Submissions on Common Facilities Waiver and Unproved Mesne Profits

Educational sample 075 | Environment and Land Court at Nairobi

Educational reconstruction based on a reported Kenyan decision. This is newly drafted text, not an original court filing, not a matter handled by our team, and not proof that a sample argument succeeded. Parties, parcels and identifying case details in the specimen are replaced with bracketed fields. Do not sign, swear or file it without checking your facts, jurisdiction, applicable rules and court directions.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CASE OR APPLICATION NO [insert appropriate reference]

[APPLICANT OR CLAIMANT] v [RESPONDENT OR DEFENDANT]

WRITTEN SUBMISSIONS

1. The Plaintiff asks the Court to enforce the estate instruments according to their terms. The issues are the promised reversionary transfer, the status of the gym and health-club space, the alleged waiver and the developer’s monetary counterclaim.

2. The sale and lease descriptions identify thirty residential apartments and specified facilities. The transfer provisions and payment of the membership sums must be considered together. A developer cannot defeat the agreed transfer condition by unilaterally reclassifying the facility space.

3. The fee charged for gym use is evidence of operation and charging arrangements. It does not override the complete lease description without an established contractual or proprietary basis.

4. The developer asserts consent and waiver. The actual company resolutions, their competence and any conditions must be proved. A request to convert or a conditional discussion is not equivalent to a proved unconditional surrender of the residents’ rights.

5. Planning and title evidence must identify the correct parcel and authorised works. The source Court noted that the plan relied on did not match the suit property. A plan for another parcel cannot establish approval of this conversion.

6. The reversion and document handover are separate operative acts. The requested order should identify the transfer obligation and deadline, the precise originals to be delivered and the parties required to perform each act.

7. Mesne profits require a legal basis in wrongful possession and a proved calculation. The developer’s claim for interest on third-party purchase balances does not itself prove wrongful occupation by residents or entitlement to mesne profits.

8. The Plaintiff requests the injunctions and mandatory relief supported by the pleaded instruments and evidence, and dismissal of the counterclaim. The Court should not grant an unproved accounting or monetary sum simply because the primary contractual breach is established.

9. The source judgment granted reversionary transfer and identified injunctions, dismissed the counterclaim and awarded costs. Any adapted prayer must still address the estate’s actual title regime, affected third parties and present legal requirements.

DATED at [place] on [date]. [Signature of party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected party and address].

Use and evidence notes

Avoid presenting historical lease arrangements as identical to every current sectional-property estate. Check the applicable Sectional Properties Act, registration and planning framework. Relief affecting existing third-party buyers requires proper joinder and hearing.

Source and procedural limits

A residents’ management company sued the developer over a thirty-apartment estate, promised common facilities, the reversionary title and original management documents. The developer converted the gym and health-club space into two proposed apartments and asserted resident consent. Its counterclaim included interest on outstanding sale consideration and mesne profits.

The Court found the management company entitled to the reversionary interest, restrained dealings and further demolition, ordered transfer within sixty days and handover of the identified originals, and dismissed the developer’s counterclaim. The consent and waiver defence was not proved. A mesne-profits demand was not established merely by listing a sum.

The source considered the lease and sale terms, Sectional Properties Act 2020 sections 6 and 13, planning approval, and the definition and proof of mesne profits. A new file must check its title regime and any applicable sectional conversion requirements rather than assume every estate has the same structure.

[2021] KEELC 1268 (KLR) — 2021. Source: https://new.kenyalaw.org/akn/ke/judgment/keelc/2021/1268/

The linked original judgment may identify parties. This public specimen omits their names. Historical allegations are not presented as established facts. A different result in your own proceedings is possible.