



**Kenya Railways Corporation v C. Dorman Limited (Environment and Land Case Civil Suit 1069 of 2015) [2025] KEELC 3871 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3871 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 1069 OF 2015**

**JA MOGENI, J**

**MAY 15, 2025**

**BETWEEN**

**KENYA RAILWAYS CORPORATION ..... APPLICANT**

**AND**

**C. DORMAN LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Plaintiff C. Dorman Limited instituted this suit on 4/04/2013 against the Defendant Kenya Railways Corporation. The Plaintiff's claim against the Defendant seeks the following:-
  - a. A permanent injunction restraining the Defendant from evicting the Plaintiff from its property; attaching the Plaintiff's property forcefully obtaining the Plaintiff's assets with the intention to sell the same at a public auction or in any other way alienating or destroying the Plaintiff's property without an order from the Court;
  - b. A declaration that the Plaintiff does not owe the Defendant any sums or fees whatsoever in respect of Clause 13 of the title deed to the Suit Property, more specifically that the Plaintiff does not owe the Defendant a Siding Fee or any other fees in respect of any other contributions of any sort;
  - c. Costs of this suit.
  - d. Any other or further relief as this Honorable Court may deem just and fair to grant.

**The Plaintiff's Case.**

2. The Plaintiff called one witness Eva Mutua – PW1 who adopted her witness statement and List of Documents as her exhibits. It was her evidence that she started working with the Plaintiff as the Personal Assistant to the Chairman on 16/06/2010. She stated that the suit property is adjacent to the Railways



line. That they paid Siding Fee to the Defendant for some time to enable loading and transportation of the goods.

3. In cross-examination she testified that the Plaintiff paid the fee to enable it enjoy the loading services but having not enjoyed the said services, the Plaintiff wrote to the Defendant on numerous occasions about the lack of services. That the Defendant was raising invoices under Clause 13 as contained at page 3 of the Title Deed. That the Plaintiff not enjoying the said services raised concern pointing out that there was no benefit accruing to them of using the platform to load their goods. That since the route stopped being functional the Plaintiff also stopped paying for the services.
4. She pointed out that from pages 7 to 17 of the Defendant's bundle there is correspondence between the Plaintiff and the Defendant in one of the letters dated 17/08/2010 to the Plaintiff, stated that the Plaintiff owed the Defendant Kesh 509,185.00. That in reference to Clause 13 of the title deed to the suit property the Defendant stated that the said Clause 13 gave the authority to the Defendant to raise the said fee. Clause 13 of the title deed states as follows:

“The Grantee shall pay such taxes duties assessments or outgoings as may be properly be imposed charged or assessed by any Government or Local Authority upon the Land or the buildings including any contribution or other sum paid by the Governor in lieu thereof.”

5. It was the Plaintiff's testimony that the Plaintiffs contested this in response to the Defendant vide their letter dated 17/08/2010. In response the Plaintiff stated that the Defendants wrote to the Plaintiffs through their agents (who are auctioneers) on 3/07/2012 issuing an ultimatum to the Plaintiffs to either pay a sum of Kesh 608,185 or be evicted, or have their property forcefully and unlawfully seized and or sold due to the disputed debt and that the Defendant would levy distress and also permit a third party to enter Plaintiff's property and take possession.
6. In re-examination she stated that Clause 13 does not mention Siding Fees and instead the Clause talks about fees upon the land or the building. She further stated that at paragraph 8 of her witness statement, she explained why the Plaintiff stopped paying the Siding Fees. She also added that the other reason for stopping to pay the fee was that the Railways ceased to operate in the 1970s. With that the Plaintiff closed their case.

#### **Defendant's Case.**

7. Similarly, the Defendant also called only one witness – Mr. Nathaniel Ochieng DW1 who adopted his witness statement and List of Documents as his exhibits.
8. In cross-examination he told the Court that he was a Surveyor at the Respondent's Company and his number was ISK No. 1897 but he did not have his Certificate with him. He testified that he did not see Siding Fees under Clause 13 of the Plaintiff's Title Deed but that the said Clause refers to charges, duties, taxes among others but not Siding Fees. It was his testimony that a title deed can be a basis of collecting taxes under the Kenya Railways Act but he could not pin point a specific Section that supported his allegation.
9. He stated that Siding Fees is charged on all properties that about the Railways Line and it is charged to maintain the Railways Line that serves these plots whether they use the line or not for service. He further stated that he has not produced a plan to support his averments. He told the Court that in his Defence Statement he had not rebutted the Plaintiff's averment that the service was not available. Although he told the Court that at paragraph 15 of the Defence Statement the Respondent has denied the allegation that the services were stopped.



10. It was the averment of the witness that the evidence of the service is depicted by existence of the Railways Line. In further cross-examination he pointed out that Section 13 (2) (f) of the Kenya Railways Act require that the Defendant offers a service before it charges a Siding Fees. He informed the Court that he had a letter dated 21/01/1952 talking about freehold and leasehold interest seeking Siding Fees but the same letter does not talk about what the fees is for.
11. He testified that the only evidence the Defendant has for service of the Defendant is that they were paid but that there is no evidence of the Defendant having offered service to the Plaintiff as per Section 13(2) of Kenya Railways Act.
12. When he was shown the letter dated 22/02/2013, he testified that there is a document of conciliation which however speaks to annual rent and the document at page 11 mentions annual fees of Kesh 24,500 for 2010. He however stated that he cannot attest to whether this annual rent refers to annual fees or Siding Fees. It was his testimony that in the Title Deeds was where the Siding Fees is mentioned but that there was no agreement upon which the fees was based but that according to him, the Title Deed is an agreement although the Plaintiff C. Dorman was not a party to the agreement of the Title Deed.
13. Upon re-examination, he stated that the Kenya Railways Act (KRA) Section 13 Cap 397 provides that the Corporation can determine and levy rates and fees to any person with permit or certificate. Thus according to him, there need not be service offered but that by provision and use of the facility the Corporation can levy fees. With this the Defendant closed its case.
14. The parties filed their submissions as directed by the Court on 01/07/2024 which I have read and considered.

### **Analysis and Determination.**

15. Flowing from the summaries of the evidence adduced and submissions rendered, I frame the following questions for determination:-
  - i. Whether the Defendant was right in charging the siding fee;
  - ii. Whether the Plaintiff is entitled to the orders sought in the Plaintiff?
  - iii. Who pays the cost of this suit?
16. On the first issue, it is the Plaintiff's averment that he leased the property from the Governor and Commander in Chief of the Colony and Protectorate of Kenya for a term of 99 years which was registered at the Registry of Titles as I.R 10491 and more particularly comprise of the parcel. That after purchasing the said property the Plaintiff received an invoice from the Defendant in respect of a contribution fee towards the unimproved site value on plot 154 Nairobi which contribution fee was referred to as a Siding Fee. The Plaintiff wrote to the Defendant questioning the legal basis of the Siding Fee, copies of correspondence were produced as exhibits by both the Plaintiff and the Defendant.
17. The Plaintiff averred which averment was not rebutted by the Defendant that they sought an explanation of the services provided by the Defendant to justify the payment of the Siding Fee but the Defendant failed to adequately address the issue. It was also the Plaintiff's testimony that they made several payments to the Defendant in respect of the said fee under the mistaken fact that fees may be due to the Respondent. That in the mid 1990's the Plaintiff took a decision to cease making any further payments to the Defendant for the reason that the platform to which the Siding Fee related could no longer be used and that it had not been in use since the mid 1970's owing to the fact that the Defendant had ceased to provide and or operate Railways services along that line from that time.



18. The Plaintiff made the decision to stop the payment made under the mistaken fact since they were not deriving any benefit or use of the platform for almost 30 years. When the Defendant was cross-examined, DW1 stated that they did not respond to the Plaintiff's correspondence in 2008 requesting for documentation which proved or provided it with legal basis to raise the Siding Fee. The Defendant however wrote to the Plaintiff on 17/08/2010 citing Clause 13 of the title deed of the suit which states as follows;

“The guarantee shall pay such taxes clients assessment or outgoing as may be properly imposed charged or assessed by any government or local authority upon the land on the buildings including any contribution or other sum paid by the governor in lieu thereof.”

19. During cross examination however, DW1 as already stated above did not adduce any evidence to confirm that it had rendered loading services to the Plaintiff, or that such services are rendered by it currently, years after the Plaintiff stopped using the said facility.

20. It is the Plaintiff's submission that Section 13 (2) (f) of the *Kenya Railways Corporation Act* mandates the Defendant to determine and charge dues or fees for services that it performs but in the circumstances of this case, no services have been provided that would warrant continual payment of the fee termed as Siding Fee.

21. The Plaintiff further submitted that it is the mandate of the Defendant to determine, impose and levy rates, fares charges, dues or fees but that this charges are pegged on the Defendant rendering a service, or from the use of its facilities, or prior to granting any person a licence, permit or certificate. The Plaintiff testified that it paid the Defendant Siding Fees when it used its cargo loading platform based on the legal provision cited above. It was the Plaintiff's submission that the Defendant in its Defence and at paragraph 7 of its witness statement admitted that the payment of Siding Fees was solely dependent on the Defendant's provision of a cargo loading platform.

22. On its part, the Defendant submits that Clause 13 of the lease referred required the grantee to pay such taxes including the Siding Fees and that these special conditions were known to the Plaintiff. That the communal Railways platform gave the Plaintiff and other businesses access to the Defendant's services where they were able to load their cargo onto the Railways for purposes of transportation.

23. Further that according to the Defendant Section 13(2) (f) of the *Kenya Railways Corporation Act* Cap 397 Laws of Kenya empowers the Corporation to determine, impose and levy rates, fares, charges, dues or fees for any service performed by the Corporation or for the use by any person of the facilities provided by the Corporation or for grant to any person of any licence, permit or certificate.

24. I note that the Defendant was not able to respond to the Plaintiff when it inquired about the fee and the fact that the rail services were non-existent since mid 1970's. This being the case, it was not proper that the Defendant insists that the Plaintiff pays a fee for a non-available service.

25. On the second issue about whether the Plaintiff is deserving of the prayers made. I hold the view that since there were no services being provided by the Defendant, then the Plaintiff has no obligation to pay for what was not being provided.



## Who will bear the Costs of Originating Summons dated 9<sup>th</sup> June, 2009?

26. It is the Court's discretionary power on the award of costs. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The Black Law Dictionary defines cost to mean:-

“The expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other.”

27. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs ordinarily follow the event unless the Court for good reasons orders otherwise. The provision of Section 27 provides as follows:-

“(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the Court or judge, and the Court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the Court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the Court or judge shall for good reason otherwise order.”

28. In the case of “Morgan Air Cargo Limited –Versus- Everest Enterprises Limited [2014] eKLR” the Court noted that;

“The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that “Cost follow the event” was driven by the fact that there could be no “one-size-fit-all” situation on the matter. That is why section 27(1) of the *Civil Procedure Act* is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case.”

29. In this case, as this Honourable Court has opined above, the Plaintiff has proved their claim against the Defendant. Whereas I would have readily awarded costs I note that the Defendant is a public institution and I will therefore direct that each party bears their own cost of the suit.

30. Finally the Plaintiff has proved their case on a balance of probability against the Defendant and each party to bear their own cost of the suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**MOGENI J**

**JUDGE**

