



REPUBLIC OF KENYA



**KENYA LAW**  
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**Govedi v Chege & 4 others (Environment & Land Case  
18 of 2018) [2025] KEELC 5047 (KLR) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5047 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 18 OF 2018**

**CG MBOGO, J**

**JULY 8, 2025**

**BETWEEN**

**DR FRIDA AFANDI GOVEDI ..... PLAINTIFF**

**AND**

**STANLEY MUREGI CHEGE ..... 1<sup>ST</sup> DEFENDANT**

**ELIZABETH AKINYI ALUOCH ..... 2<sup>ND</sup> DEFENDANT**

**KENYA COMMERCIAL BANK LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**SAVINGS AND LOAN KENYA LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**IRENE OKOTH ODUDO ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 20<sup>th</sup> February, 2025 filed by the 1<sup>st</sup> defendant/applicant, and it is expressed to be brought under Sections 1A and 3A of the [Civil Procedure Act](#) and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders: -
  1. Spent.
  2. That the honourable court be pleased to order the 5<sup>th</sup> defendant to vacate and hand-over vacant possession of Garden Terraces Apartment No. F-7 erected on L.R. No. 209/2679 along Kabarnet Road, Nairobi to the Applicant for breach of the Agreement for Sale dated the 12<sup>th</sup> February, 2016.
  3. That the honourable court be pleased to grant an order directing the law firm of Rachier and Amollo Advocates to release to the applicant all the documents appertaining to the suit property handed over to them by the 3<sup>rd</sup> defendant on 25<sup>th</sup> February, 2016 including the Discharge of Charge.



4. That the honourable court be pleased to grant an order discharging the applicant from the obligations imposed by the agreement dated 12<sup>th</sup> February, 2016.
  5. That the honourable court be pleased to review, vary, and vacate the order of the 11<sup>th</sup> March, 2016.
  6. That the costs of this application be provided for.
2. The application is premised on the grounds on its face. The application is supported by the affidavit of the 1<sup>st</sup> defendant/applicant sworn on even date. The 1<sup>st</sup> defendant/applicant deposed that the plaintiff filed suit at the Commercial Division in Civil Suit No. 70 of 2016 after being denied injunctive orders by this court in ELC No. 95 of 2016. Further, that on 11<sup>th</sup> March 2016, she obtained orders against the defendants/respondents barring them from concluding the sale of the suit property to the 5<sup>th</sup> defendant/respondent. The 1<sup>st</sup> defendant/applicant deposed that prior to that, he had entered into a sale agreement with the 5<sup>th</sup> defendant/respondent dated 12<sup>th</sup> February, 2016 for the sale of the suit property, and in a letter dated 23<sup>rd</sup> February 2016, the completion documents were handed over to the firm of Rachier & Amollo Advocates. Further, that on 1<sup>st</sup> March 2016, he handed over vacant possession of the suit property to the 5<sup>th</sup> defendant/respondent with verbal assurance that he would be paid the balance of KShs. 7,600,000/-. He deposed that he does not wish to pursue the conclusion of the agreement because of breach of Clause 6, and the apparent collusion between the plaintiff and the 5<sup>th</sup> defendant/respondent.
  3. The 1<sup>st</sup> defendant/applicant deposed that no prejudice will be suffered by the 5<sup>th</sup> defendant/respondent since she has enjoyed a cumulative rental monthly income of KShs. 12,960,000/- from 1<sup>st</sup> March, 2016 to February, 2025. He deposed that he has suffered prejudice occasioned by losing possession of the suit property and rental income for the last 9 years.
  4. The application was opposed by the replying affidavit of the 5<sup>th</sup> respondent sworn on 30<sup>th</sup> May, 2025. The 5<sup>th</sup> defendant/ respondent deposed to the terms of the sale agreement dated 12<sup>th</sup> February, 2016, and that she paid a deposit of KShs. 12,000,000/- which is a substantial part of the purchase price and also redeemed the charge to Kenya Commercial Bank. While further agreeing that she was granted vacant possession of the suit property on 1<sup>st</sup> March 2016, she contended that she was surprised to find that a restriction had been placed by the plaintiff against the title on allegation of spousal consent, and later discovered that there were temporary injunction orders issued against the defendants on any dealings with the suit property.
  5. The 5<sup>th</sup> defendant/respondent deposed that the delay in completing the transaction was as a result of the injunction orders, and that at all times, she has been ready and willing to pay the balance of the purchase price. Further, she deposed that the 1<sup>st</sup> defendant/applicant has never taken any steps to set aside the injunctive orders, and that he is in cahoots with the plaintiff to deny her the right to property. She deposed that it has not been shown that she has failed to perform the said agreement.
  6. The 5<sup>th</sup> defendant/respondent deposed that it is the 1<sup>st</sup> defendant/applicant who willingly gave vacant possession, and as such, she is not in breach of clause 6 of the agreement. The 5<sup>th</sup> defendant/respondent deposed that the procedure adopted by the 1<sup>st</sup> defendant/applicant in trying to impeach the agreement is unknown in law and the Law Society Conditions of Sale. Further, that the issues raised form the substratum of the suit and it cannot be determined summarily through an application.
  7. This court directed that the application be canvassed by way of the written submissions. The 1<sup>st</sup> defendant/applicant and the 5<sup>th</sup> defendant/respondent did not file their written submissions. The



plaintiff attempted to file brief written submissions dated 16<sup>th</sup> June, 2025. However, these submissions are of no value at this stage, as they seek to take the place of a response contemplated under Order 51 Rule 14 of the Civil Procedure Rules which provides that any opposition to any application ought to be contained either in a notice of preliminary objection, replying affidavit or a statement of grounds of opposition. In this case, the plaintiff did not file any opposition to the application, and instead filed the written submissions in response thereof.

8. Be that as it may, I have considered the application, and the replying affidavit filed by the 5<sup>th</sup> defendant/respondent. I am of the view that the issue for determination is whether the orders sought ought to be granted. It is not disputed that the 1<sup>st</sup> defendant/applicant and the 5<sup>th</sup> defendant/ respondent entered into an agreement for sale of the suit property dated 12<sup>th</sup> February, 2016. The 1<sup>st</sup> defendant/applicant contended that he handed over vacant possession of the suit premises on the assurance that the balance of the purchase price amounting to Kshs. 7,600,000/- would be paid to him. However, that was not the case, in the last 9 years, the 5<sup>th</sup> defendant/respondent continued to collect rental income to his prejudice. On the other hand, the 5<sup>th</sup> defendant/respondent agreed to the terms of the sale agreement and stated that she is more than willing to complete the transaction save for the injunctive orders that have barred further transactions and the restriction placed on the title of the suit property.
9. As I have understood the 1<sup>st</sup> defendant/applicant, he has made it clear that he is no longer interested in the transactions of the suit property, and that he would wish to be discharged from any further responsibilities emanating therefrom. It appears that he now wishes to rescind the contract, and revert to the position that he was prior to the sale agreement in total disregard of the matters before the court. The 1<sup>st</sup> defendant/applicant seeks orders varying or vacating the orders issued on 11<sup>th</sup> March, 2016, and vacant possession of the suit property that is the subject of the suit which is pending hearing. In my view, it would be careless for the court to turn a blind eye on the main issues in the suit, and consider the dispute arising from between parties who have been sued by the plaintiff. While the approach adopted by the 1<sup>st</sup> defendant/applicant is unknown to the court, it is in hindsight a scheme to summarily dispose the suit which cannot be entertained at this stage.
10. From the above, this court finds that the orders sought in the application cannot be granted. The notice of motion dated 20<sup>th</sup> February, 2025 lacks merit and it is hereby dismissed with no orders as to costs. It is so ordered.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 8<sup>TH</sup> DAY OF JULY, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**08/07/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Samson Muruka for the Plaintiff/Respondent

Ms. Masara holding brief for Mr. Wakwaya for the 5<sup>th</sup> Defendant

Mr. Chebon holding brief for the Mbogo for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants

Mr. Gichuki for the 1<sup>st</sup> Defendant /Applicant

