



Crane & another v Kamau & another (Environment and Land Case 598 of 2014) [2025] KEELC 6077 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6077 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND CASE 598 OF 2014
JO OLOLA, J
SEPTEMBER 19, 2025**

BETWEEN

TERI CRANE 1ST PLAINTIFF

PROJECT KENYA INTERNATIONAL LIMITED 2ND PLAINTIFF

AND

PETER WANJOHI KAMAU 1ST DEFENDANT

FRANCIS KINYANJUI GITHINJI 2ND DEFENDANT

RULING

1. By the Chamber Summons dated 4th November, 2024, the Plaintiff/Applicants had sought for the following orders:
 1. Spent
 2. Spent
 3. Spent
 4. That the Deputy Registrar, Environment and Land Court – Nyeri be authorized to sign the Transfer Forms and/or all other relevant documents to effect the transfer of LR. No. Nyeri/Municipality Block 1/1285, LR. No. Nyeri/Municipality Block 1/1286, LR. No. Nyeri/Municipality Block 1/1287 and LR. No. Nyeri/Municipality Block 1/1446 to the name of Project Kenya International Limited;
 5. That the Honorable Court be pleased to make a declaration that the 1st Defendant is in contempt of the court Order/Decree issued on 29th October, 2024 to give vacant possession pursuant to the Judgment delivered on 3rd October, 2024 and consequently, that the 1st Defendant be committed to jail for a period of six (6) months or such period as the court may



direct, and/or his properties be sequestered or such amount of fine be imposed for the purpose of purging the contempt of court; and

6. That the costs of the application be granted to the Applicants in any event.
2. The Application which is supported by an Affidavit sworn by the 1st Plaintiff Teri Crane, is premised inter alia on the grounds:
 - a. That the Judgment delivered on 3rd October, 2024 required the two Defendants/Respondents to transfer the suit properties to the 2nd Plaintiff and to grant vacant possession of the said parcels within 30 days from the date of the judgment;
 - b. That although the Plaintiffs have entreated the Defendants to have the process amicably undertaken, the Defendants had declined to respond and the 1st Defendant has failed to give vacant possession despite the clear orders of the court;
 - c. That the Plaintiffs continue to suffer prejudice in their rights as they have to incur costs in expenses for leasing alternative office premises and severe losses every single day the 1st Defendant remains in occupation of the suit premises.
 - d. That in addition the Defendants have declined to execute the Transfer Forms and provide documents which are necessary to effect the transfer of the suit properties to the name of the 2nd Plaintiff as decreed in the judgment, without which the terms of the judgment cannot be effected; and
 - e. That the Applicants have no other legal way of enforcing the court orders/decrees issued pursuant to the court's judgment, hence it is only just that the orders sought herein be granted to enable the Applicant make use of the suit properties.
 3. Peter Wanjohi Kamau (the 1st Defendant) is opposed to the application. In his Replying Affidavit sworn on 18th November, 2024, the 1st Defendant avers that he did on 11th October, 2024 lodge a Notice of Appeal Against the Judgment delivered on 3rd October 2024 and further, that on 23rd October, 2024, he did file a Notice of Motion praying for stay of execution of the Judgment pending the hearing of the Appeal.
 4. The 1st Defendant avers that the 1st Plaintiff travelled from the United States of America on 22nd October, 2024 fully aware that the time for execution was not ripe and that the Notice of Appeal had been filed. He asserts that the right of appeal is a fundamental imperative in the process of a fair hearing and that he has the right to seek justice until all possibilities of appeal have been exhausted.
 5. I have carefully perused and considered the Plaintiffs' application as well as the response thereto by the 1st Defendant.
 6. By their application before the court, the Plaintiffs pray for an order that the Deputy Registrar of this court be authorized to execute Transfer Forms and/or all other relevant documents to effect the transfer of LR. No. Nyeri Municipality Block 1/1285; 1286; 1287 and 1446 to the name of the 2nd Plaintiff. In addition, the Plaintiffs have urged the court to make a declaration that the 1st Defendant is in contempt of the court orders issued on 29th October, 2024 to give vacant possession of the suit properties.
 7. Order 21 Rule 29 of the Civil Procedure Rules provides that where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged or to such person as he may appoint to receive delivery on his behalf, and if necessary, by removing any person bound by the decree who refuses to vacate the property.



8. On the other hand, Section 98 of the *Civil Procedure Act* provides that where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract, or other documents or to endorse any negotiable instruments, the court may on such terms and conditions, order that the conveyance, contract or other document be executed or that the negotiable instruments be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract or other documents or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person directed initially, to execute or endorse it.
9. In the matter herein, the Defendants have not denied that they had as at the time of this application yet to execute the transfer documents for the suit properties. It is the 1st Defendant's case that he was yet to comply with the court orders since he had on 23rd October, 2024 lodged an application for stay of execution of the decree pending an intended appeal.
10. I note from the record that the said application for stay of execution was effectively withdrawn by the 1st Defendant on 4th December, 2024 when he filed a notice indicating that he had withdrawn the same.
11. That being the case, there would be no reason why the documents effecting transfer would remain unexecuted as the mere existence of an appeal does not of its own operate as a stay of execution.
12. In regard to the prayer that the 1st Defendant be declared to be in contempt of the court orders issued on 3rd October, 2024 and that he be committed to jail for a period of six (6) months, I was not persuaded that there was any basis upon which the court would do so. The court orders had required the 1st Defendant to vacate the suit premises within 30 days of delivery of judgment. Those days had barely lapsed when the Plaintiffs filed this application on 4th November, 2024.
13. As the 1st Defendant has explained, he had lodged a Notice of Appeal together with an application for stay of execution of the court orders on 23rd October, 2024. That application was slated for hearing on 10th December, 2024 and I was not persuaded there was willful failure on the part of the 1st Defendant as at the time this application was filed, to obey the court's orders.
14. In the circumstances. I allow the Motion dated 4th November, 2024 only in terms of prayer No. 4 thereof.
15. I make no order as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19TH DAY OF SEPTEMBER, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Mugambi Advocate for the Plaintiff/Applicant
- c. No Appearance for the Defendants/Respondents

