



**Woburn Estate Limited v Beretta (Environmental and Land Originating
Summons 22 of 2022) [2025] KEELC 3784 (KLR) (7 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3784 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 22 OF 2022**

EK MAKORI, J

APRIL 7, 2025

BETWEEN

WOBURN ESTATE LIMITED PLAINTIFF

AND

LIVIO LUIGI BERETTA DEFENDANT

JUDGMENT

1. The originating summons dated the 8th day of September, 2022, seeks the following prayers:
 - a. That the lease between the Plaintiff and the Defendants stands discharged by virtue of manifest breach on the part of the Defendants under clause 6.1 of the lease agreement.
 - b. That a vesting order be issued vesting Apartment 3A of Block 3 within portion number 10714 Folio 666/1596 in the names of Woburn Estate Limited.
 - c. That the Defendant should be condemned to meet the costs of this summons
2. The Plaintiff and the Defendants entered into a lease agreement, annexed to the supporting affidavit and marked as Exhibit FE-1. The said lease agreement provided for payment of a service charge on services provided by the Plaintiff, which is the management company.
3. The Plaintiff is the company, while the Defendant is termed as the apartment owner in the said lease.
4. The Defendants who are termed as the apartment owner by the year 2022 were in arrears of a sum of Ksh 5,000,000. The said amount has escalated to a higher sum at the time of filing these OS.



5. Clause 6.1 of the lease under (Proviso and General Conditions) provides as follows
“.....the charge or any part thereof are outstanding for twenty-eight (28) days after becoming due (whether) formally demanded or not) or if the owner fails to pay or discharge any other obligation or liability payable or to be discharged by the owner,
.....then and in the said case it shall be lawful for the company (Woburn Estate Limited) at any time thereafter to re-enter into and upon the premises or any part thereof in the name of the whole and the same to have again repossess and enjoy its former state and thereupon the term shall absolute determine anything herein contained to the contrary.....”
6. The lease provides under clause 6.1 that whether the said service charge is formerly demanded or not, it shall be lawful for the company, the Plaintiff herein, to re-enter into the said premises or any part thereof.
7. The Plaintiff has exhibited the Defendant’s statement as at the time of filing of this suit, which has been marked as Exhibit FE-2.
8. Clause 10.1 of the lease agreement states as follows:
“ each of the parties hereto hereby agrees and confirms for purposes of the law of contract Act (Chapter 23, Laws of Kenya) that she or it (as the case may be) has executed this lease with the intention to bind herself or itself (as the case may be) to the contents thereof.”
9. The OS was served. No appearance or defence was put forward, and the court then proceeds to allow the OS as submitted and in accordance with the contract as agreed and executed by the parties as contained in clause 6.1, which cannot be changed or rewritten.
10. Therefore, the plaintiff has proven its case on the required standards of the law, and the prayers sought are hereby allowed in their entirety as per the OS
11. Since the claim was undefended, there will be no order as to costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 7TH DAY OF APRIL 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Otara for the Applicant

Court Assistant: Happy

