



**Katsuri Limited v Nyeri Wholesalers Limited (Environment & Land  
Case 122 of 2015) [2025] KEELC 3636 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3636 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 122 OF 2015**

**JO OLOLA, J**

**MAY 8, 2025**

**FORMERLY NYERI HCC NO. 109 OF 2009)**

**BETWEEN**

**KATSURI LIMITED ..... PLAINTIFF**

**AND**

**NYERI WHOLESALERS LIMITED ..... DEFENDANT**

**JUDGMENT**

**Background**

1. This suit was initially filed as Nyeri HCCC No. 109 of 2009. It was transferred to this court and was given its current reference on 20<sup>th</sup> April, 2015.
2. By a Plaint dated 3<sup>rd</sup> July 2009, Katsuri Limited (the Plaintiff) prays for Judgment against Nyeri Wholesalers Limited (the Defendant) for:
  - a. A declaration that the lease agreements for Kshs 60,000/= and for Kshs 100,000/= both dated 2<sup>nd</sup> April, 2004 are irregular and (that) the same be nullified;
  - b. A declaration that the purported termination of lease and the notice to vacate land title No. Nyeri/Municipality/Block III/66 dated 19<sup>th</sup> January, 2009 against the Plaintiff be deemed as of no effect;
  - c. Any other relief as this Honourable Court might deem fit and proper to grant; and
  - d. Costs of this suit.
3. Those prayers arise from the Plaintiffs contention that on or about 2<sup>nd</sup> April, 2004, it entered into a lease agreement to rent part of the defendants premises on the said parcel of land known as Nyeri/Municipality/Block III/66 to operate a shop and residence. It is the Plaintiff's case that it challenged



the authenticity of several lease agreements that purportedly exists between itself and the Defendant after the Defendant demanded in excess of Kshs. 2,674,000/= in rent arrears in relation to one of the lease agreements.

4. The Plaintiff avers that sometime on 19<sup>th</sup> January, 2009, the Defendant issued an eviction notice against the Plaintiff from the suit premises with effect from 15<sup>th</sup> April, 2009. It is the Plaintiff's case that the said notice was based on an unknown lease agreement. It is further the Plaintiff's case that the Defendant had fraudulently and deliberately prepared several purported lease agreements with the intention of extorting arbitrary rent money from the Plaintiff and as a result, the Plaintiff had sought redress in Nyeri HCCC No. 585 of 2007 and CMCC No. 588 of 2007.
5. Nyeri Wholesalers Limited (the Defendant) is opposed to the Plaintiff's claim. In its Further Amended statement of Defence and Counterclaim dated 24<sup>th</sup> March, 2016, the Defendant admits the existence of the Lease Agreement dated 2<sup>nd</sup> April, 2004 but denies that it had rented residential premises to the Plaintiff. The Defendant further denies that the Plaintiff instituted Nyeri CMCC No. 585 of 2007 to challenge the authenticity of the lease agreements. The Defendant asserts that the said suit together with Nyeri BPRT No. 69 of 2009 were both dismissed with costs to itself.
6. The Defendant denies further that it served the Plaintiff with a notice of eviction on 19<sup>th</sup> January, 2009. On the contrary, the Defendant avers that it served the Plaintiff with a notice of non-extension of the lease upon its expiry. It is the Defendant's case that the lease was for a term of 5 years and 1 day from 15<sup>th</sup> May, 2004 lapsing on 15<sup>th</sup> April, 2009.
7. By way of its Further Amended Counterclaim, the Defendant avers that the Plaintiff breached the terms of the lease agreement by defaulting in payment of rent thereby prompting the Defendant to levy distress on several occasions.
8. The Defendant accordingly prays for judgment against the Plaintiff for:
  - a. An order of vacant possession of the demised premises and in default the Plaintiff be forcefully evicted therefrom;
  - b. A sum of Kenya Shillings Three Million Eight Hundred and Sixty-Five Thousand Five Hundred (Kshs 3,865,500/=) being the outstanding rent arrears as at 15<sup>th</sup> April, 2009;
  - c. A sum of Kshs 11,959,500/= being mesne profits from May, 2009 at a rate of Kshs 178,500/= per month until delivery of vacant possession which was made on 19<sup>th</sup> November, 2014;
  - d. A sum of Kshs 2,605,349/= being cost of damages, repairs and painting of the premises as sought in paragraph 19 of the Plaintiff;
  - e. Interest on (b), (c) & (d) above at commercial rates;
  - f. Cost of the suit and or Counter claim; and
  - g. Any other relief the Honourable Court may deem fit to grant.
9. At the trial herein, the Plaintiff called 1 witness while the Defendant called 2 witnesses in support of their case.

### **Analysis and Determination**

10. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Advocates representing the parties herein.



11. By its suit as filed herein, the Plaintiff prays for a declaration that the lease agreement for Kshs. 60,000/= and Kshs. 100,000/= both dated 2<sup>nd</sup> April, 2004 are irregular. They urge the court to nullify the said agreements on account that the same are forgeries. The Plaintiff further urges the court to declare that the purported termination of its lease and a notice to vacate the demised premises dated 19<sup>th</sup> January, 2009 is of no legal effect.
12. Those prayers are premised on the Plaintiff's contention that on or about 2<sup>nd</sup> April, 2004, it did enter into a lease agreement with the Defendant wherein the Plaintiff was allowed to rent part of the Defendant's building erected on the parcel of land known as Nyeri/Municipality/Block III/66 to operate a shop and residence at a monthly rent of Kshs. 40,000/=.
13. It was the Plaintiff's case that subsequent to the execution of the said agreement, the Defendant deliberately and fraudulently prepared other purported lease agreements in which the monthly rent payable for the demised premises was altered for the purposes of extorting arbitrary rent from the Plaintiff.
14. The Plaintiff told the court that sometime on 19<sup>th</sup> January, 2009 the Defendant issued the Plaintiff with an eviction notice requiring the Plaintiff to vacate the suit premises by 19<sup>th</sup> April, 2009. It is the Plaintiff's case that the said notice was not based on the authentic list executed between itself and the Defendant and that the same was based on the fraudulent lease agreements generated solely by the Defendant and hence of no consequence.
15. While admitting that it did enter into a lease agreement wherein it agreed to rent out the said premises for commercial purposes to the Plaintiff the Defendant denies having fraudulently forged other agreements for the purpose and intent of extorting arbitrary rent from the Plaintiff. It is the Defendant's case that the parties had mutually agreed on a monthly rent of Kshs. 100,000/= and that the Plaintiff had constantly defaulted in payment of the agreed rent.
16. The Defendant further denies that it had issued an eviction notice requiring the Plaintiff to vacate the demised premises. On the contrary, the Defendant asserted that following the Plaintiff's persistent default in payment of rent, it had merely issued the Plaintiff with a notice of non-extension of the lease upon its expiry on 15<sup>th</sup> April, 2009.
17. In support of its case, the Plaintiff called its director Bipin Chandra Shah (PW1) who told the court that the lease agreement they executed on 2<sup>nd</sup> April, 2004 was not witnessed by an advocate. PW1 told the court that on 3<sup>rd</sup> September, 2007, they had received a notice from the Defendant demanding rent arrears in the sum of Kshs. 2,600,000/=. He told the court that it was then that he came to discover that the Defendant had two other copies of the lease indicating that the monthly rent was Kshs. 60,000/= and another one indicating the rent as Kshs. 100,000/=. He told the court that it was the Defendant which had unilaterally inserted the different figures.
18. From the material placed before the court, it was evident that the Plaintiff had for some time disputed the amount of rent that was payable monthly for the demised premises. It was also apparent that due to those disagreements, the Defendant had distrained for the disputed rent arrears a number of times.
19. It was the Plaintiff's case that in order to deal with the demands being made by the Defendant, the Plaintiff had moved to the Chief Magistrates Court at Nyeri in the year 2007 and had instituted Nyeri CMCC. No. 585 of 2007. A perusal of the pleadings from the said case reveals that the Plaintiff had moved to court after the Defendant proclaimed its properties and was then in the process of selling the same.



20. As a result of the said proclamation, the Plaintiff had asked the court to issue an order of injunction restraining the Defendant from further proclaiming, removing, advertising for sale, disposing and/or in any manner interfering with the properties in the rented business premises. In addition, the Plaintiff sought a declaration that the proclamation was unprocedural and an order for the Defendant to furnish accounts and/or break down the alleged outstanding rent which the Defendant had then stated to be Kshs. 2,729,500/=. More significantly, the Plaintiff asked the court to direct the Defendant to deliver the duly registered lease and/or agreements with the Plaintiff.
21. Upon hearing the dispute and in a Judgment delivered on the said matter on 3<sup>rd</sup> August, 2011, the Honorable S.M. Muketi, CM proceeded to dismiss the Plaintiff's case after finding as follows:

“The rent payable from the Agreements on record was is what is in dispute. The Plaintiffs are saying it is Kshs 40,000/=. The defendant is saying it was Kshs 100,000/=.

Looking at the agreement produced, there was an initial rent of Kshs 40,000/= and as per Dexh 3 -upgraded to Kshs 100,000/=. From the evidence on record the correct rent payable per month is Kshs 100,000/=”
22. At the trial herein, PW1 confirmed in cross examination that the Lower Court had in indeed found that the rent payable for the demised premises was Kshs. 100,000/=. In his testimony in-chief, PW1 affirmed that position stating that the Defendant's other directors had refused to execute the lease for Kshs. 40,000/= and that the rent for the premises was then negotiated at Kshs. 100,000/=.
23. From the material placed before the court, it was apparent that the position held by PW1 was not one that was held by the Plaintiff as a company. In the year 2010, one Pravid Chandra Shah, a director of the Defendant Company was charged at the instigation of PW1, under section 349 of the [Penal Code](#) for allegedly forging a rent agreement. Testifying at the trial in which the accused was eventually acquitted, PW1 conceded that the lease agreement for Kshs. 100,000/= was the valid lease. He testified that the lease for Kshs. 100,000/= had been executed and sealed by his co-directors after he declined to sign the same.
24. Arising from the foregoing, it was evident that the allegation that the lease for Kshs. 100,000/= was fraudulent and/or irregular was certainly unfounded and without any basis. The lease agreement for Kshs. 100,000/= as the monthly rent for the demised premises had been executed by the Plaintiff's directors and the same was binding upon the parties.
25. In regard to the termination of the lease, it was not in dispute that the lease agreement entered into between the parties and dated 2<sup>nd</sup> April, 2004 was for a term of 5 years and one day effective 15<sup>th</sup> May, 2004. That being the case, the lease effectively lapsed on 15<sup>th</sup> April, 2009. PW1 told the court that before expiry of the lease, the Defendant gave it notice of non-extension of the lease on 19<sup>th</sup> January, 2009. It was his case that they did not however move out of the premises as one of the Directors had borrowed money from the shop.
26. In the circumstances herein, I was unable to see why the Plaintiff would urge the court to deem the notice as being of no effect. As it were, a tenant cannot become a tenant at will by refusing to vacate the demised premises when an express notice of non-renewal has been given.



27. By holding over the demised premises, the Plaintiff is obligated to pay compensation for the use and occupation of the premises and was liable to eviction. As the Court of Appeal did state in Attorney General –vs- Halal Meat Products Limited (2016) eKLR:

“It follows therefore that where a person is wrongfully deprived of his property he/she is entitled to damages known as mesne profits for loss suffered as a result of the wrongful period of occupation of his/her property by another.”

28. In the matter herein it was again not in dispute that after the expiry of the lease on 15<sup>th</sup> May, 2009, the Plaintiff remained in occupation of the demised premises until 19<sup>th</sup> November, 2014. In support of their claim for mesne profits, the defendant has produced a Valuation Report prepared by J.S. Mureithi of Mureithi Valuers dated 3<sup>rd</sup> April, 2009. The Report which puts the value of the demised premises at Kshs. 178,500/= a month has not been challenged by the Plaintiffs.

29. While the Defendants sought the sum of Kshs. 2,605, 349/- being the cost of damages, repairs and painting of the premises, no evidence was placed before this court in support of that claim.

30. Accordingly, the Plaintiff's case is dismissed as the same lacks in merit. I however enter judgment for the Defendant and allow the Defence and further Amended Counterclaim as follows:

- a. Kshs. 3,865,500/= being outstanding rent arrears as at 15<sup>th</sup> April, 2009
- b. Kshs. 10,324,000/= being the mesne profits for the period May, 2009 until 19<sup>th</sup> November, 2014.
- c. Interests on (a) and (b) above at court rates.
- d. The Plaintiff shall meet the costs of both the suit and the Counterclaim.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 8<sup>TH</sup> DAY OF MAY, 2025**

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**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Gori Advocate for the Plaintiff
- c. Mr. Mahinda the Advocate for the Defendant

