



**Kingori v Telposta Pension Scheme Registered Trustees & another (Civil Suit 489 of 2017) [2022] KEELC 2214 (KLR) (28 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2214 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
CIVIL SUIT 489 OF 2017  
SO OKONG'O, J  
JUNE 28, 2022**

**BETWEEN**

**ANNE NGIMA KINGORI ..... PLAINTIFF**

**AND**

**TELPOSTA PENSION SCHEME REGISTERED TRUSTEES ..... 1<sup>ST</sup> DEFENDANT**

**DORCAS KINYANYA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The full facts of this case is set out in the judgment of this court that was delivered on 7<sup>th</sup> October 2021. In summary, the 2<sup>nd</sup> defendant was at all material times an employee of Kenya Posts & Telecommunications Corporation (hereinafter referred to as “KPTC”). The 2<sup>nd</sup> defendant was employed by KPTC with effect from 4<sup>th</sup> November, 1982. Following restructuring in the telecommunication sector that led to the split of KPTC into Postal Corporation of Kenya and Telkom Kenya Limited, the 2<sup>nd</sup> defendant became an employee of Telkom Kenya Limited. The 2<sup>nd</sup> defendant worked for Telkom Kenya Limited (hereinafter referred to as “Telkom”) until 31<sup>st</sup> January, 2007 when her services were terminated due to redundancy. While in the employment of Telkom, the 2<sup>nd</sup> defendant was allocated a two-bedroomed house known as Quarter No. 59 on Akal Road, Nairobi as her residence. This property that was later referred to as Nairobi/Block 69/117, Unit 63 House No. 59 shall be referred to hereinafter as “the suit property”. The suit property among others that were owned by the defunct KPTC was subsequently transferred and vested in TelPosta Pension Scheme (hereinafter referred to only as “the 1<sup>st</sup> defendant”) with effect from 1<sup>st</sup> July, 1999.
2. In 2004, the 1<sup>st</sup> defendant decided to sell the suit property among others to the occupant thereof. By a letter dated 25<sup>th</sup> March, 2004, the 1<sup>st</sup> defendant offered to sell the suit property to the 2<sup>nd</sup> defendant at Kshs. 1,200,000/- on terms and conditions that were contained in the said letter. On 21<sup>st</sup> March,



2005, the 1<sup>st</sup> and 2<sup>nd</sup> defendants entered into a written agreement of sale in respect of the suit property which provided among others that;

1. The suit property was sold to the 2<sup>nd</sup> defendant together with the buildings and other developments thereon at a price of Kshs. 1,200,000/-.
  2. The 2<sup>nd</sup> defendant had paid to the 1<sup>st</sup> defendant a sum of Kshs. 120,000/- as a deposit on execution of the agreement receipt of which the 1<sup>st</sup> defendant acknowledged.
  3. The 2<sup>nd</sup> defendant was to pay to the 1<sup>st</sup> defendant the balance of the purchase price on the completion date.
  4. The completion date was 90 days from the date of the agreement.
  5. The property was sold with vacant possession on the date of completion.
  6. The sale was subject to *Law Society Conditions of Sale* (1989 Edition) in so far as the same was not inconsistent with the terms of the agreement.
3. The 2<sup>nd</sup> defendant failed to pay the balance of the purchase price within the 90 days completion period. On 28<sup>th</sup> July, 2005, the 1<sup>st</sup> defendant gave the 2<sup>nd</sup> defendant 21 days notice to pay the balance of the purchase price failure to which she risked forfeiting the 10% deposit that she had paid. The 2<sup>nd</sup> defendant did not respond to the said demand letter. The 1<sup>st</sup> and 2<sup>nd</sup> defendants exchanged some correspondence in 2006 that did not result in the completion of the agreement between the parties.
4. On 3<sup>rd</sup> October, 2007, 2 years after the agreement of sale that the 1<sup>st</sup> defendant entered into with the 2<sup>nd</sup> defendant, the 1<sup>st</sup> defendant entered into another agreement for sale of the suit property with the plaintiff. Under the new agreement, the 1<sup>st</sup> defendant sold the suit property to the plaintiff at Kshs. 2,512,036/- and the property was transferred and registered in the name of the plaintiff on 5<sup>th</sup> August, 2011. In the meantime, the 1<sup>st</sup> defendant remained in possession of the suit property and refused to vacate the same.
5. The plaintiff filed this suit through a plaint dated 5<sup>th</sup> September, 2008 that was amended on 20<sup>th</sup> March, 2012. In the amended plaint, the plaintiff sought the following reliefs;
- i. A permanent injunction restraining the defendants from occupying, collecting rent from, transferring, alienating, or in any way dealing with or interfering with the proprietary rights and interests enjoyed by the plaintiff over all that property known as Title Number Nairobi/Block 69/117 Unit 63 located in South B Estate, Nairobi (the suit property).  
Vacant possession of the suit property.
  - iii. Mesne Profits from 4<sup>th</sup> September, 2008 to the date of recovery of possession of the suit property by the plaintiff together with interest at commercial rates until payment in full.
  - iv. Costs of the suit and interest.
6. The plaintiff averred that it paid the full purchase price for the suit property to the 1<sup>st</sup> defendant and the property was transferred to her. The plaintiff averred that although the 1<sup>st</sup> defendant had caused the suit property to be registered in her name, the 1<sup>st</sup> defendant had failed and/or refused to grant her vacant possession of the property in accordance with the terms the agreement of sale between the parties. The plaintiff averred that the 2<sup>nd</sup> defendant who was the 1<sup>st</sup> defendant's tenant on the suit property prior to the sale of the same to the plaintiff was notified of the change of ownership of the suit property by the 1<sup>st</sup> defendant and was advised to pay rent to the plaintiff. The plaintiff averred that the 2<sup>nd</sup> defendant



- refused to pay rent to the plaintiff and had instead sub-let the suit property unlawfully to a third party. The plaintiff averred that the 2<sup>nd</sup> defendant was a trespasser on the suit property since she was not the owner thereof.
7. The 1<sup>st</sup> defendant filed a defence and a counter-claim against the 2<sup>nd</sup> defendant on 2<sup>nd</sup> May, 2012. In its defence, the 1<sup>st</sup> defendant admitted that it sold and transferred the suit property to the plaintiff. The 1<sup>st</sup> defendant averred that having transferred the suit property to the plaintiff, it had discharged its obligations to the plaintiff under the agreement of sale between the parties. The 1<sup>st</sup> defendant averred that it was not liable to the plaintiff for vacant possession and mesne profits and that the same should be claimed from the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant averred that the 2<sup>nd</sup> defendant's continued occupation of the suit property was unlawful.
  8. In its counter-claim against the 2<sup>nd</sup> defendant, the 1<sup>st</sup> defendant reiterated the contents of its defence and averred that prior to selling the suit property to the plaintiff, the 2<sup>nd</sup> defendant had defaulted in her tenancy obligations to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant averred that it had made attempts to levy distress against the 2<sup>nd</sup> defendant which did not yield much since the 2<sup>nd</sup> defendant had nothing to attach. The 1<sup>st</sup> defendant averred that the 2<sup>nd</sup> defendant's tenancy agreement with the 1<sup>st</sup> defendant in respect of the suit property lapsed on account of the 2<sup>nd</sup> defendant's breach of the same and upon the sale and transfer of the property to the plaintiff. The 1<sup>st</sup> defendant averred that the plaintiff was entitled to immediate possession of the property upon the property being transferred to the plaintiff.
  9. The 1<sup>st</sup> defendant averred that since the 2<sup>nd</sup> defendant had failed to deliver vacant possession of the suit property to the plaintiff, she was liable to pay to the plaintiff mesne profits until she delivered up possession. The 1<sup>st</sup> defendant sought the following orders by way of counter-claim;
    1. The plaintiff's suit against the 1<sup>st</sup> defendant be dismissed and the 1<sup>st</sup> defendant's costs be borne by the 2<sup>nd</sup> defendant.
    2. Judgment be entered for the 1<sup>st</sup> defendant against the 2<sup>nd</sup> defendant for;
      - i. An order directing the 2<sup>nd</sup> defendant to vacate and give vacant possession of the suit property to the plaintiff.
      - ii. In default, an order be issued for the eviction of the 2<sup>nd</sup> defendant from the suit property
      - iii. An order for the 2<sup>nd</sup> defendant to pay mesne profits to the plaintiff from 4<sup>th</sup> September, 2008 until possession is delivered.
    3. Kshs. 180,000/- being rent arrears due from the 2<sup>nd</sup> defendant to the 1<sup>st</sup> defendant as at August, 2008.
    4. Costs of the counter-claim.
  10. The 2<sup>nd</sup> defendant filed a defence and counter-claim against the 1<sup>st</sup> defendant on 30<sup>th</sup> May, 2012. The 2<sup>nd</sup> defendant denied that the plaintiff purchased the suit property, paid the purchase price and had the property transferred to her name. The 2<sup>nd</sup> defendant denied that she was notified of the change of ownership of the suit property and advised to pay rent to the plaintiff and that she refused to do so. The 2<sup>nd</sup> defendant denied further that her occupation of the suit property was illegal and that she had sublet the property to third parties.
  11. In her counter-claim against the 1<sup>st</sup> defendant, the 2<sup>nd</sup> defendant reiterated the contents of her defence. The 2<sup>nd</sup> defendant averred that she was still a tenant on the suit property. The 2<sup>nd</sup> defendant averred that on 25<sup>th</sup> October, 2005, the 1<sup>st</sup> defendant offered to sell to her the suit property that she was occupying.



The 2<sup>nd</sup> defendant averred that she entered into a sale agreement with the 1<sup>st</sup> defendant and paid 10% deposit in the sum of Kshs. 120,000/-. The 2<sup>nd</sup> defendant averred that in breach of the said agreement of sale between her and the 1<sup>st</sup> defendant, the 1<sup>st</sup> defendant sold the suit property once again to the plaintiff. The 2<sup>nd</sup> defendant averred that the 1<sup>st</sup> defendant had breached the agreement of sale between them by failing to furnish her with the completion documents to enable her obtain finance for the balance of the purchase price.

13. The 2<sup>nd</sup> defendant prayed for;

1. The dismissal and/or striking out of the plaintiff's suit.
2. A permanent injunction restraining the 1<sup>st</sup> defendant from interfering with the 2<sup>nd</sup> defendant's peaceful and quiet occupation of the suit property.
3. Judgment to be entered against the 1<sup>st</sup> defendant for;
  - i. An order for specific performance directing the 1<sup>st</sup> defendant to complete the agreement of sale that it entered into with the 2<sup>nd</sup> defendant.
  - ii. An order allowing the 2<sup>nd</sup> defendant to complete the payment of the balance of the purchase price and for the extension of the completion period.
  - iii. Costs of the counter-claim.

The court after hearing the parties in their respective claims delivered a judgment on 7<sup>th</sup> October 2021. The court entered judgment for the plaintiff and the 1<sup>st</sup> defendant against the 2<sup>nd</sup> defendant on the following terms;

1. "Judgment is entered for the plaintiff against the defendants as follows;
  - i. The 2<sup>nd</sup> defendant, her agents, servants, employees or anyone else claiming under the 2<sup>nd</sup> defendant shall vacate and hand over possession of all that property known as Title Number Nairobi/Block 69/117 Unit 63, Nairobi (the suit property) to the plaintiff within 30 days from the date hereof.
  - ii. In the event that the 2<sup>nd</sup> defendant fails to vacate and hand over possession of the suit property to the plaintiff within the prescribed period, a warrant of eviction shall issue on application by the plaintiff for the 2<sup>nd</sup> defendant's forceful eviction from the suit property.
  - iii. A permanent injunction is issued restraining the defendants by themselves or through their agents, servants, employees or anyone else claiming under them from in any way whatsoever dealing with or interfering with the enjoyment of the plaintiff's rights over the suit property.
  - iv. The 2<sup>nd</sup> defendant shall pay to the plaintiff mesne profits at the rate of Kshs. 30,000/- per month from 5<sup>th</sup> August, 2011 until vacant possession is delivered to the plaintiff together with interest at court rate from the date hereof until payment in full.
2. Judgment is entered for the 1<sup>st</sup> defendant against the 2<sup>nd</sup> defendant in the sum of Kshs. 180,000/- together with interest at court rate from the date of filing of the 1<sup>st</sup> defendant's counter-claim until payment in full.
3. The 2<sup>nd</sup> defendant's counter-claim against the 1<sup>st</sup> defendant is dismissed.



4. The 2<sup>nd</sup> defendant shall pay the plaintiff's and the 1<sup>st</sup> defendant's costs of the suit and the counter-claims.”
14. The 2<sup>nd</sup> defendant was dissatisfied with the said judgment of the court and filed a notice of her intention to appeal against the same to the Court of Appeal. The 2<sup>nd</sup> defendant also filed an application dated 29<sup>th</sup> October 2021 seeking a stay of execution of the said judgment pending the hearing and determination of her intended appeal to the Court of Appeal. On 10<sup>th</sup> November 2021, the court directed that the 2<sup>nd</sup> defendant's application be heard by way of written submissions and gave timelines within which the parties were to file their respective submissions. The court also ordered that the prevailing status quo relating to possession of the suit property be maintained on condition that the 2<sup>nd</sup> defendant deposited a sum of Kshs. 1,100,000/- as security in an interest earning bank account in the joint names of the advocates for the parties within 14 days of the order in default of which the order was to lapse.
15. The 2<sup>nd</sup> defendant neither filed submissions nor deposited the said sum of Kshs. 1,100,000/- as had been ordered by the court. Instead, the 2<sup>nd</sup> defendant filed another Notice of Motion application dated 22<sup>nd</sup> November 2021 seeking an order for the review of the orders that were made by the court on 10<sup>th</sup> November 2021. On 15<sup>th</sup> December 2021, the court directed that the 2<sup>nd</sup> defendant's new application dated 22<sup>nd</sup> November 2021 be mentioned on 27<sup>th</sup> January 2022 together with her earlier application dated 29<sup>th</sup> October 2021 for stay of execution.
16. On 27<sup>th</sup> January 2022, the court granted the 2<sup>nd</sup> defendant time to file submissions in respect of her two applications and stood over the matter to 4<sup>th</sup> April 2022 for fixing a ruling date. On 4<sup>th</sup> April 2022, the 2<sup>nd</sup> defendant's advocate told the court that they had not filed submissions in respect of the 2<sup>nd</sup> defendant's two applications for stay of execution and review of the order of security that the court had made. Counsel informed the court that the 2<sup>nd</sup> defendant was unable to furnish any security and as such he was leaving matter to the court.
17. The 2<sup>nd</sup> defendant having failed to prosecute her two applications dated 29<sup>th</sup> October 2021 and 22<sup>nd</sup> November 2021, the court had no alternative but to dismiss the two applications. The applications were dismissed with costs on 4<sup>th</sup> April 2022 due to the 2<sup>nd</sup> defendant's failure to comply with the directions that were given by the court on filing of submissions. With the dismissal of the said applications, the status of the 2<sup>nd</sup> defendant on the suit property remained as per the judgment of 7<sup>th</sup> October 2021.
18. As at the time of the dismissal of the 2<sup>nd</sup> defendant's applications aforesaid, the plaintiff had filed an application by way of Notice of Motion dated 15<sup>th</sup> December 2021 seeking an order for warrants to be issued for the forceful eviction of the 2<sup>nd</sup> defendant from the suit property at the 2<sup>nd</sup> defendant's own cost. That is the application which is before the court. In summary, the application which is supported by the affidavit of the plaintiff sworn on 15<sup>th</sup> December 2021 was brought on the ground that despite the judgment of this court that was delivered on 7<sup>th</sup> October 2021 ordering the 2<sup>nd</sup> defendant to vacate the suit property within 30 days, the 2<sup>nd</sup> defendant had refused to do so leaving the plaintiff with no alternative but to move the court for an eviction order.
19. The application was opposed by the 2<sup>nd</sup> defendant through an affidavit sworn on 19<sup>th</sup> January 2022. The 2<sup>nd</sup> defendant averred that she had preferred an appeal against the judgment of this court and that she would suffer irreparable damage if she was to be evicted from the suit property before her appeal was heard. The 2<sup>nd</sup> defendant averred that her appeal to the Court of Appeal which was arguable would be rendered nugatory. The 2<sup>nd</sup> defendant averred that she had not refused to vacate the suit property



but was waiting to exhaust her right of appeal. The 2<sup>nd</sup> defendant averred that she had a right to be protected by the court.

20. The 2<sup>nd</sup> defendant averred further that she had not refused to deposit security as ordered by the court. The 2<sup>nd</sup> defendant averred that the time within which she was to make the deposit was too short necessitating her application for review. The 2<sup>nd</sup> defendant urged the court to dismiss the plaintiff's application in the interest of justice.
21. When the application came up for hearing on 27<sup>th</sup> June 2022, the plaintiff's advocate relied entirely on the plaintiff's affidavit in support of the application and urged the court to allow the same. The 2<sup>nd</sup> defendant's advocate also relied on the 2<sup>nd</sup> defendant's replying affidavit filed in opposition to the application and urged the court to dismiss the application.
22. The orders in the judgment delivered of 7<sup>th</sup> October 2021 relevant to the present application provided as follows;

**Judgment is entered for the plaintiff against the defendants as follows;**

- i. The 2<sup>nd</sup> defendant, her agents, servants, employees or anyone else claiming under the 2<sup>nd</sup> defendant shall vacate and hand over possession of all that property known as Title Number Nairobi/Block 69/117 Unit 63, Nairobi (the suit property) to the plaintiff within 30 days from the date hereof.
  - ii. In the event that the 2<sup>nd</sup> defendant fails to vacate and hand over possession of the suit property to the plaintiff within the prescribed period, a warrant of eviction shall issue on application by the plaintiff for the 2<sup>nd</sup> defendant's forceful eviction from the suit property."
23. It is common ground that the said judgment has not been stayed or varied. It is also common ground that the 2<sup>nd</sup> defendant has refused to vacate the suit property in terms of the said judgment. I find no valid reason in the 2<sup>nd</sup> defendant's replying affidavit for her continued occupation of the suit property after her application for stay of execution was dismissed. The 2<sup>nd</sup> defendant's continued occupation of the suit property is contemptuous of the lawful judgment of this court. The court has a duty to ensure that its orders are obeyed.
  24. Due to the foregoing, I find merit in the plaintiff's Notice of Motion dated 15<sup>th</sup> December 2021. The Deputy Registrar shall forthwith issue a warrant to a licensed auctioneer nominated by the plaintiff directing him to evict the 2<sup>nd</sup> defendant from all that property known as L.R No. Nairobi Block 69/117 Unit 63. The plaintiff shall have the costs of the application.

**DELIVERED AND DATED AT NAIROBI THIS 28TH DAY OF JUNE 2022**

**S. OKONG'O**

**JUDGE**

**JUDGMENT DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO  
CONFERENCING PLATFORM IN THE PRESENCE OF:**

Mr. Kimathi h/b for Mr. Agwara for the Plaintiff

N/A for the 1<sup>st</sup> Defendant

Ms. Omondi h/b for Mr. Were for the 2<sup>nd</sup> Defendant

Ms. C. Nyokabi-Court Assistant

