



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lois Holdings Limited v Tamboi & 184 others (Environment & Land Case  
77 of 2004) [2022] KEELC 13407 (KLR) (27 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13407 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 77 OF 2004  
FO NYAGAKA, J  
SEPTEMBER 27, 2022**

**BETWEEN**

**LOIS HOLDINGS LIMITED ..... DECREE HOLDER**

**AND**

**NDIWO TAMBOI & 184 OTHERS ..... JUDGMENT DEBTOR**

**RULING**

1. I have, in a previous ruling in this matter, indicated that this suit has had a long and checkered history characterized by a multiplicity of applications. This court is once again called upon to determine and application, this time by the plaintiff/ judgement-creditor. The application is by way of a notice of motion application dated April 20, 2021 and filed the same date. It was brought under sections 3, 3A and 63(e) of the Civil Procedure Act and order 51 rule 1 of the Civil Procedure Rules. It sought the following reliefs:
  1. That pursuant to the judgment of September 29, 2014 herein, this hon court be pleased to order the eviction of the defendants from LR No 5335/2.
  2. That the defendants be ordered to pay the costs of this application.
2. The application contained nine (9) grounds which are summarized that the judgment was entered for the plaintiff against the defendants on September 29, 2014 to the effect that the plaintiff was owner of the suit land; that pursuant to the judgment an agreement was reached between the plaintiff and the defendants on November 4, 2015 of which the suit land was one of the parcels which was sold to the defendants but the agreement was breached by the defendants for want of payment of consideration; seven years later the defendants continued using the land and that negotiations on the sale of the land failed completely; and no specific performance could be ordered over a null and void agreement.
3. The application was supported by the affidavit of one Lois Nyaigera Kimbui which was sworn on the same date of the application. She reiterated the grounds of the application and annexed to the affidavit,



as LNK 1, a copy of the judgment. She also attached to the affidavit, as LNK 2, 3 and 4 copies the sale agreements between the plaintiff and the defendants. It is one of these agreements, which relates to the suit land in issue that she contented failed. She then annexed to the affidavit and marked as LNK 5 a copy of a letter dated October 4, 2016 addressed to the defendants and copied to other relevant government offices revoking the agreements. She asked the court to allow the application as made.

4. The application was opposed by way of five (5) grounds of opposition. There were that the application was incompetent, misconceived, bad in law, and fatally defective; it was brought under the wrong provisions of law; that seeking a prayer for eviction was an abuse of the process of the court since there was already an eviction order (sic) hence the one sought if granted would be duplex; the applicant had not listed the total number and specified the names of persons to be evicted hence the order might be used to evict third parties and strangers to the suit and not parties; and that the application had not encompassed the current jurisprudence and protocols on evictions including international instruments to which Kenya is party.
5. The application was disposed of by way of written submissions. The applicant filed its on July 19, 2022 while the respondents filed theirs on the same date. I will not reproduce in detail the contents of the submissions by the parties but I have considered the issues they summarize for me to consider.
6. On the one hand, the applicant submitted that this court entered judgment in its favour on the material date and by virtue of the judgment it entered into an agreement with the defendants for the purchase of the suit land, together with two other parcels, at a consideration of Kshs 99,000,000/=. They then submitted that the defendants sought specific performance of the agreements in Kitale ELC No 14 of 2021 but the suit was struck out. Theirs was that the defendants failed to take advantage of the opportunity the court gave them.
7. The respondents, on the other hand, did not submit anything different from the grounds of opposition that they filed and which this court summarized. Actually, they copied the grounds, word for word and pasted them onto the document they titled “judgment-debtor’s submissions on the decree-holder’s notice of motion dated April 20, 2021”, and only italicized them. They then changed the numbering of each from numerals to vowels. I will not comment on the paucity of reasoning or the lack of seriousness in regard to the submissions by the respondents. In any event submissions do not form part of the pleadings of parties but only persuasion by them to courts to agree to their views or not. Thus, I will determine the merits of the application.

## **Determination**

8. I carefully considered the application, the grounds of opposition thereto and the submissions by the parties. I have also given due and deep regard to the law applicable both through statute and case law. The court formulated only two issues for determination. These were:
  - a. Whether the application is merited
  - b. What orders to issue on costs of the application?
9. I begin by analyzing the first issue.
  - a. Whether the application is merited
10. The application arises from a judgment of this honourable court which was delivered on September 29, 2014. The applicant seeks to execute the judgment by way of eviction of the defendants. The said judgment has neither been varied nor appealed from. I thus need to consider the reliefs granted by the court in the judgment.



11. The relevant relief to consider for the purposes of the application is (iii). The relief was couched as follows, “That the defendants are allowed to remain on LR 5335/2 pending mutual agreement in terms of the advise of the court contained in paragraph 26 hereinabove. The plaintiff shall be at liberty to move the court should there be no agreement for appropriate orders.”
12. The applicants contend that following the judgment, that pursuant to the judgment the plaintiff and the defendants reached an agreement on November 4, 2015. They also argue that the defendants breached the agreement by not paying the consideration, and even seven years later they continued remaining on and utilising the land. They state that no specific performance can be ordered on the failed and null and void agreement. They also state that the defendants moved the court sought specific performance of the impugned agreement in Kitale ELC No 14 of 2021 but the suit was struck out. This court confirms that indeed the said suit was struck out.
13. Thus, as the present situation is, there is no agreement declared valid which can be enforced. Again, the plaintiffs were to remain on the parcel of land in question pursuant to an agreement to be reached by the parties on advice of the court. The grounds of opposition as to incompetence, defectiveness, or fatality of the application herein are not merited. Additionally, the argument that the application is brought under the wrong provisions of law is neither here nor there since article 159(2) (d) of the Constitution of Kenya cures the anomaly of technicalities that may have arisen from the party citing wrong provisions, of which I see none. In any event the respondent was selective on which provisions of law the application was brought under. He stated that the application was brought under section 63(e) of the Civil Procedure Act. I see none in the body of the application. Counsel must have been reading a totally different application from the one the court has. regarding the other grounds of opposition, this court sees no duplicity thereof in relation to the reliefs granted.
14. There is no abuse of the process and there is no need to specifically mention the persons to be evicted. It is clear that the suit was against the defendants and anyone claiming through them and judgment was entered as such. It appears that the respondents want to convolute this matter by ‘speaking’ or arguing the need for no eviction by other parties or third parties who are not part of the proceedings herein. That is disingenuous, particularly when there are no such instructions. The respondents want to cling on any straw they find as they sink. That the court cannot agree to.
15. There being none, and there being no stay of execution of the orders, the applicant is entitled to the orders sought. The application is merited and it is hereby allowed with costs to the applicants.
16. Orders accordingly.

**Ruling dated, signed and delivered at Kitale via electronic mail this 27<sup>th</sup> day of September, 2022.**

**HON DR. IUR FRED NYAGAKA**

**JUDGE, ELC KITALE**

