



**Olembo v Nalanda (Environment & Land Case E008 of 2024)
[2025] KEELC 4484 (KLR) (11 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4484 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E008 OF 2024**

**CK NZILI, J
JUNE 11, 2025**

BETWEEN

KENNETH SHITSUGANE OLEMBO PLAINTIFF

AND

JACOB NASONGO NALANDA DEFENDANT

JUDGMENT

1. By a plaint dated 21/2/2024, the plaintiff seeks to have the defendant evicted from 50 acres of portion of land out of LR No. 9XX9/3, otherwise known as Plot No. XB Ndalala Settlement Scheme, and payment of unspecified mesne profits as the legal administrator of Prof. N.K. Olembo. The plaintiff avers that by a lease agreement dated 5/12/2000, the defendant was leased out by the deceased, 50 acres for a non-renewal term of 5 years with effect from 1/1/2019, which was to expire on 31/12/2023, to plant sugarcane.
2. Upon expiry, the plaintiff avers that the defendant was notified that there could be no renewal and therefrom to vacate the land, which he declined to do so. The plaintiff avers that he had entered into a new lease with a third party that was to commence on 1/1/2024, but has been unable to hand him vacant possession due to the defendant's act of refusal to vacate, which have subjected him to loss and damage.
3. The defendant opposed the suit by a statement of defence and a counterclaim dated 4/3/2024. He denied signing any lease with the plaintiff over the subject land. Further, the defendant averred that LR No. 9XX9/3 and Plot No. XB Ndalala Settlement Scheme were different parcels of land, the latter belonging to the late Bernard Mokanga. The defendant averred that by a lease agreement dated 8/9/2018, the late professor Norah Khadzini Olembo leased to the defendant some 50 acres, part of Plot No. XB Ndalala Settlement Scheme to which the lessor claimed to have a beneficial interest, which for a lease was to run for a period of 5 years at a consideration of Kshs.3,000,000=, which he paid in four installments, that was to expire on 31/12/2023, with an option of a renewal.



4. The defendant avers that he took possession and planted sugarcane that is yet to mature. The defendant avers that the lessor passed on 11/3/2021, when the lease was still subsisting. The defendant avers that he was not aware that the plaintiff had on 13/3/2023 obtained a grant over the estate of the deceased lessor in the agreement dated 8/9/2018. It was the defendant's claim that the plaintiff as per the lease was obliged to extend the lease and therefore the new lease entered was erroneous, since there was already in force, his lease over Plot No. XB Ndalala Settlement Scheme, but not LR No. 9XX9/3. The defendant avers that the lease agreement of 8/9/2018 was not amended or varied by the one dated 5/12/2000.
5. It is averred that vide a lease agreement of 31/12/2019, the plaintiff contending to be an owner of Plot No. XB in Ndalala Settlement Scheme, leased 120 acres to the defendant for a period of 5 years with effect from 1/1/2020 upto 31/12/2024 for Kshs. 6,000,000/=, only for the plaintiff to decline to put him into possession. The defendant avers that in mid-January 2024, the plaintiff promised to extend the lease of 8/9/2018, that had expired on 31/12/2023 and demanded an enhancement of Kshs.1,900,000/=, held by him, and in good faith on 23/2/2024, a deposit of Kshs. 500,000/=, was made into the defendant's account.
6. By way of a counterclaim, the defendant contends that the plaintiff as an administrator of the estate of the lessor in the agreement of 8/9/2018, should be ordered to extend the lease for a period of 5 years with effect from 1/1/2024 upto 31/12/2028, to which the lessee would forthwith pay the balance of Kshs.600,000/=. Alternatively, and without prejudice to the foregoing, the defendant prays for an order that the plaintiff refunds the Kshs.2,400,000/=, the failed consideration with interest. Therefore, the defendant counterclaim for:
 - (a) Dismissal of the main suit.
 - (b) Order for extension of the lease and payment of Kshs. 6,000,000/=.
 - (c) In the alternative, only if prayer No. (b) is disallowed, a refund of Kshs. 2,400,000/= with interest.
7. In a reply to defence and defence to the counterclaim dated 21/3/2024, the plaintiff insisted that he only entered into one lease on LR No.9XX9/3, which is part of Plot No. XB Ndalala Settlement Scheme, which he signed on behalf of Prof. N.K. Olembo, whose estate he is now the legal administrator, otherwise, there is no other lease between him and the defendant. Further, the plaintiff insists that the lease that he signed had no provision for any extension of the lease as alleged. Additionally, the plaintiff denied receiving any money as alleged in the counterclaim for a new lease, as the Kshs.1,200,000/=, paid was utilized in the expired lease.
8. At the trial Kenneth Shitsugane Olembo testified as PW1. He relied on witness statements dated 21/2/2024 and 16/10/2024, as his evidence-in-chief. PW1 told the court that he is the sole administrator and beneficiary of the estate of his late parents Professor Norah Khadzini and Reuben James Olembo (deceased). As an authorized agent of the lessor, who were his parents, PW1 told the court that on 1/1/2019 he met the defendant, who signed a lease agreement with him regarding Plot No. XB Ndalala Settlement Scheme to run upto 31/12/2023 at Kshs. 3,000,000/=, which the defendant paid in full.
9. PW1 told the court that in June 2022, he orally notified the defendant that the lease would expire in December 2023 and will not be renewed. Subsequently, PW1 told the court that on 10/12/2022 he met and personally served the defendant with a written notice of expiry of the lease, which he acknowledged receipt of, and went ahead to sign a new lease with Andrew Mwamisi, whom they visited the land for viewing, only to surprisingly find sugarcane grown on it, yet the new tenant was to take possession and



- begin farming in January 2024. PW1 said that he reported the matter to Kwanza Police Station and wrote a statement, leaving the police to commence investigations
10. Accordingly, PW1 told the court that LR No. 9XX9/3 is also known as Ndalala Plot XB measuring approximately 50 acres. PW1 said that around 2016, there was a farm manager by the name Wycliffe Olumosi Mukokwa, who he later learned had been conducting business on the farm without instruction by getting into lease agreements without authority.
 11. In this case PW1 said that after confrontation with the farm manager, he confessed in writing having signed leases without authority and further directing funds therefrom to himself. As a result, PW1 said that he terminated his services on behalf of the estate as per a letter dated 20/2/2020, copied to the police. PW1 said that by the end of 2020, it came to his knowledge that there was purported existing lease dated 31/12/2019 between the defendant and himself as a lessor for 120 acres leased for 5 years with effect from 1/1/2020 to December 2024, at Kshs. 12,000/= per acre to grow sugarcane, out of which the farm manager had been paid directly Kshs.6,000,000/=.
 12. Further, PW1 said that the defendant produced another lease dated 8/2/2018 purportedly signed by him and his late mother to run for 5 years from January 2019 to 31/12/2023 for 50 acres at Kshs. 12,000/= per acre. PW1 said that from the lease documents, the sum was paid to Mr. Mukokwa at KCB Kitale Branch Account No. 182011470, without his knowledge and his late mother's. PW1 said that he also came across another part to the aforesaid bank account while he was not aware of and upon confronting the defendant he conceded the mistake and asked to be allowed to harvest his crops before he could vacate.
 13. As a result, PW1 told the court that he agreed to a new lease with the defendant on 5/12/2020 on condition that the lease allegedly in place to terminate on 31/12/2024, cost be Kshs. 12,000/= per an acre, for 50 acres and on other than the Kshs. 1,800,000/=, Kshs.1,200,000/= be paid directly to his account, which payment was done on 19/7/2021 and the defendant allowed to grow sugarcane on the parcel, until end of the lease; with no option of a renewal, or replanting of any sugarcane in the last year of the lease agreement.
 14. PW1 said that in view of the foregoing arrangements, he entered into a new lease with one Mr. Nakitare, that was to commence in January 2024. PW4 said that despite the foregoing and notices, the defendant has declined to hand over the land yet he has no valid lease. PW1 relied on a copy of the termination letter dated 26/2/2020, P. Exhibit No. (2), letter dated 24/2/2024. P. Exhibit No. (3), letter dated 10/12/2022, P. Exhibit No. (4), lease dated 1/9/2022, P. Exhibit No. (5), OB No. 19/21/1/2024, P. Exhibit No. (6), declaration dated 14/2/2020 by Wycliffe Mukokwa as P. Exhibit No. (7). PW1 said that none of his employees had authority to receive money on his behalf. He however admitted visiting the office of Ms. Kidiavai Advocate, to sign a lease.
 15. In cross-examination, PW1 said that his late parents had been on the land since 1994 and before he obtained a power of attorney dated 1/1/2019, he was not involved in the day to day running of the farm which was under Wycliffe Olumosi Mukokwa, a farm manager, close relative of his late father. PW1 said that he may not have known the arrangements that the farm manager had with his late mother, as regard inputs and outputs in the farm that he was managing. PW1 said that he was aware that new leases would be signed before M/S Kidiavai Advocates, such as the one contained in the defendant's list of documents dated 8/9/2018, whose contents, signatures and payments, he could not ascertain.
 16. PW1 said that after he obtained a power of attorney, he managed to sign the lease agreement dated 20/12/2020, which he only received Kshs. 1,200,000/= out of the Kshs. 3,000,000/=, though the balance is allegedly said fully to have been paid as per DMFI (2), which he disputes. PW1 denied awareness of communication as per DMFI (3) or knowledge of the alleged lease regarding 120 acres.



- PW1 said that by 30/8/2021 his mother had passed on, hence the power of attorney also terminated. PW1 said that he subsequently obtained grant for the estate dated 13/3/2023 and therefore between 11/3/2021 and 13/3/2023, there was no legal administrator for the estate, even though he was the one running the show. PW1 denied working with the farm manager at the time.
17. PW1 said that after obtaining the grant he never informed the defendant about it. PW1 denied knowledge or approval of the lease for Kshs. 6,000,000/= for 12 acres. Even though Kshs. 500,000/= was paid to his account, PW1 said that he told the bank to refund it for it was not the Kshs. 1,800,000/= which had been agreed upon, hence the termination letter dated 10/12/2022 on behalf of the estate of the deceased. PW1 said that his father died in 2005. PW1 said that at the renewal time, he was neither a legal administrator nor a holder of a power of attorney after its expiry with the death of his late mother. PW1 denied authorizing the farm manager to receive any money on behalf of the estate, or to sign new leases.
 18. Jacob Nasongo Nalawa testified as DW1. He relied on his witness statement dated 10/12/2024, as his evidence-in-chief. DW1 told the court that by a lease agreement dated 8/9/2018, he leased 50 acres of land from the plaintiff's late mother, on land known as Plot No. XB Ndalala Settlement Scheme for 5 years with effect from 1/1/2019 to expire on 31/12/2023, subject to renewal, at Kshs. 3,000,000/= . DW1 said that he paid a deposit of Kshs. 600,000/= upon execution of the lease to an account belonging to Wycliffe Olumosi Mukokwa at KCB Kitale Branch, who was an agent of the lessor and a farm manager, referred to him by the deceased and also a signatory of the lease on her behalf.
 19. DW1 said that he also paid another Kshs. 600,000/= to the same account on 2/11/2018, followed by a cash deposit to the agent on 15/1/2019, who sought for the same to enable him to pay the workers. DW1 said that the payments of 15/1/2019 cleared the rental fee for 2021. DW1 said that at the request of the plaintiff, claiming to hold a power of attorney, he signed the lease agreement dated 5/12/2020, on similar terms as the one dated 8/9/2018, with an extension clause, and that around late November 2019, the agent informed him that he used money for farm operations and since there were 120 acres available for lease in 2020, he visited the land which had mature maize crop and hence signed a lease agreement dated 31/12/2019 for the said acreage being part of Plot XB Ndalala Settlement Scheme for 5 years with effect from 1/1/2020 at Kshs. 6,000,000/=. DW1 said he paid Kshs. 600,000/=, Kshs. 500,000/=, Kshs. 600,000/= and Kshs. 400,000/= on, 31/12/2019, 7/1/2020, 17/1/2020 and 27/1/2020, respectively, totaling Kshs.1,900,000/= to the said agent.
 20. DW1 said that possession was not handed to him until the maize crops were removed in 2021, which agreement the plaintiff was aware of. DW1 said that in April 2021, PW1 called him to attend the offices of Ms. Kidiavai Advocates who had done the lease agreements and agreed to extend the failed lease agreement to take care of the deposit of Kshs.1,900,000/= and that on 19/7/2021, he transferred Kshs. 1,200,000/= to the plaintiff, to clear rent for 2022 and 2023 for the initial lease. DW1 said that on 23/2/2024 he issued Kshs. 200,000/= Equity Bank cheque to the plaintiff and transferred Kshs. 300,000/= to him which was part of the extended lease to expire on 31/12/2027. DW1 said that it could, therefore, be unfair to be evicted from the land when he has already paid Kshs. 2,400,000/=, leaving only a balance of Kshs. 600,000/=.
 21. DW1 relied on a leases dated 8/9/2018, as D. Exhibit No. (1), 5/12/2020 as D. Exhibit No. (2), agreement dated 31/12/2019 as D. Exhibit No. (3), text messages and email for 14/2/2020, D. Exhibit No. 4(a) and (b). DW1 said that he agreed with the plaintiff that Kshs.1,900,000/= could be recovered from the extension of the lease, for the full access of the land. DW1 produced the cheque and the RTGS transfer form as D. Exhibit No. (6) and (7) respectively. DW1 admitted that he didn't know that the plaintiff had obtained letters of administration dated 10/12/2022.



22. In cross-examination, DW1 said that D. Exhibit No. (1) was subject to renewal and the contents were not to plant crops, which would run for more than a year before harvest. Equally, DW1 admitted that the lease was that he would not plant any new crops on the land years towards the expiry date. DW1 admitted that the lease for 120 acres came before the existing ones had expired, and was necessitated by the termination of the services of the agent, hence replacing the earlier one of 2020. DW1 said that the subsequent lease did not cancel the existing one. According to him, the two agreements were running concurrently. DW1 said that the third agreement for 120 acres was done in 2019, for the same land but in a different portion. Further, DW1 admitted that the agent did not sign anywhere acknowledging the deposits, save for the bank record, otherwise, he notified the plaintiff about the payments and the extra 120 acres of land lease.
23. According to DW1, Wycliffe was not only an authorized agent but also part of the family. DW1 said he never reported the said Wycliffe to the police over the alleged illegal receipt of the deposits. DW1 said that the issue of 120 acres is not documented. DW1 said that the last payment was done on the day that he received the court papers before they could discuss the extension and the terms of the new lease. DW1 said that he did not confirm from Wycliffe if all his payments had been forwarded to the deceased's estate.
24. Wycliffe Olumosi Mukokwa testified as DW2. He relied on a witness statement dated 10/12/2024 as his evidence-in-chief. DW2 told the court that the late Prof. Norah Olemba was his late aunt, who engaged him to manage her 50 acres of land in Kapkoi, 55 acres of land in Bidii and 450 acres of land in Ndalala Farm Endebess. DW2 said that he was in charge of farm operations, workers, payments of farm bills, vehicle maintenance and fueling. DW2 said that he had been authorized to sign leases on behalf of the principal which were to be attested at M/S Kidiavai & Co. Advocates offices. DW2 said that an account was opened for him at KCB Kitale Branch under his name as a sole signatory and to render an account for all the monies in and out of the account to the land owner.
25. DW2 admitted that a lease agreement was signed on 8/9/2018 between the deceased and the defendant for 50 acres of land in Plot XB, at Kshs.3,000,000/= for 5 years. DW2 said that Kshs.1,800,000/=, was paid through him and Kshs.1,200,000/= paid to the plaintiff. DW2 said that in November 2019, he raised cash for the operation of the land by leasing out 120 acres of land to the defendant with effect from January 2020 for 5 years as per the lease agreement drawn by the advocates and received Kshs.1,900,000/= on various dates that he utilized for farm operation. DW2 said that the defendant was not given possession of the 120 acres as the person who had maize continued using the land.
26. DW2 said that he informed the plaintiff about the 120-acre lease, and said that there could be an extension of the lease and hence its payment of Kshs. 500,000/= to the plaintiff. DW2 said that on 30/3/2020, he sent a short message service to the plaintiff, resigning from his position which he had held since 2010, as an authorized agent. DW2 admitted that he was a signatory of all the agreements before the court on behalf of the lessor. DW2 said that he had no accounting records before court to verify the inputs and outputs in the farm. DW2 said that he was not privy to any lease signed after 30/3/2020. DW2 said that he was not able to hand over the 120 acres of land since the land had maize. DW2 said that the farm income and farm expenditure records were not before the court to show how he obtained and utilized monies in the farm operations, otherwise, he used to brief the lessor from time to time. DW2 said that the 120 acres was different from the 50 acres of land leased to the defendant.
27. The plaintiff relies on written submissions dated 24/3/2025, isolating three issues for the court's determination. On whether the lease was eligible for extension. The plaintiff submitted that Clause No. 2(b) of the lease dated 5/12/2020 was clear that since no formal request was made for an extension, the defendant should have vacated the land by the expiry date, hence it expired by effluxion of time.



- Further, the making of part payments after the expiry, according to the plaintiff did itself amount to a consent to extend the lease, and justify the defendant to remain in possession as provided under Section 60(2) of the Land Act. The plaintiff submitted that he was not aware and did not authorize any payments of the deposits.
28. The plaintiff submitted that he gave adequate notice to vacate to the defendant but instead continued planting sugarcane on the land contrary to the terms of the expired lease contrary to Section 60(1) of the Land Act. The plaintiff submitted that he had a legitimate expectation that the defendant could comply with the clause on termination of the lease and the termination notice dated 10/12/2022. Reliance was placed on Joseph Kaloki t/a Royal Family Assembly -vs- Nancy Atieno Ouma [2020] eKLR. The plaintiff submitted that in absence of an agreement of expulsion of lease or payments made towards the extension of the lease, the lease was lawfully terminated, hence the defendant is a trespasser to the land.
 29. On the alleged lease with DW2, the plaintiff submitted that what the defendants claim to be a lease offends Section 2 of the Land Act as a key obligation of granting exclusive possession was not by the lessor but DW2 who had no authority to do so, hence had no legal rights to transfer to the defendant. Further, the plaintiff submitted that the defendant knowingly entered into a contract with DW2 without verifying his authority or consulting the actual owner of the land or legal administrator, who had previously entered into a lease agreement with him. Additionally, the plaintiff submitted that the defendant knowingly made payments to the agent's personal account, which shows that the intension was to enter into a lease agreement, without the plaintiff's knowledge or consent.
 30. Again, the plaintiff submitted that the lease agreement dated 31/12/2019 for 120 acres is therefore invalid on account of capacity, lack of authority from him, and for non-registration as required under Section 43(2) of the Land Registration Act. Therefore, as an unregistered instrument in land, as provided under Section 36(2) of the Land Registration Act, it confers no legal or equitable estate, though may be enforceable between the parties as held in Jeuk Suk Kim & Another -vs- E. J. Austin & 2 Others [2013] EKL. In this case the plaintiff submitted that the defendant has not adduced evidence to show that the lease agreement was entered into by the agent on his behalf to be construed as between him and the defendant. Reliance was placed on Wamugi Stationers & Booksellers Ltd -vs- Wachira (Civil Case E006 of 2022) [2024] KEHC 5316 [KLR] (16th May 2024).
 31. The plaintiff submitted that the defendant failed to exercise due diligence to verify if DW2 had express authority to enter into the lease against, hence acted negligently to sign, and make payments with the employee without consulting the plaintiff, making the contract invalid. And unenforceable against the plaintiff who was neither a party nor did he authorize or consent to do execution. In absence of privity of contract with the defendant, the defendant lacks standing to enforce its terms against the plaintiff. The plaintiff submitted that he had entered into a lease agreement dated 1/9/2023 with a new lessee, who is unable to take up possession out of the defendant's illegal occupation, despite lawful termination of his lease, hence the reliefs sought.
 32. The defendant relies on written submissions dated 29/3/2025. It is submitted, that the basis of the defendant's entry into the suit land was the agreement dated 8/9/2018, where the agent was executing on behalf of the lessor. The lease agreement also provided for an extension on agreement by the parties. A subsequent agreement was made on 5/12/2020, but did not refer the previous agreement but was executed by the plaintiff for the lessor.
 33. Again, the defendant submitted that the deceased referred him to DW2, his agent and farm manager and thus he could sign on behalf of the lessor. On payments, the defendant submitted that he paid KShs.1,900,000/= to DW2 for a lease of 120 acres which payment he acknowledged receipt and used



for farm operations. The defendant submitted that he paid a further Kshs.500,000/= for the lease extension, to the plaintiff on 23/2/2024.

34. The defendant relied on *Karanja -vs-Phoenix of EA Ass. Co.Ltd Kisumu HCC No. 56 of 1987* to submit that there are no allegations that the agent acted fraudulently. Again, the defendant submitted that the plaintiff is estopped from not extending the lease for 5 years. Reliance was placed on Section 120 of the *Evidence Act* and Section 2 of the *Land Act*, *Kym Jong Kyu (supra)*, *Veeland Housing Company Limited & 2 others -vs- David Waweru Kahinga & 8 others [2021] eKLR* and *Kibiri & 5 others -vs- Harambee Savings and Credit Co-operative Society Limited (Environment & Land Case 4 of 2021) [2024] KEELC 1149 (KLR)*.
35. The issues calling for my determination are:
- (1) If the plaintiff is entitled to orders of eviction of the defendant 50 acres forming part of LR No. 9XX9/3 also known as Plot No. XB Ndalala Settlement Scheme.
 - (2) If the plaintiff is entitled to mesne profit for the defendant's occupation of the land following expiry of the lease on 31/12/2023.
 - (3) If the defendant was entitled to any automatic right to the renewal or extension of the lease dated 8/9/2019 upon its expiry.
 - (4) If so in No. (3), above, whether the defendant exercised the right and or expressed interest for the renewal and or on what terms.
 - (5) If the lease agreement dated 31/12/2019 admitted to an extension of the expired lease, is valid and enforceable in law against the plaintiff.
 - (6) If the defendant is justified in remaining on occupation of the 50 acres of land.
 - (7) Whether the defendant has a valid counterclaim.
 - (8) If the defendant is entitled to the reliefs in the counterclaim.
 - (9) What is the order as to costs.
36. It is trite law that parties are bound by their pleadings and issues for the court's determination flow from the pleadings. See *Raila Amollo Odinga & Others -vs- IEBC & Others [2017] eKLR*. The plaintiff brings the suit as the legal administrator and sole beneficiary of the estate of the late Prof. Reuben James Olembo, from a grant issued on 28/1/2022 and on 13/3/2023 for the estate of Prof. Reuben James and Prof. Norah Khadzini respectively, who were the joint owners of LR No. 9XX9/3, title certificate XB.67274 issued on 6/9/1995 by the Registrar of Titles under the Registration of Titles Act (repealed).
37. The plaintiff in his evidence told the court that his late father passed on 13/3/2005 while his mother passed on 11/3/2021. Prior to her death, the plaintiff testified that he had a general power of attorney, issued by his late mother on 1/7/2019. The same from the court record, going by the ruling dated 18/9/2024 was registered on 18/9/2019. It is not disputed that the plaintiff signed a lease agreement with the defendant as holder of the power of attorney on behalf of his late mother dated 15/12/2020 for 5 years, to expire on 31/12/2023. The plaintiff pleads and testified that upon expiry of the lease, the defendant failed to adhere to the expiry clause and or termination notice and instead has continued to occupy the leased property for no justification at all.



38. On the other hand, the defendant insists that there was a renewal clause and he exercised the same by signing and executing a new lease with the plaintiff's authorized agent, named Wycliffe Olumosi Mukokwa, DW2 made part payments but was yet to be given the 120 acres of land, hence the plaintiff ought to either extend the lease, accept the balance of Kshs. 600,000/= and in the alternative to refund with interest the Kshs. 2,400,000/=.
39. In reply to defendant and defence to the counterclaim, the plaintiff insists that he is a stranger to any new lease with the defendant as the legal administrator or holder of the power of attorney, he never received any alleged monies for any new lease, or notice to renew or negotiate a new lease, or approved or consented to any new lease, and that the only money that he received was Kshs. 1,200,000/=, out of the expired lease.
40. It appears that the defendant did not file any reply to the defence to the counterclaim and refute the averments by the plaintiff regarding the legality, capacity, proprietary. Enforceability and basis to remain on the 50 acres of land for the expired lease.
41. It is trite law that courts do not rewrite contracts but only enforce them, unless they suffer from illegality, are void, there was undue influence in its procurement or misrepresentation or are unconscionable. See *NBK -vs- Pipe Plastic Samkolit (K) Ltd & Another* [2001] eKLR.
42. There is no dispute that the parties entered into the lease dated 5/12/2020. Clause 2 gave the details of the account and the name where the rental sum was to be deposited. Similarly, the terms of the lease were indicated as ending on 31/12/2023, subject to a renewal on the expired agreement and drafting of a new lease between the same parties not later than August 2021, with no planting/seeding of sugarcane in the land year (2022). The lease agreement had no termination clause. However, the plaintiff says that he issued a one month's notice pursuant to Section 65(1)(f) of the *Land Act*.
43. The general rule is, the rights and obligations of the parties to a lease are set out in the lease agreement. Once they are not incorporated, statutory obligations are imported into the agreement. In *Chimantal Meghi Nuja Shah & Another -vs- Oxford University Press EA Ltd*, the court held that in a situation where the lease did not contain a termination clause, termination before expiry of the lease would amount to a breach of the contract. See also *KBC -vs- Popatilal Madhauj & Another* [2019] eKLR.
44. Parties are bound by what they contracted for. It is not the business of courts to rewrite contracts. The lease agreement before the court had timelines on when to express intention for an extension of lease and for negotiation for a new lease, not later than 30/8/2021 between the same parties. Therefore, the intention of the parties on the exercise of a renewal of the lease was clear. Parties even went to an extent to state that sugarcane should not be planted in 2022 so as not to interfere with the expiry of the lease.
45. The defendant's justification is that he entered into a new lease dated 31/12/2023 between himself and the plaintiff through his agent Wycliffe Olumosi Mukokwa. The lessor, who is the plaintiff is described as the owner of Plot No. XB Ndalala Settlement Scheme. The acreage is 120 acres. Clause No. 2 says that the rent would be paid to Wycliffe Olumosi Mukokwa. It is not indicated in which account and or whether he will be receiving the rental sum on behalf of the lessor. The lease agreement does not refer to the earlier the one signed with the plaintiff, about to expire on 31/12/2023. It does not indicate if the 50 acres is incorporated into the 120 acres of land. It does not state if plot No. XB Ndalala Settlement Scheme is distinct from LR No. 9XX9/3 as pleaded in the statement of defence and counterclaim. It does not state that the portion is separate, distinct or away or within the one planted with sugarcane. Further, there is no evidence that the plaintiff, as the lessor who had contracted earlier on with the defendant and whose lease was still running as of 31/12/2019, had consented to, been informed or involved in the discussions leading to the lease agreement on its expiry date. Further, if the defendant



was exercising his right of renewal, under the old lease, the parties were clear that the time to do so was before 30/8/2019.

46. The onus is on the defendant to discharge that he engaged the party who had signed the earlier lease agreement in line with Clause No. 2 thereof, and authorized that the terms and conditions of the new lease be negotiated, agreed upon and executed by his agents, DW2. In *Kimaiyo Pius Langat -vs- Co-operative Bank of (K) Ltd* [2017] eKLR, courts said that they do not rewrite contracts between parties, who are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved. The defendant has not pleaded any coercion, fraud or undue influence in executing the lease dated 5/12/2020. The old lease had clear terms and conditions on the timelines and the mode of renewing, negotiating and executing a new lease and the parties to do so. The lessor had signed the earlier lease on behalf of his mother Professor Norah K. Olembo. Upon effluxion of time, the lease expired. The defendant now wants the court to enforce the lease dated 31/12/2019 as binding upon the plaintiff. The plaintiff terms the lease as illegal, invalid, void and not registered under the law. Registration and stamp duty paid for it is lacking. The defendant as indicated above has not filed a reply to the defence to the counterclaim to counter the assertions. He who wants the court to believe the existence of certain fact or will fail if there is no evidence called to assert the existence of certain facts to prove his case, bears the burden of proof. It is the defendant who has pleaded that the lease was signed by the plaintiff's authorized agent and with the knowledge of the lessor. PW1 has produced exhibits where DW2 admitted that he had no ostensible authority to sign the lease in the first instance and also did not hand over vacant possession or give out the received rental sum to the plaintiff.
47. The defendant seeks an order of specific performance of the lease dated 31/12/2019, since though he paid the deposit of Kshs. 2,400,000=, he was yet to acquire vacant possession of the 120 acres. Specific performance is an equitable remedy available only where there is a valid and enforceable contracts in terms of Section 3 of the *Law of Contract Act* and Section 38 of the *Land Act* in regard to land contracts. The witness to the lease was not called to testify that the plaintiff had authorized the agent to sign on his behalf and had also agreed to the new lease upon expiry of the of the older lease, and to cover more land than the old lease.
48. Part performance of the contract by taking possession has not happened for the reason that the agent had no land to give. He knew that he had no land to give. The capacity in which DW2 signed the lease is not defined. It is not indicated at all that he was a farm manager, beneficial owner, relative and or an authorized agent of the plaintiff. He who comes to equity must do equity and come with clean hands. The defendant earlier on dwelt with the plaintiff in his capacity as a son and holder of a power of attorney donated to him to deal with the suit land. Therefore, the defendant cannot in law feign ignorance to know the son and holder of the power of attorney was the only authorized agent of the owner of the land. Due diligence required the defendant to verify the authority and capacity of DW2 to replace the plaintiff in the negotiation of a new lease. The defendant should have seen the warning signs when the defendant also consented to collect the rental income personally and not through the name and bank details of the plaintiff, where rental income was being deposited.
49. It is hard to believe that the defendant would take such a drastic about turn and deal not with the son and the owner of the land, but with someone else in such circumstances, where he was seeking for more acreage and paying more monies for the acreage. Similarly, before this court, the defendant has been at pains to explain the efforts that he made before and soon after entering into the new lease to inquire, notify and seek to know if the plaintiff was aware of the new lease and for hand over the of the 120 acres of land. The defendant wants the court now to hold and find that he is a tenant of the plaintiff and is on the land legally. The plaintiff says that he has no privity of contract with the defendant, who



- in law should be a trespasser after he forfeited to exercise a renewal of the lease, and upon the expiry of the old lease by effluxion of time.
50. The defence to the counterclaim has not been traversed under Order 6 Rule 9(1) and (3) of the Civil Procedure Rules. Notice of termination of the lease was issued. Correspondence seeking for the renewal of the lease and for more land, terms and conditions is lacking from the defendant to the lessor and seeking his concurrence on the new terms and conditions. It is the owner of the land who could have notified the defendant the availability of 120 acres inclusive of or as part of the 50 acres. A party cannot be compelled to execute an agreement, imposing unilateral terms as held in *National Fund for the Disabled of Kenya Registered Trustees -vs- Esquire Ltd* [2017] eKLR.
 51. A court cannot only enforce a contract between the parties. Similarly, a court cannot enforce a contract for an alleged breach where there is no evidence that the party blamed for breach was privy to it, authorized it, approved of it, benefited out of it and acquiesced to its validity. See *Ngere Tea Factory Co. Ltd -vs- Alice Wambui Ndome* [2018] eKLR.
 52. Legitimate expectation was not pleaded in the defence or counterclaim. In any event legitimate expectation cannot be invoked to offend statutory provisions on execution of contracts, registration of leases and on validity of leases, set out in Section 3 of the [Law of Contract Act](#), Section 38 of the [Land Act](#) and Sections 43 and 46 of the [Land Registration Act](#). A court cannot enforce an illegal contract or allow itself to be made an instrument of enforcing, obligations alleged to arise out of a contract or transaction which is illegal and if the person invoking it is himself implicated in the illegality. See *Sija Interlink Ltd & Another -vs- Koinange Investment Ltd & Others* [2009] eKLR.
 53. Since the defendant knew of the existence of the son to the owners of the land in the old lease and opted to ignore him in the new lease, the doctrine of estoppel precludes him from asserting contrary view to what is implied in the previous dealings with the plaintiff to now plead and testify before this court that the plaintiff should be ignored in the new lease. See *Sarah Njeri Mwobi -vs- John Kimani Njoroge* [2013] eKLR. The attempts to deposit funds in the account of the plaintiff after the suit was filed to otherwise, sanitize the lease agreement should be seen as an attempt to regularize an otherwise, invalid contract. How the defendant all over sudden remembered the existence of the bank account at that stage and not before signing the lease on the eve of expiry of the old lease signed by the plaintiff, leaves the court with irresistible inference that the defendant acted in bad faith. The defendant waived or abandoned his rights on renewal and negotiations of a new lease with the plaintiff by 30/8/2021. See *748 Air Services Ltd vs Theuri Munyi* [2017] eKLR. The new lease was not only unexecuted by the plaintiff or his authorized agent, but also unregistered, it lacks the consent of the lessor as required under Section 54(1) of the [Land Registration Act](#).
 54. The plaintiff cannot be blamed for failing to perform his terms and conditions, where the source of his obligations are doubtful and did not consent, approve or authorize its execution. See *Mega Garment Ltd -vs- Mistry Jadva Parbat & Co. EPZ Ltd* [2016] eKLR. The plaintiff cannot be termed as a contract breaker and for the implications of the law to be visited upon him. The upshot is that the defendant is on the suit land without the consent or approval of the plaintiff. He is a trespasser by dint of Section 3 of the [Trespass Act](#). Any acts on the land after expiry of the lease amounts to continuing trespass.
 55. Trespass is actionable per se without prove of damages. Mesne profits must be pleaded and proved. See *Hahn -vs- Singh* [1985] KLR 716. The court cannot award mesne profits based on conjecture, or threat or on arbitrary assessment. In *M'Ngiti -vs- Gatua* (ELC 96 of 2021) [2022] KEELC 2653 [KLR] (6th July 2022) (Judgment), the court cited *Caltex Oil (K)O Ltd -vs- Bono Ltd* [2016] eKLR, that a court cannot award prayers not pleaded or proved. The claim for mesne profits is rejected.



56. The upshot is that I find the plaintiff's suit merited and the statement of defence and counterclaim lacking merits. The eviction order shall issue against the defendant to hand over vacant possession after 3 months, in default execution to issue at his costs. Costs of the suit and the counterclaim to the plaintiff.

57. Orders accordingly.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
AT KITALE ON THIS 11TH DAY OF JUNE 2025.**

In the presence of:

Court Assistant - Dennis

Karongo for the Plaintiff present

Kiarie for the Defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

