



County Government of Kakamega v Njuguna (Environment and Land Case E017 of 2022) [2025] KEELC 4704 (KLR) (25 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4704 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE E017 OF 2022**

**DO OHUNGO, J
JUNE 25, 2025**

BETWEEN

COUNTY GOVERNMENT OF KAKAMEGA PLAINTIFF

AND

JOHN NGUGI NJUGUNA DEFENDANT

JUDGMENT

1. The Plaintiff, a county government established pursuant to Article 176 of *the Constitution* of Kenya and the *County Governments Act*, moved the Court on 13th May 2022 through Plaintiff dated 9th May 2022. It averred in the Plaintiff that at all material times it was the lessor of the parcel of land known as Kakamega Municipality/Block I/615 (the suit property) in respect of which a lease was registered on 3rd August 2001 and a Certificate of Lease issued in favour of the Defendant on 3rd September 2001. That the Defendant breached special condition number 2 of the lease by failing to develop the suit property as provided therein.
2. The Plaintiff therefore prayed for judgment against the Defendant for:
 - a. An order that the lease in respect to land parcel title number Kakamega/Municipality/Block I/615 be forfeited on account of breach of the special condition number 2 on development; and
 - b. Such other order as the Honourable Court may deem fit and just.
3. Although evidence of service of summons to enter appearance upon the Defendant was availed, the Defendant neither entered appearance nor defended the claim.
4. At the hearing, Ronald Matende Omwoma testified for the Plaintiff and stated that he was a practicing Physical and Land Use Planner and a Land Administration Expert. He adopted his witness statement dated 8th March 2024 and produced copies of the documents listed as item numbers 1 to 5 in the



Plaintiff's list of documents dated 9th May 2022 as well as copies of the documents listed as item numbers 1 to 5 in the Plaintiff's supplementary list of documents dated 8th March 2024.

5. Mr Matende stated in the Witness Statement that he was a member of the Appeals Panel of the Kakamega County Land Application, Extension of Leases and Land Administration Committee that was gazetted through Gazette Notice Number 103 dated 30th December 2020 and published in Gazette Volume CXXIII - No. 12 dated 15th January 2021 with a mandate to hear appeals from persons whose plots had been identified as undeveloped in breach of the special conditions of their allotment letters and leases. That the Committee was to thereafter make recommendations on repossession to the Plaintiff. He also stated that the Plaintiff as the lessor of the suit property published a report of undeveloped plots within Kakamega Municipality and that the Defendant was notified of hearings.
6. Mr Matende went on to state that the Defendant failed to appear before the committee and that upon deliberations, the committee made a recommendation advising the Plaintiff to repossess the suit property on account of non-development. That the Plaintiff then issued to the Defendant a "Notice for Repossession" through letter dated 11th January 2022.
7. The Plaintiff's case was then closed. As earlier stated, the Defendant neither entered appearance nor defended the claim. His case was equally closed. Directions were then given that parties file and exchange written submissions. The Plaintiff filed written submissions dated 15th August 2024. The Defendant did not file any submissions.
8. The Plaintiff argued that Sections 12 (9) and 31 of the Land Act give a lessor the relief of forfeiture on account of breach of special condition to a lease and empower the Court to grant forfeiture. It also relied on Article 60 (1) (c) of the Constitution and contended that land is to be held and used in a productive manner.
9. The Plaintiff further argued that the Defendant failed to develop the suit property as required by special condition number 2 and he was therefore in breach of the said term of the lease. Relying on the cases of Kahindi Ngala Mwangandi v Mtana Lewa [2014] eKLR, Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR, Republic v County Government of Siaya Ex parte Between Ruth Akelo Were; Rosella Nyanja (Interested Party) [2021] eKLR, and Melisa Awour Odera v Keringet Estates Limited [2021] eKLR, the Plaintiff contended that it had met the threshold for grant of forfeiture. It therefore urged the Court to grant it the reliefs sought in the plaint.
10. I have considered the pleadings, evidence, submissions and authorities cited. The issues that arise for determination are whether the Defendant breached the lease and whether the Plaintiff is entitled to the reliefs sought.
11. I have perused the lease dated 5th June 2001 and registered on 3rd August 2001. The initial lessee was James Muiru Waweru. Pursuant to the certificate of official search dated 27th May 2021, the Defendant was registered as lessee on 3rd September 2001 for a term of 99 years from 1st April 1993.
12. The Plaintiff's case is that the Defendant breached special condition number 2 of the lease. The said condition provides as follows:

The Lessee shall within six calendar months of the actual registration of the lease submit in triplicate to the Local Authority plans (including block plans showing the positions of the buildings and system of drainage for the disposal of sewage, surface and sullage water) drawings, elevations and specifications of the buildings the Lessee proposes to erect on the land and shall within 24 months of the actual registration of the lease complete the erection of such buildings and the construction of the drainage in conformity with



such plans, drawings, elevations and specifications as amended (if such be the case) by the Local Authority: PROVIDED that notwithstanding anything to the contrary contained or implied by the Trust *Land Act* if default shall be made in the performance or observance of any of the requirements of this condition it shall be lawful for the County Council or any person authorized by the County Council to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the County Council in respect of any antecedent breach of any condition herein contained.

13. The Defendant has not challenged the Plaintiff's case. I am in the circumstances persuaded that the Defendant did not develop the suit property as provided in special condition number 2 of the lease. In those circumstances, he is in breach of the said term. It follows therefore that the Plaintiff is entitled to the reliefs sought.
14. In view of the foregoing, I find merit in the Plaintiff's case. I make the following orders:
 - a. It is hereby ordered that the lease in favour of the Defendant in respect of land parcel title number Kakamega/Municipality/Block I/615 is forfeited on account of breach of special condition number 2 on development.
 - b. Considering that the Plaintiff did not seek costs, I make no order as to costs.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 25TH DAY OF JUNE 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Wabuko for the Plaintiff

No appearance for the Defendant

Court Assistant: B Kerubo

