



REPUBLIC OF KENYA



**KPC Retirement Benefit Scheme 2006 (DC) Registered Trustees
v Kay Thrice Limited (Environment & Land Case E086 of 2022)
[2025] KEELC 1206 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1206 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E086 OF 2022
LC KOMINGOI, J
MARCH 13, 2025**

BETWEEN

**KPC RETIREMENT BENEFIT SCHEME 2006 (DC) REGISTERED
TRUSTEES PLAINTIFF**

AND

KAY THRICE LIMITED DEFENDANT

JUDGMENT

1. By the Plaint dated 4th July 2022, the Plaintiff is a body corporate under the *Trustees (Perpetual Succession) Act* registered on 23rd January 2013. The Defendant is a Limited Liability Company incorporated under the *Companies Act*.
2. The Plaintiff's case that it is the registered owner of house number 95 situate on property Kajjado/Kitengela/76873. It is further its case that in a Tenant Purchase Agreement dated 22nd June 2020, the Defendant agreed to purchase House number 95. The agreement stipulated that the balance of the purchase price would be paid in equal instalments of Kshs. 111,485 on or before the fifth day of every month for a period of two hundred and forty months. The Plaintiff claims that despite being issued with demand notices on several occasions, the Defendant failed to pay the said instalments for twenty-four months. On 10th February 2021, the Plaintiff issued a 21 days termination notice pursuant to clause 12 of the Tenant Purchase Agreement. The Defendant continued to breach the agreement and another termination notice was issued on 25th May 2021. Eventually a Rescission notice dated 10th August 2021 was issued rescinding the agreement and requiring the Defendant to vacate the premises. The Defendant has failed to comply with the notices and has continued to occupy the premises without meeting his obligations.
3. The Plaintiff eventually issued the Defendant with a notice to vacate dated 6th October 2021. The said notice was also served on the Isinya Sub County Police Commander and Isinya Deputy County



Commissioner on 21st March and 30th March 2022 respectively. Despite all these notices Defendant continued to occupy the premises and as of 14th April 2022 the unpaid amount was Kshs. 2,675,640 together with service charge of Kshs. 105,000.

4. The Plaintiff therefore sought for:
 - a. A mandatory order of immediate eviction compelling the Defendant, his servants, agents, employees, personal representative, assigns or anyone claiming to be on the suit premises by Defendant's authority to vacate the suit property known as House No. 95 on Kajiado/Kitengela/76873 in Kitengela.
 - b. A mandatory order compelling the Defendant to remove any personal belongings or items of property which he has brought onto House No. 95 on Kajiado/Kitengela//76873 in Kitengela with immediate effect failing which the Plaintiff should remove the same at the Defendant's cost.
 - c. A mandatory order compelling the Defendant to forthwith and without delay settle the outstanding arrears of Kshs. 2,780,640 together with interest at commercial rate from the date of filing this suit to the date of fully complying with the orders of this Honourable Court.
 - d. A permanent injunction restraining the Defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit property by the Defendant's authority from occupying, being in occupation, trespassing on the suit property and/or interfering, in any way, with the Plaintiff's quiet enjoyment, possession and use of the suit property and/or from offering for sale, selling, transferring alienating or in any way disposing of the suit property being House No. 95 on Kajiado/Kitengela/76873 in Kitengela.
 - e. An order directed at the officer commanding station, Kitengela Police Station to ensure compliance with the court orders herein, to oversee the eviction of the Defendant from the suit property and ensure peace prevails.
 - f. Costs of the suit.
 - g. Any other or further reliefs that this Honourable Court may deem fit and just to grant.
5. The Defendant who was duly served with copies of Plaintiff and Summons to enter appearance neglected to enter appearance and or file defence within the stipulated period.
6. The matter therefore proceeded for formal proof.

Evidence of the Plaintiff

7. PW1, Geoffrey Cheruiyot, adopted his witness statement dated 15th April 2024 as his evidence in chief and produced his bundle of documents as exhibits in this case.
8. At the close of the oral testimony, the Plaintiff tendered final written submissions.

The Plaintiff's submissions

9. Counsel submitted that, the single issue for determination was whether the Plaintiff was entitled to the orders sought. It was submitted that it was not in dispute that there was a valid Tenant Purchase Agreement entered between the Plaintiff and the Defendant and the Defendant failed to perform his contractual obligations. It was further submitted that, the Plaintiff had proved its case and was entitled to the orders sought together with costs. Reference was made to the case of Dormakaba Ltd v Architectural Supplies Kenya Ltd [2021] KEHC 210 (KLR).



Analysis and Determination

10. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
 - i. Whether the Plaintiff is entitled to the reliefs sought in the Plaintiff.
 - ii. Who should bear costs of the suit?
11. The Plaintiff's case is that it entered into a Tenant Purchase Agreement, with the Defendant on 22nd June 2020 for the sale of house number 95 on property known as Kajiado/Kitengela/76873.
12. PW 1 produced the Tenant Purchase Agreement duly executed by parties to this suit as an exhibit in this case. The agreement indicates that the purchase price of the house was Kshs. 11,250,000; with payment of a non refundable deposit of Kshs. 1,125,000 on or before execution of the agreement; and the balance of Kshs. 10,125,000 together with a 12% interest was to be paid in two hundred and forty (240) monthly instalments of Kshs. 111,485 on or before the 5th day of every month.
13. The Plaintiff's case is that the Defendant has neglected to meet the obligations and had outstanding arrears of Kshs. 2,675,640 as of 14th April 2022.
14. It is trite Law that he who alleges must prove. Section 107 of the *Evidence Act* provides that;
 - “ 107 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.
 - (1) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
15. Clause 12 of the agreement executed provides that, if the Tenant Purchaser fails to adhere to payment of the monthly instalments for a period of over 2 months and fails to remedy the non repayment within 21 days of being notified of the default, the Plaintiff was entitled to rescind the agreement and repossess the house.
16. Clause 13 goes on to provide that any notices under the Agreement would be in writing and served to the purchaser's last known address.
17. The Plaintiff produced termination notices dated 10th February 2021 and 25th May 2021 and a letter rescinding the contract dated 10th August 2021 asking the Defendant to vacate the premises. On 6th October 2021 the Plaintiff issued the Defendant with a notice to vacate the premises within three (3) months of that notice. However, the Defendant was still in possession of the premises with outstanding arrears and the Plaintiff has thus sought Court's intervention to evict the Defendant.
18. From evidence presented, it is clear that the Defendant was in material breach of the agreement leading to its rescission by the Plaintiff and thereafter an eviction notice issued in 2021. This is over four years ago.
19. It is unfair and unfortunate for the Defendant to continue being in occupation of a premises that it does not pay for to the detriment of the owner. This is illegal occupancy which should not be condoned.
20. I find that the Plaintiff has proved its case against the Defendant on a balance of probabilities.
21. Accordingly Judgment is entered for the Plaintiff as follows;



- a. That the Defendant, his servants, agents, employees, personal representative, assigns or anyone claiming to be on the suit premises by Defendant's authority is hereby ordered to vacate the suit property known as House No. 95 on Kajiado/Kitengela/76873 in Kitengela within 21 days from the date of this judgement.
- b. That the Defendant, his servants, agents, employees, personal representative, assigns or anyone claiming to be on the suit premises by Defendant's authority is hereby ordered to remove any personal belongings or items of property which he has brought onto House No. 95 on Kajiado/Kitengela//76873 in Kitengela within 21 days from the date of this judgement.
- c. Failure to adhere to orders a and b above, the Plaintiff be at liberty to enter and remove the Defendant and his belongings from House No. 95 on Kajiado/Kitengela//76873 in Kitengela at the Defendant's cost.
- d. That the Defendant is hereby ordered to forthwith settle the outstanding arrears of Kshs. 2,780,640 together with interest at commercial rate from the date of filing this suit to the date of full compliance with this Court's orders.
- e. That a permanent injunction is hereby issued restraining the Defendant, his servants, agents, employees, personal representatives, assigns or anyone claiming to be on the suit property by the Defendant's authority from occupying, being in occupation, trespassing on the suit property and/or interfering, in any way, with the Plaintiff's quiet enjoyment, possession and use of the suit property and/or from offering for sale, selling, transferring alienating or in any way disposing of the suit property being House No. 95 on Kajiado/Kitengela/76873 in Kitengela.
- f. That the officer commanding station, Kitengela Police Station is ordered to ensure compliance with the Court orders herein and ensure peace prevails.
- g. That costs of the suit to be borne by the Defendant.

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

L. KOMINGOI

JUDGE.

In The Presence of:

Mr. Kimathi for the Plaintiff.

N/A for the Defendant.

Court Assistant – Mutisya.

