



REPUBLIC OF KENYA



**Kamau & another v Green Valley Limited & another (Environment & Land  
Case E133 of 2024) [2025] KEELC 4900 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4900 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E133 OF 2024**

**JM ONYANGO, J**

**JUNE 30, 2025**

**BETWEEN**

**JAMES KAMAU KAMAU ..... 1<sup>ST</sup> PLAINTIFF**

**RICHARD KIPKIRUI MARISIN ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**GREEN VALLEY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MARGARET WAIRIMU MAGUGU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion dated 18th September 2024 brought pursuant to Article 159 (2) (d) of the [Constitution](#) of Kenya 2010, Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 7 Rule 1, Order 10 Rule 4, Order 36 Rules 1 and 2 and Order 51 of the Civil Procedure Rules, the Plaintiffs/Applicants seek the following orders:
  1. Spent
  2. That the honourable court be pleased to enter summary judgment in favour of the Plaintiffs against the Defendants for the sum of Kshs 3,700,000 being the 10% contractual price agreed as the penalty for the breach of the contract of the sale of the land subject of these proceedings, viz, Land Reference Number 145/86 (formerly LR No. 141/81/81 under the sale agreement for this land parcel, duly executed by the parties herein.
  3. That the Defendants be condemned to pay interest on the above said penalties at court rates from the date of breach until full payment.
  4. That the Defendants be condemned to pay the costs of the said application and this suit.



2. The application is premised on the grounds on the face of it and supported by the Supporting Affidavit of James Kamau Kamau (the 1st Applicant) sworn on 18th September 2024. He avers that he and the 2nd Plaintiff instituted this suit vide a Plaint dated 2nd August 2024. Together with the Plaint, they filed an Application of even date seeking restraining orders against the Defendants/Respondents from dealing with Land Reference Number 145/86 (formerly LR No. 141/81/5 and hereinafter referred to as “the suit property”). He further avers that the Respondents opposed the said application through Grounds of Opposition dated 13th August 2024 and a Replying Affidavit dated 14th August 2024. He adds that despite having duly entered appearance, the Respondents failed to file a Defence within the stipulated time in violation of Order 7 Rule 1 of the Civil Procedure Rules, 2010.
3. He depones that the failure by the Respondents to comply with the above-mentioned provision is in clear breach of procedural obligations, warranting the court to proceed as provided under Order 10 Rule 4 of the Civil Procedure Rules, which allows for the entry of judgment in default of defence.
4. He states that they discovered that the suit property, which had been sold in breach of the agreement between the parties, has now been fully conveyed/transferred to a third party, thereby rendering their application dated 2nd August 2024, seeking restraining orders against the Respondents, spent. He adds that the Respondents have acknowledged and admitted to all the claims levelled against them in the suit through their Replying Affidavit dated 14th August 2024.
5. He contends that through the said Replying Affidavit, the Respondents have admitted to having elected the decision to rescind the contract between the parties solely on the perceived lack of funds on the part of the Applicants, and falsified defamatory remarks levelled against their Advocate.
6. He faults the Respondents for acting in bad faith and blatant breach of the terms of the contract by rescinding the agreement and selling the suit property to a third party without issuing a notice to them, a fact he claims the Respondents have admitted to in their Affidavit. He adds that the Respondents’ act of depositing Kshs 5,000,000 in full is an admission of the fact that they were the ones in breach of the contract.
7. He contends that Clause 7.3 of the Sale Agreement between the parties provides a default clause which states that in case of a rescission by either party, the rescinding party shall be liable to pay a penalty of 10% of the purchase price.
8. He further contends that it is in the interest of justice and procedural fairness that this court be pleased to enter summary judgment against the Respondents pursuant to the provisions of Order 36, Rule 1 and 2 of the Civil Procedure Rules, 2010. It is his position that the Respondents will not suffer any prejudice if the orders sought are granted, given that they have already unlawfully benefited from the sale and transfer of the suit property.
9. In opposing the application, the Respondents filed Grounds of Opposition dated 25th September 2024 and a Replying Affidavit sworn by Stephen Kirumba Njoroge (a director of the 1st Respondent). The said director contends that for a prayer for Summary Judgment to be granted, the Plaint must contain an express prayer for a liquidated demand, the Respondent must fail to appear on/or before the day fixed in the summons and the request for entry of the summary judgment must be made in form no.13 of Appendix A.
10. He contends that there is no prayer for any liquidated claim in the Plaint. He adds that the Applicants only sought orders for specific performance, refund of the deposit sum and damages, interest and costs of the suit. He further contends that this falls outside the ambit of Order 10 Rule 4 of the Civil Procedures Act.



11. It is his position that the Applicants were refunded the deposit sum of Kshs.5,000,000 vide a bank transfer to their account on 11th June 2024, in compliance with their formal demand for the refund of the same.
12. He faults the Applicants for seeking an order compelling the Respondents to pay the penalty fee when they are the ones who breached the terms of the Agreement for Sale and, as such, ought to bear the consequences thereof. He adds that the Agreement for Sale dated 22nd May 2024 was rescinded due to breach of the contract by the Applicants, who failed to demonstrate proof of funds before the 1st Respondent could transfer the land to them and insisted that they were still looking for a financier. He adds that the Applicants accepted the said rescission and even demanded a refund of their deposit.
13. He depones that the Respondents filed a Statement of Defence dated 19th September 2024, which raises triable issues that can only be properly determined at the full hearing of the suit.

### **Submissions**

14. The application was canvassed by way of written submissions. The Applicants filed their submissions dated 27th January 2025, while the Respondents filed theirs dated 28th March 2025.

### **Analysis and Determination**

15. I have considered the application and the submissions made. It is my considered view that the sole issue for determination is whether, on the facts and circumstances of this case the court should enter summary judgment in favour of the Applicants against the Respondents.
16. Article 159 (2)(c) of the *Constitution* provides that in the exercise of Judicial authority, the courts shall ensure that justice is administered without undue delay. In addition, under Section 63(e) of the *Civil Procedure Act*, the Court may, in order to prevent the ends of justice from being defeated make such interlocutory orders as may appear to the court to be just and convenient. Further, Sections 1A and 1B of the *Civil Procedure Act* too oblige the court to ensure just, fair, proportionate and expeditious administration of justice to the parties before it.
17. The procedural law under Order 36 Rule 1 of the Civil Procedure Rules on summary judgment provides that:

“In all suits where a plaintiff seeks judgment for-

A liquidated demand with or without interest; or

The recovery of land, with or without a claim for rent or mesne profits, by a landlord from a tenant whose term has expired or been determined by Notice to quit or been forfeited for non-payment of rent or for breach of covenant, or against persons claiming under such tenant or against a trespasser, where the defendant has appeared but not filed a defence the plaintiff may apply for judgment for amount claimed, or for recovery of the land and rent or mesne profits.”
18. In the case of *ICDC vs Daber Enterprises Ltd* [2000] 1 EA75, the court of Appeal stated that:

“The purpose of the proceedings in an application for summary judgment is to enable the plaintiff to obtain a quick judgment where there is plainly no defence to the claim. To justify summary judgment, the matter must be plain and obvious and where it is not plain and obvious, a party to a civil litigation is not to be deprived of his right to have his case tried



by a proper trial where if necessary, there has been discovery and oral evidence subject to cross examination.”

19. In *Dhanjal Investments Ltd vs Shabaha Investments Ltd*, Civil Appeal No.232 of 1997, the Court of Appeal stated as follows regarding summary judgment:

“The law on summary judgment procedure has been settled for many years now. It was held as early as in 1952 in the case of *Kandlal Restaurant -v- Devshi & Company* (1952) EACA 77 and followed by the Court of Appeal for Eastern Africa in the case of *Souza Figuerido & Company Ltd –v- Mooring Hotel Ltd* (1959) EA 425 that, if the defendant shows a bona fide triable issue, he must be allowed to defend without condition....”

20. Regarding what constitutes triable issues, in *Kenya Trade Combine Ltd -v- Shah* Civil Appeal No.193 of 1999, the Court of Appeal stated as follows:

“In a matter of this nature, all a defendant is supposed to show is that a defence on record raises triable issue which ought to go for trial. We should hasten to add that in this respect a defence which raises triable issues does not mean a defence that must succeed.”

21. A perusal of the court record shows that the Applicants instituted this suit through a Complaint dated 2nd August 2024 seeking the following orders:(a) an order directing the Respondents to specifically perform their contractual obligations under the sale agreement and deliver all necessary documents to effectuate the transfer of the suit property; (b) in the alternative, in addition to making a refund of the deposit sum duly paid to them, the Respondents pay all damages under the contract, consequential losses suffered by the Applicants and exemplary damages for their criminal and fraudulent misconduct; (c) Interest on the amount paid and, on any damages, awarded at court rate per annum from the date of the disbursements of the funds to the Respondents until the date of payment; (d) Costs of this plus 16% VAT thereon; and (e) any other order or relief that the court may deem fit and just to award.
22. Together with the Complaint, the Applicants filed a Notice of Motion Application of an even date seeking injunctive orders against the Respondents restraining them from dealing, entering, developing, fencing, disposing of or interfering with the suit property in any manner. The Respondents opposed the said application through Grounds of Opposition dated 13th August 2024 and a Replying Affidavit sworn by Stephen Kirumba Njoroge on 14th August 2024 in which he stated that the suit property had already been registered in the name of a third party, thereby rendering the application dated 2nd August 2024 spent. He denied that the Respondents had breached the contract. He added that the only issue for determination before the court should be who between the parties was in breach and therefore liable to pay the 10% penalty indicated in the agreement.
23. It is not in dispute that the agreement dated 22nd May 2024 contained a default clause in the event of breach. It is also not in dispute that the suit property is registered in the name of a third party. Both parties have stated that the Respondents refunded the deposit paid by the Applicants and both parties accuse the other for the breach of the agreement. It is my humble view that the issue of who is in breach of the agreement is a triable issue that needs to proceed for trial in order for this court to make a determination.
24. From the foregoing, I hold the view that the court cannot grant summary judgment to the Applicants. I am satisfied that there are triable issues which need to be determined by the court at a full trial. In my view, the Respondents should be given the opportunity to defend the suit. Entering summary judgment against the Respondent when the defence filed raises triable issues will have the effect of ousting the Respondents from the judgment seat, contrary to the provision of the *Constitution* on the



right to access to justice as contemplated in Article 48 of the Constitution and as a result deny them right to a fair hearing under Article 50 (1) of the Constitution.

25. In the end, I find no merit in the Application dated September 18, 2024 and proceed to dismiss it. The costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30<sup>TH</sup> DAY OF JUNE 2025.**

.....

**J. M ONYANGO**

**JUDGE**

In the presence of :

1. Miss Zulekha for Mr Kago for the Defendants
2. Mr Ahenda for the Plaintiff

Court Assistant: Hinga

