



Denooyer & another v Ancilloto (Environment and Land Case E011 of 2022) [2025] KEELC 4061 (KLR) (28 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4061 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND CASE E011 OF 2022**

**LN MBUGUA, J
MAY 28, 2025**

BETWEEN

JAMES DENOAYER 1ST PLAINTIFF

LORRIE DENOAYER 2ND PLAINTIFF

AND

LUISA ANCILLOTO DEFENDANT

RULING

1. Before me is a notice of motion application dated 15.1.2025 filed by the plaintiff seeking leave for the firm of Okatch and partners to come on record in this matter, that the consent dated 22.10.2024 be reviewed and set aside, and that the plaintiffs be allowed to file any supplementary documents in support of their case.
2. The application is premised on grounds on the face of the application and the supporting affidavit of Lori Denooyer, the 2nd plaintiff sworn on 15.1.2025. She contends that the plaintiffs have been in occupation of parcel LR. 8035/9 since year 2009 in which the defendant had promised to give them a lease to the suit property, of which they have made developments on the said land.
3. That they embarked on resolving the matter amicably resulting into the case being marked as settled on 22.10.2024. She contends that the plaintiffs did not know the repercussions of the said agreement and contends that the legal advise leading to the consent was not proper.
4. In her supplementary affidavit dated 20.2.2025, the deponent gave the history of their interest in the suit property, reiterating that they have invested heavily on the said land, hence they were entitled to compensation as at the time the defendant transferred the land to herself. She contends that they were misadvised by their lawyers on the issue of rights to land of non citizens (like the plaintiffs). Thus, the decision by the defendant not to grant them a lease over the suit property was based on misinformation and misconception.



5. The deponent therefore avers that the legal advice they got from their advocates which lead them to sign the licence agreement was wrong.
6. The defendant opposed the application vide her Replying Affidavit dated 6.2.2025, as well as grounds of opposition of even date. She denies that the plaintiffs have been in occupation of the suit premises since year 2009, adding that she never promised them any lease. What she gave them was a licence, the one signed on 22.10.2024. She contends that the consent was properly signed and denies that there was any collusion.
7. The respondent has also filed a supplementary affidavit dated 20.2.2025 where she contends that she never entered into any discussions with the plaintiffs for the latter to buy the suit land, adding that the plaintiffs negotiated , agreed and signed the licence agreement dated 22.10.2024.
8. On 10.2.2025, the court gave self-executing directions on the prosecution of the application at hand, in which the plaintiffs were to file and serve their submissions by 3.3.2025, while the respondent was to file and serve their submissions by 10.3.2025. The court directed the parties to file the respective affidavits of services in the portal. Documents filed or served outside the given timelines or not served were to stand as expunged. There was no compliance with these directions; in that the plaintiffs' submissions were filed on 7.3.2025 outside the given timelines and were not even served, while those of the defendant though filed within time were not served. To this end, the court had combed through the digital file in the portal and did not trace any affidavits of services in respect of the aforementioned submissions. It follows that the submissions filed by the two opponents stand as expunged.
9. The court has come across a consent allowing the firm of Okatch and partners to come on record for the plaintiffs. Thus the issue left for determination is whether, the consent filed on 22.10.2024 should be set aside.
10. In *Protus Hamisi Wambada & another v Eldoret Hospital* [2020] KEELC 2294 (KLR), the court cited the case of *Kenya Commercial Bank Ltd V Specialized Engineering Co. Ltd* [1982] KLR 485, where Harris J held inter alia, that –

“A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.

A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side”.

11. Still in *Protus Hamisi Wambada & Another v Eldoret Hospital* (supra), the court referred to the case of *Hirani V. Kassam* [1952] 19 EACA 131 where the Court of Appeal held that;

“It is now well settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out..”

12. The consent apparently filed by the parties on 22.10.2024 was not properly scanned, hence the digital file copy is not readable. The court brought this issue to the attention of the parties on 2.4.2025, the date the matter was initially scheduled for delivery of the ruling. The court directed the parties to file



hard copies of their documents of which, I have seen the consent in question attached to the application dated 15.1.2025. The content therein reads as follows:-

By Consent, it is hereby agreed between the parties as follows:

The matter be marked as settled with no orders as to costs. Dated this 22 day of October 2024”

13. What is clear from the above consent is that the court was not given the nitty gritty details of how the consent was arrived at. The parties simply wanted the court to mark the case as settled and no more. How then does one of the parties turn around inviting the court to interrogate the various agreements and all transactions carried out by the parties behind the scenes? It is trite law that courts do not re write contracts for the parties, See *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* (2017) Eklr. Thus, the court cannot step in at this stage to determine whether the plaintiffs ought to have been given a lease instead of a licence agreement.
14. It is also worthy to note that the consent was not just signed by the advocates. All the parties herein appended their signatures to the said consent, meaning that they were privy to the terms of the settlement. In the case of *Patricia Bini v Melina Investments Ltd & 3 Others* 2015) KHC 5093 the court cited the case of *Curtis v Chemical Cleaning & Dyeing Co. Ltd*(1951), ALL ER 631 where Lord Denning held as follows:-

“If a party affected signs a written document, knowing it to be a contract which governs the relations between him and the other party, his signature is irrefragable evidence of his assent to the whole contract, including exception clauses, unless the signature is shown to be obtained by fraud or misrepresentation”
15. Another point for consideration is that the negotiations were not conducted in haste. This matter did not go to trial primarily because the parties had been negotiating for a while as seen from the proceedings of 7.5.2024.
16. Finally, I find that the plaintiffs are blaming their erstwhile advocates in giving them the wrong advice; that as non-citizens, they could not get a lease. However, there is no evidence to indicate that the plaintiffs have taken any action against their former advocates for giving them the apparently wrong advice.
17. In the end, I find that the application dated 15.1.2025 is not merited, the same is hereby dismissed with costs to the defendant.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 28TH DAY OF MAY 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

