



**Lexo Energy Kenya Limited v Nyanya (Environment & Land Case  
21 of 2023) [2025] KEELC 3413 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3413 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 21 OF 2023**

**FM NJOROGE, J**

**APRIL 29, 2025**

**BETWEEN**

**LEXO ENERGY KENYA LIMITED ..... PLAINTIFF**

**AND**

**SAMWEL OTIENO NYANYA ..... DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 15/9/2023, the Plaintiff implores this court to grant the following reliefs against the Defendants: -
  - a. A declaration that the Plaintiff is entitled to the enjoyment, peaceful and quiet possession, control, and occupation of the suit property land title number Kilifi Township/Block 3/1186 as per and/or in accordance with the terms of the lease dated 10/9/2018 and addendum thereto dated 3/2/2023 entered between the Plaintiff and the Defendant;
  - b. A declaration that the lease issued by the Defendant and registered in favour of the Plaintiff over the suit property constitutes and/or is an encumbrance over the suit property land title number Kilifi Township/Block 3/1186 and survives any subsequent disposition including transfer of title to any third party;
  - c. A declaration that any materializing sale of the suit property land title number Kilifi Township/Block 3/1186 by and/or on behalf of the Defendants to any third party shall not affect and/or interfere with the rights of the Plaintiff under the lease dated 10/9/2018 and addendum thereto dated 3/2/2018 to enjoyment, peaceful and quiet possession, control and occupation thereof;
  - d. A permanent order of injunction be issued to restrain the Defendant whether by himself, his servants, agents and/or persons working on his behalf; from terminating or purporting to terminate the lease, evicting, purporting to evict, issuing and/or purporting to issue any notice



of eviction to the Plaintiff, interfering with the enjoyment, peaceful and quiet possession, control and occupation or at all of and/or over the suit property land title number Kilifi Township/Block 3/1186 for the remainder of the lease;

- e. Costs of the suit;
  - f. Any other relief which the honourable court may deem fit to grant.
2. The Plaintiff's case is that vide a lease dated 10/9/2018 duly registered on 13/9/2018 and a subsequent addendum dated 3/2/2023, it leased the land comprised of title number Kilifi Township/Block 3/1186 (the suit premises) from the Defendant for a period of 15 years from 19/9/2018, for purposes of operating a business of a petrol service station and other ancillary services. The Plaintiff averred that it has been in possession of the suit premises operating as such until on 6/9/2023 when the Defendant informed it via email of its intention to sell the suit premises. The Defendant served upon it on 12/9/2023, an eviction notice on account of the impending sale. The Plaintiff pleaded that the impending eviction would occasion it immense financial loss, irreparable harm and damage owing to the substantial investment it has done on the suit premises.
3. The Defendant entered appearance and filed a statement of defence and counterclaim dated 2/7/2024. The Defendant admitted the existence of the lease and stated that the Plaintiff breached Clause 4 (d) of the lease by transferring possession of the suit premises to Shell Petrol Station, without the Defendant's consent. The Defendant counterclaimed for: -
- a. That the Plaintiff's suit be dismissed with costs to the Defendant.
  - b. A declaration be made that the Plaintiff has breached the express terms of the lease and thus the lease dated 10/9/2018 be and is hereby determined.
  - c. The Defendant is granted vacant possession of the property.
  - d. Costs of the suit and interest.
4. In rebuttal, the Plaintiff filed a Reply to Defence and Defence to Counterclaim dated 9/7/2024. The Plaintiff denied the allegations of breach of lease raised in the defence, and all allegations pleaded in the counterclaim. The Plaintiff pleaded that pursuant to a branding partnership it entered into with Vivo Energy Limited, and in accordance with Clause 4 (d) of the lease, the Plaintiff rebranded the petrol station to "Shell" in order to boost sale volumes. The Plaintiff averred that by way of a letter of notification dated 17/8/2023, it notified the Defendant of the rebranding. The Plaintiff added that the rebranding partnership and subsequent rebranding has never affected any of the terms of the lease. He urged the court to dismiss the counterclaim and enter judgment in favour of the Plaintiff.

## Evidence

5. Each side called one witness. The Plaintiff's witness Kelvin Gathara (PW1) told the court that he is the legal and Human Resource Manager of the Plaintiff. He adopted his written witness statements dated 15/9/2023 and 10/7/2024 as part of his evidence-in-chief, and produced the documents in the list of documents dated 15/9/2023 as P. Exh. 1-6 as arranged therein. The witness also produced as P. Exh. 7 and 8, the documents in the list of documents dated 10/7/2024. He testified that the Plaintiff has been the Defendant's tenant since 2017, and that it notified the Defendant when it entered into an agreement with another company; that the Defendant then offered to transfer the suit premises to the Plaintiff at Kshs. 175 million which it could not afford at the time. PW1 told the court that despite the rebranding, the Plaintiff was still in possession and continues to manage the petrol station; that the rebranding was only meant to increase the sale volume.



6. On cross-examination by Mr. Matheka, PW1 told the court there was no merger with Vivo Energy Limited. He explained that the agreement between the Plaintiff and Vivo Energy was only a supply agreement, for the Plaintiff to use the Shell brand, and that the approval was given by the Competition Authority Kenya. The witness testified on re-examination that the Plaintiff is authorized to sell Vivo Energy products and that the lease does not contain any term that enjoins the Plaintiff to operate solely as “Lexo”. He stated that Clause 4 d allows the Plaintiff to assign, part with possession or allow the station be operated by any other dealer authorized by the Plaintiff.
7. Samuel Otieno Nyanya testified as DW1. He adopted his witness statement dated 2/7/2024 and produced as DExh. 1 and 2, the photographs annexed in the list of documents dated 2/7/2024. He told the court that the lease agreement was between himself and the Plaintiff, and that he never gave his consent to assign the lease to a third party. He asserted that Clause 4 (d) means only a dealer can be given the station and not an importer like Shell. He denied ever being notified of the said rebranding or the agreement between the Plaintiff and Vivo Energy.
8. Upon cross-examination by Mr. Omondi, the Defendant confirmed that there is no clause that specifically states that the Plaintiff could only operate at the suit premises as “Lexo”, and that he could therefore not dictate the products the lessee would sell or how it should run the suit premises. He added that the lease does not dictate how the Plaintiff should brand the petrol station. The Defendant asserted that his issue was the rebranding and that he was never informed of the same. The witness was subsequently shown the letter dated 12/9/2023 in his list of documents. He confirmed the details thereon, that there was no complaint on rebranding but only the issue of sale; that the Defendant had no evidence of sale, transfer or subletting by the Plaintiff, but only on rebranding. In re-examination, the Defendant told the court that the lease does not provide for rebranding. He added that Clause 4 (d) gives the Plaintiff ability to assign or sublet.
9. The Defendant’s testimony marked the close of the hearing and parties agreed to file closing written submissions, which they did.

#### **Plaintiff’s Submissions.**

10. Counsel for the Plaintiff reiterated the evidence already reproduced hereinabove. It was his argument that the Plaintiff has not violated any of the terms of the lease by rebranding the service station to “Shell” or by selling of the products of Vivo Energy Limited, and that in any case, the lease itself under Clause 4 (d) allows assignment or parting with possession of the suit premises and have the same operated by an authorized dealer or licensee. To counsel, the Plaintiff has proved its case against the Defendant. He added that the allegations raised in the counterclaim were not proved and urged the court to dismiss the counterclaim with costs.

#### **Defendant’s Submissions**

11. It was counsel’s submission that while Clause 4 (d) allows assignment and or transfer, that right was limited to an authorized dealer or licensee or persons not in competition to it but to run the station to the benefit of the Lessor. Counsel maintained that “Shell” is not an authorized dealer or licensee as speculated under Clause 4(d), but a competitor if not an equal oil importer as the Plaintiff. To counsel, that was so because even the Plaintiff had to seek the advisory of the Competition Authority Kenya. According to Mr. Matheka, the Plaintiff’s actions are tantamount to breach of lease and it is attempting to cover the breach as a branding exercise. He added that there was no evidence of the branding agreement and urged the court to dismiss the Plaintiff’s claim.



## Analysis And Determination

12. I have considered the pleadings, evidence and submissions presented by both parties; the following issues are for determination: -
  - i. Whether the Plaintiff was in breach of the lease dated 10/9/2018;
  - ii. Whether the lease dated 10/9/2018 should be terminated;
  - iii. Whether the Plaintiff is entitled to the prayers sought in the plaint;
  - iv. Who ought to bear the costs of the suit.
13. The Defendant's case is that the lease agreement between himself and the Plaintiff did not have any clause allowing the Plaintiff to assign the suit premises to a third party who was not an authorized dealer. His grievance was also that he was not informed of the alleged rebranding of the premises. The Lease agreement was produced as an exhibit by both parties in this case.
14. The Plaintiff asserted that the change of the suit premises name from "Lexo" to "Shell" was purely rebranding calculated at increasing sale volumes, and that in any case Clause 4 (d) of the lease allows the lessee, the Plaintiff herein, to assign and or part with the possession of the suit premises without the consent of the Lessor, the Defendant.
15. The said Clause is reproduced hereunder: -
  - (d) The Lessee reserves the right to assign and or part with the possession of the demised premises, and have the service station with ancillary services and convenience retail activities on the demised premises being operated by an authorized dealer or licensee of the lessee in any one of the ancillary services or convenience retail activities and the lessee shall further have the right to appoint a third party as a licensee or licensees to operate a shop and any other related business or businesses on the demised premises;"
16. The above clause is quite straightforward, that the lessee who is the Plaintiff herein, could assign and or part with the possession of the suit premises and have the service station together with all the ancillary services be operated by a third party. The clause has no requirement of the Lessor's consent prior to assigning or parting with possession thereof. The Plaintiff was therefore well within the terms of the lease, allowing the alleged rebranding. The Defendant's argument that "Shell" is not a licensed dealer stipulated under Clause 4 (d) above, but an importer, was not substantiated. The upshot is that the Plaintiff is not in breach of the lease agreement.
17. Kenyan courts rely on contractual interpretation and common law principles in commercial lease disputes. Generally, a lease creates an estate in land for the agreed term, and once granted, neither party can terminate the lease earlier except as provided for in the lease or by breach or default; therefore, courts do not imply early termination rights unless clearly expressed, in that, if the lease is silent on a break clause, the lease is presumed to run to the end of the fixed term.
18. The lease, being for a fixed term of 15 years, does not contain a break clause granting the lessor a general right to terminate the lease prematurely. Clause 4 (e), while acknowledging the possibility of termination without the lessee's fault does not confer upon the lessor a contractual right of early



termination; rather, it creates a remedial mechanism in the event of wrongful termination. Clause 4(e) reads: -

“In the event that this lease is terminated by the lessor through no fault of the lessee, the lessor shall within fourteen (14) days of demand reimburse to the lessee all sums as would have been unutilized in respect of the remainder of the term of the lease, failing which the lessee’s remedies shall be those contained in the aforementioned charge.”

19. Accordingly, the lease remains binding on both parties for its full duration unless lawfully ended by mutual agreement, operation of law, or breach by the lessee. Having established that the Plaintiff was not in breach of the lease, this court is satisfied that the reliefs sought by the Plaintiff are merited and so prayers no (a), (b), (c), (d), and (e) in the Plaint dated 15/9/2023 are hereby granted as prayed.

**JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 29<sup>TH</sup> DAY OF APRIL, 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

