference to the rights of the Plaintiff. The purpose of such a declaration is not merely academic, otiose nor abstract. It is to provide a foundation for the practical separation of those interests so that each party can utilize and enjoy their portion of the property independently. The refusal of one party to cooperate in achieving this logical end is a blatant attempt to undermine the authority and finality of the Court's decree.
39. The Respondent's objections are noted but are ultimately without merit. The Court's primary duty is to give effect to the substance of its Judgment, which was a declaration of distinct proprietary rights. The most direct and equitable way to give effect to this is through the issuance of separate titles. The argument on financial burden can be addressed by an order apportioning the costs of the process. The suggestion of a sale, in this instance, would contradict the Court's declaration of ownership and would force a willing owner to relinquish their property against their will.
40. The law provides a clear remedy for this kind of impasse. Where a party is ordered to perform an act and refuses to do so, the Court can appoint an officer of the court to execute the necessary documents on that party's behalf. This ensures that the administration of justice is not held hostage by a disobedient litigant.
41. For this reason, I discern that the Notice of Motion application dated 26th July, 2024 be and is hereby found to be meritorious and thus the orders sought are granted accordingly.

Issue No.b). Whether the Notice of Motion application date 28th January, 2025 by the Interested Party/ Applicant is merited?

42. Under this Sub – title, the main substratum from the filed application dated 28th January, 2025 is causing the review of a Judgement of this court. Specifically, the Honourable Court has been called upon to set aside or vary the Judgement delivered by this Court on 7th March, 2024 as it may just and equitable find fit and suitable Order (c) to read to wit:-

“that Plot Number Mombasa/Block/XVII/1323 be submitted to the land Registrar and each unit to have a Certificate of lease under the Sectional Title instead of the same being sub – divided into equal titles between Mohamed Swaleh Karma Hantosh and Anisa Swaleh Karma”

43. The law governing review of Judgement is found under the provision of Section 80 of the Civil Procedure Act, Cap. 21 and Order 45 of the Civil Procedure Rules, 2010. As already stated herein above, the application by the Applicant was brought under the provisions of Section 80 (a) of the Civil Procedure Act, Cap. 21 (Hereinafter referred to as “The Act”) and Order 45 (1) (1) (a) of Civil Procedure Rules, 2010 (Hereinafter referred to as “The Rules”). A clear reading of these provisions indicates that Section 80 is on the power to do so while Order 45 sets out the rules on doing it.
44. The provision of Section 80 of the Act provides as follows: -

“ Any person who considers himself aggrieved—’

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or



- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
45. While the provision of Order 45 Rule 1 of the provides as follows: -
- “ 1. Any person considering himself aggrieved—
- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”
46. Briefly, and prior to proceeding further, for ease of reference, the Honourable Court wishes to extrapolate on a few case law on this subject matter. In the case of:- “Republic – v - Public Procurement Administrative Review Board & 2 others [2018] eKLR” it was held:
- “Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”
47. Additionally, in the case of “Sarder Mohamed – v - Charan Singh Nand Sing and Another (1959) EA 793” where the High Court held that Section 80 of the Act conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate. Broadly speaking, in the case of “Republic – v - Public Procurement Administrative Review Board & 2 others [2018] e KLR” it was held: -
- “Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”



48. From the stated provisions, it is quite clear that the powers to cause any review, variation or setting aside a Court's decision are discretionary in nature. Thus, the unfettered discretion must be exercised judiciously, not capriciously and reasonably. To qualify for being granted the orders for review, varying and/or setting aside a Court order under the above provisions to be fulfilled, the following ingredients, jurisdiction and scope are required.
- a. There should be a person who considers himself aggrieved by a Decree or order;
 - b. The Decree or Order from which an appeal is allowed but from which no appeal has been preferred;
 - c. A decree or order from which no appeal is allowed by this Act;
 - d. There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made; or
 - e. On account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree or order.
 - f. The review is by the Court which passed the decree or made the order without unreasonable delay.
49. This Honourable Court on the said subject matter has previously stated in in the case of "Sese (Suing as the Administrator of the Estate of the Late Shali Sese) – v - Karezi & 8 others (Environment and Land Constitutional Petition 32 of 2020) [2023] KEELC 17427 (KLR)" where it held thus:-
- “The power of review is available only when there is an error apparent on the face of the record. Indeed, this Court emphasizes that a review is not an appeal. The review must be confined to error apparent on the face of the record and re – appraisal of the entire evidence or how the Judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is permissible.”
50. Now turning to the application of these legal principles to the facts of the instant case. The Interested Party as the Applicant averred that immediately after the delivery of the Judgement, the Plaintiff extracted the Decree and served upon the Applicant's Advocate. Indeed, he admitted being in full agreement with the Judgement and the Decree except where the Court ordered that the suit property to be sub – divided into two portions between the Plaintiff and the Applicant. He informed the Court that the Kadhi's Court had already ordered that the property be registered in both names of the Plaintiff and the Applicant. Unfortunately, the Court never had an opportunity to evaluate that the suit property was very small in size and had two floors put up on the suit property.
51. Therefore, according to the Interested Party/Applicant, the best way is for all parties to get their rightful investment by this Court ordering for the surrender of the title and convert it into a Sectional Property. In order words, to let all the units have their own Certificate of Lease. The Estate of the deceased where the Applicant was a legal Administrator consisted of the ground floor, 1st floor and half share. Yet, the Plaintiff only owned half share of the suit property and the Upper floor of the suit property. He opined that the order ought to be varied to reflect the true ownership “vis – a – vis” the investments of all the parties.
52. Fundamentally, the Applicant wishes to have the Court breathe the oxygen and invoke the provisions of the Sectional Property Act to the Judgement. Its rather unfortunate that these issues were never



raised earlier on. Nonetheless, being a land matter, what matters most is the best interest of Justice, Equity and Conscience to be served based on merit by substantially balancing the interest of all parties. Legally speaking, the Sectional Properties Act No. 21 of 2020 and from its preamble provides for the division of building into individual units for separate ownership, with common property jointly owned by all unit owners. It allows individuals to acquire a Certificate of Title for their specific unit (like an apartment or maisonette) within a larger building or complex as it is in the case of the suit property.

53. From the face value, this Court does not see much variation from the application and the prayers sought herein. Be that as it may, taking that there has been no appeal preferred; the applicant has not pointed out any discovery of any new and important matter or evidence; some mistake or error apparent on the face of the record, the Honourable Court is left to conclude that there exists only the grounds of “Sufficient reason” as provided for in law only makes the execution of the Decree from the already delivered Judgement of 7th March, 2024 more smooth, efficient and fair. Indeed, there will be no prejudice to be suffered at all by any parties. In the given circumstances, I discern that the application has merit and hence should be allowed accordingly.

Issue No. c). Who will bear the Costs of Notice of motion application dated 26th July, 2024

54. 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 Laws of Kenya 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 – v - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – v - 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 – v - 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.
55. In the present case, the Honourable Court elects to not to award costs.

II. Conclusion & Disposition

56. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Clearly, the both the Applicants have made out their case as per the two (2) Notice of Motion applications dated 26th July, 2024 and 28th January, 2025 respectively.
57. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-
- That both the Notice of Motion applications dated 26th July, 2024 and 28th January, 2025 be and are hereby found to be merited and thus are allowed with no orders as to costs.
 - That this Honourable Court do and is hereby pleased to order the title issued by the Land Registrar to one Mohamed Swaleh Karma Hantoosh on the 31st day of July, 2023 be recalled and deposited in this court for cancellation and revocation.
 - That this Honourable Court do set aside and/or vary the Judgement delivered on 7th March, 2024 specifically to vary Order (c) in the Judgement to read Plot No. Mombasa/Block/



XVII/1323 be submitted to the Land Registrar and each unit to have a Certificate of Lease under the Sectional Title instead of the same being sub – divided into equal titles between Mohamed Swaleh Karma Hantooshand Anisa Swaleh Karama.

- d. That this Honourable Court do and is hereby pleased to order the District Surveyor Mombasa District to carry out survey on Plot No. Mombasa/Block XVII/1323 and cause the issuance of two equal titles in the names of Mohamed Swaleh Karma Hantooshand Mohamed Swaleh Karma Hantoosh as stated above.
- e. That this Honourable Court do and is hereby pleased to issue an order to the Land Registrar Mombasa Land District Registry to issue two equal titles in the names of Mohamed Swaleh Karma Hantosh and Anisa Swaleh Karama in terms of the survey conducted by the District Surveyor Mombasa district.
- f. That shall be no orders as to costs. .

It is soOrdered Accordingly.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 7TH DAY OF NOVEMBER2025.

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HON. MR. JUSTICE L. L. NAIKUNI,
ENVIRONMENT AND LAND COURT MOMBASA

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. No appearance for the Plaintiff.
- c. Mr. Oduor Advocate for the Defendants.

