



**Syan & 2 others v Kihoro (Environment and Land Case
517 of 2017) [2025] KEELC 5176 (KLR) (9 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5176 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 517 OF 2017**

CA OCHIENG, J

JULY 9, 2025

BETWEEN

SURINDERPAL SINGH SYAN 1ST PLAINTIFF

JARSMEER SINGH SYAN 2ND PLAINTIFF

SANATKUMAR SHANTILAL TRIVEDI 3RD PLAINTIFF

AND

WANYIRI KIHORO DEFENDANT

JUDGMENT

1. The Plaintiffs commenced this suit vide a Complaint dated the 26th February 2008. They contend that around 1st April 2001, the registered proprietors of LR No. 1/205 hereinafter referred to as the 'suit premises', being Ranjeet Singh Syan and the 3rd Plaintiff, entered into a two (2) year Tenancy Agreement with Dr. Wanjiru Kihoro, the Defendant's late wife. It is their case that after the lapse of the Lease, the Defendant continued to illegally reside in the suit premises without paying rent on account of allegations that his late wife had purchased the said property.
2. They Plaintiffs' hence sought for the following Orders:
 - a. An order for eviction of the Defendant from the suit premises namely LR No. 1/1205.
 - b. Ksh.760,000/= as at 1st March 2008 with a monthly increment of ksh.40,000/= upto the date of eviction.
 - c. Interest on (b) above from the date of filing suit until payment in full.
 - d. Costs of the suit.
3. The Defendant vehemently opposed the suit by way of a Statement of Defence dated the 18th April 2008, which was amended to include a Counterclaim dated the 5th January 2009.



4. Vide a Ruling dated the 8th February 2024, this Court struck out both the Defendant's Defence and Counterclaim and granted prayer (a) of the Plaintiff. This judgement therefore relates to prayer (b) and (c) of the Plaintiff.

Evidence of the Plaintiff

5. The Plaintiff, who is an executor of the Will of the late Ranjeet Singh Syan together with the 2nd Plaintiff testified as PW1. He adopted his witness statement and supplementary witness statement as his evidence in chief and produced the Plaintiffs' List of documents dated 7th September 2012 and their further list dated 31st July 2024 as P. Exhibit 1-13.
6. It was his testimony that the rent arrears owed by the Defendant from the date of filing suit upto the date of eviction orders is Kshs. 6,120,000/=. He confirmed that the Defendant was evicted from the suit premises on 23rd November 2020.
7. He explained that the late Ranjeet Singh Syan and the 3rd Plaintiff(deceased) are registered proprietors of the suit premises who entered into a Tenancy Agreement with one Dr Wanjiru Kihoro (now deceased). The tenancy provided that the Lease was to last for a period of two (2) years with effect from 1st April 2001 and it terminated formally on 1st April 2003, by effluxion of time and was never formally renewed.
8. Subsequently, Dr Wanjiru Kihoro died and the Defendant continued residing on the suit premises while paying rent at ksh.40,000/= per month, without entering into a formal arrangement for Lease with the proprietors of the suit premises until eviction in 2020. He claimed that a Notice was sent to the Defendant by the Advocates for the Plaintiffs on 31st December 2007 requiring him to vacate the suit premises but he refused to comply.
9. He testified that as at March 2008, when this suit was filed, the Defendant had not paid rent for nineteen months and the rent arrears then stood at Ksh. 760,000.00. He pointed out that the late Dr Wanjiru was involved in an air crash in Busia on 25th January 2003 which left her in a coma for three (3) years and nine (9) months, leading to her demise on 12th October 2006, during which period the Defendant paid for rent for the suit premises as a tenant, then turned around and claimed that Dr Wanjiru had purchased the suit premises.
10. He averred that the 3rd Plaintiff died on 16th March, 2019 and the application by the legal representative of his Estate to substitute the deceased was disallowed on 17th November, 2021.

Submissions

11. The Plaintiffs submitted that under Section 3 (1) of the *Distress for Rent Act*, a tenant is obligated to pay rent for the period they occupy property and when a tenant continues to occupy property without the Landlord's consent, then they become liable for the rent arrears.
12. Further, that under Section 2 of the *Civil Procedure Act* a landlord can claim for mesne profits from the date the tenant ought to have given up possession to the date he actually gives up possession.
13. To buttress their case, the Plaintiffs relied on the case of *Fredrick Korir vs Soin United Women Section Group* (2018) eKLR as well as *Kasturi Limited v Nyeri Wholesalers Limited* (2014) eKLR.
14. The Defendant failed to file submissions despite being granted leave to do so.



Analysis and Determination

15. Upon consideration of the pleadings herein, testimony of the witness, exhibits and Plaintiffs' submissions, the only issue for determination is whether the Plaintiff is entitled to rent arrears of Ksh. 760,000/= as at 1st March 2008 with a monthly increment of ksh.40, 000/= upto the date of eviction of the Defendant.
16. I note as per the Ruling of Justice Lucy Mbugua dated the 8th February, 2024, she held as follows:
 1. The Defence and Counterclaim of the Defendant are hereby struck out.
 2. An order of eviction of the Defendant is hereby issued as sought in prayer No. (a) in the Plaintiff.
 3. The matter is to be listed for formal proof in respect to prayer Nos. b and c in the Plaintiff.
17. The Court then fixed the matter for formal proof and on 18th February, 2025, when this matter did proceed but the Defendant requested to peruse the Court file before he could file written submissions.
18. Later the Defendant instead of filing submission, filed a Notice of Motion application dated the 23rd May, 2025 seeking to cite the 1st Plaintiff for contempt. At this juncture as a Court I will proceed to deal with the main issue in dispute which is the rent arrears since the Defendant was already evicted from the suit premises and will make a determination of the application for contempt thereafter. It is trite that where a matter is set for formal proof, the Plaintiff is still expected to adhere to the rules of evidence and prove its claim.
19. In this instance PW1 testified that the Defendant owes rent arrears from the date of filing this suit upto the date he was evicted on the 23rd November, 2020 amounting to Kshs. 6,120,000/=. He explained that the late Ranjeet Singh Syan and the 3rd Plaintiff (deceased) entered into a two-year tenancy agreement with one Dr Wanjiru Kihoro (now deceased), with effect from 1st April 2001 and it terminated formally on 1st April 2003 by effluxion of time. He testified that Dr Wanjiru Kihoro died and the Defendant continued residing on the suit premises while paying rent at ksh.40,000/= per month, without entering into a formal arrangement for lease with the proprietors of the suit premises until eviction in 2020. He claimed that a Notice was sent to the Defendant by the Advocates for the Plaintiffs' on 31st December 2007 requiring him to vacate the suit premises but he refused to comply. He contended that as at March 2008, when this suit was filed, the Defendant had not paid rent for nineteen months and the rent arrears then stood at Kshs. 760,000.00.
20. The Defendant never tendered evidence to controvert the Plaintiffs' averments.
21. Looking at the exhibits produced by the Plaintiffs, I note the Defendant had even been convicted and sentenced for forgery of Memorandum of Agreement of Sale of Land in respect to LR 1/205 (suit land) in Kibera CMCR. Case No. 5220 of 2015. I note the Defendant was already evicted from suit land in November, 2020. This in essence means that the Plaintiffs are entitled to rent arrears, for the period the Defendant failed to pay rent. I note the Plaintiffs in their submissions have sought for mesne profits but this was not a prayer in the Plaintiff. It is trite that parties are bound by their pleadings and since they never pleaded for it, as a Court I am unable to grant this prayer.
22. In *Samaki Industries (K) Limited v Kenya Ports Authority* [2024] KECA 794 (KLR), the Court of Appeal stated;

“In this case, the demand by the Respondent of rent arrears or payment of “rent” for any period during which the Appellant remained in occupation of the suit premises after the



lease had expired, and without the Respondent's consent, ought to have been properly demanded as "mesne profits". To our mind, any erroneous reference thereto as "rent" did not by any means negate the status of the Appellant as a trespasser thereon, and on account of which the respondent was entitled to compensation by way of "mesne profits".'

23. The court of Appeal also awarded rent arrears in *Patel & Another v MJC & Another (Suing as the guardians of PIP)* [2022] KECA 364 (KLR) and in *Saheb v Hassanally* [1981] KECA 9 (KLR) on account of continued occupation without paying rent.
24. In the foregoing while associating myself with the decisions quoted, I find that the Plaintiffs have proved their claim for rent arrears and will proceed to enter final judgment in their favour in the following terms:
 - a. Rent arrears of Kshs. 6,120,000/= from date of filing this suit upto the date of eviction on the 23rd November, 2020.
 - b. Costs of this suit
 - c. Interest on (a) above at court rates until payment in Full.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF JULY 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Ms Ndirangu for Plaintiff

Wanyiri Kihoro the Defendant

Court Assistant: Joan

