



**Flow Farm Limited v Organics 4 Orphans International (Thive for Good East Africa) (Environment and Land Case E034 of 2025) [2025] KEELC 7213 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7213 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E034 OF 2025  
CK NZILI, J  
OCTOBER 22, 2025**

**BETWEEN**

**FLOW FARM LIMITED ..... PLAINTIFF**

**AND**

**ORGANICS 4 ORPHANS INTERNATIONAL (THIVE FOR GOOD EAST AFRICA) ..... DEFENDANT**

**RULING**

1. The court is asked by an application dated 2/7/2025 to restrain the respondent from enforcing the terms of an agreement dated 9/8/2024, including taking possession of the L.R. No. 2116/1090 (IR No. 57922), pending hearing and determination of this suit. The reasons are contained on the face of the application and in a supporting affidavit sworn by Florence Njeri Chege on 22/7/2025.
2. Briefly, the applicant says that the parties entered into a sale agreement dated 31/7/2023 for the subject property, for a consideration of Kshs. 30,200,000/=, whose completion period was agreed at 90 days. Paid Kshs. 16,420,229/= as per the attached bank statement as annexure FL-2 to the affidavit. It is averred that the balance was to be paid through a financier, which, upon frustration from both the defendant and the financier, was impossible.
3. The applicant says that parties had to enter into another agreement dated 9/8/2024, whose terms are not only primitive but are also unconscionable. The applicant says that though it is in occupation of the subject, the respondent has issued a termination notice of the sale agreement dated 5/7/2025, which is clear that the respondent does not intend to refund the entire deposit, but to enforce the unconscionable terms in the agreement dated 9/8/2024.



4. The applicant deposes that since it is in possession of the suit property and continues to pay Kshs. 90,000/= as monthly rent pending payment of the full purchase price, the respondent shall suffer no loss if the orders sought are granted.
5. The applicant says that the respondent failed to provide the completion documents to the financier on time, but nevertheless has been paid an extra Kshs. 5,000,000/= towards reducing the balance of Kshs. 22,180,000/=.
6. Further, the applicant avers that despite punitive terms introduced in the 2<sup>nd</sup> agreement, which is a total departure from the 1<sup>st</sup> agreement, he has continued to make more payments on 29/8/2024, 16/10/2024, 14/12/2024, and on 21/12/2024, making the whole payment of Kshs. 16,420,229/=.
7. The application is opposed through a replying affidavit sworn by Ambrose Lemaiyan Mootian on 29/7/2025.
8. While admitting that the parties entered into a sale agreement dated 31/7/2023 to dispose of the suit property at Kshs. 30,200,000/= with an agreed completion period of 90 days, with a balance to be paid by a financier, it is deposed that the applicant failed to complete the transaction even after a completion notice dated 9/11/2023 was issued, or provide a proportional undertaking or evidence of financial readiness to complete the same.
9. The respondent deposes that in good faith granted several extensions were granted, culminating in an addendum agreement dated 9/8/2024, which expanded the completion date to November 2026, allowing for payment in monthly instalments as proposed by the applicant and introducing agreed penalties for default.
10. The respondent deposes that despite the extraordinary indulgence, the applicant defaulted again in January 2025, hence, the invocation of Clause 5.1 of the addendum.
11. Therefore, the respondent deposes that though the agreement stood terminated on 1/2/2025, but continued to indulge the applicant on its request until the end of June 2025, when it became clear that the applicant lacked the capacity to complete the transaction. The respondent, therefore, terms the termination notice dated 8/7/2025 as justified.
12. The applicant relies on written submissions dated 29/7/2025 stating that it has met the conditions for the grant of the reliefs sought. On the other hand, the respondent relies on written submissions dated 30/7/2025. It is submitted that the applicant seeks to restrain the respondent from exercising its clear contractual rights under an agreement which the applicant has constantly failed to honour for two years.
13. The respondent submits that this is a classic case of a party that is seeking equitable relief with unclean hands after breaching a contract and failing to fulfil a financial obligation, despite repeated indulgencies and extension.
14. The respondent submits that there is no prima facie case established in terms of Mugo -vs- Equity Bank Ltd [2023] KEHC 24167 KLR and Giella -vs- Cassman Brown [1973] EA 358, as the applicant has breached the contract, the agreement was lawfully terminated under its own terms, and the respondent has thereby exercised a contractual remedy after affording the applicant multiple chances to comply.
15. Equally, the respondent submits that the applicant now seeks protection not to vindicate a legal right, but to avoid the consequences of its own non-performance. The respondent submits that the court should not be invited and indeed should decline the invitation to issue the orders sought, to restrain it



from acting in a lawful, voluntary, and clear written agreement. Reliance is placed on National Bank of Kenya Limited -vs- Pipe Plastic Samkolit (K) Ltd (2002) 2 EA 503 [2011] eKLR

16. On irreparable harm, the respondent submits that in view of the default, the applicant is only entitled to a refund, which is a quantifiable and compensable damage. In contrast, the respondent submits that it has been kept out of possession of the property for 2 years, receiving no licence fees since December 2024, and has foregone its opportunity to resell the land.
17. It is submitted that the respondent will further suffer and endure operational hardship as a charitable organization, as it was relying on the sale to fund its operations in view of dwindling donor funding; otherwise, to grant the orders sought will perpetuate these losses, which are real and ongoing harm.
18. On balance of convenience, the respondent submits that it is the registered owner, the applicant is in default, and has failed to cure it despite patience and flexibility in extending the completion date, yet it continues to occupy the premises and run a quest house business without payment or compliance, hence enjoying the benefits while avoiding the obligations.
19. The respondent submits that to grant the reliefs sought would have the effect of undermining the sanctity of contracts, encouraging defaulting parties to run to court for shelter after breaching agreements, and depriving it of its legitimate right to recover possession of its own property.
20. The respondent submits that the applicant wants the court to rewrite the contract through judicial fiat-something the court has repeatedly refused to do as per National Bank of Kenya -vs- Samkolit (K) Ltd (supra).
21. The applicant's primary pleading is the plaint dated 22/7/2025. It seeks the court to declare the agreement dated 9/8/2024 unconscionable, oppressive, null and void, and to issue an injunction against the defendant from enforcing the agreement, including taking possession, the subject matter, advertising, or selling L.R. No. 2116/1090 (IR 57922), or in any other way dispossessing the plaintiff of the said property.
22. Order 40 Rule 1 of the Civil Procedure Rules as read together with Section 63(a) of the [Civil Procedure Act](#), provides that where in any suit is proved by affidavit or otherwise, that any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or wrongful likely to be sold in execution of a decree or that the defendant intends to remove or dispose of his property to obstruct or delay in the execution of any decree that may be passed against the defendant in the suit, the court may order a temporary injunction or restrain such act, or make any other orders to stay or prevent the wastage, damage, alienate, sell, removal or disposition of the property, as it thinks fit until the disposal of the suit.
23. Order 40 Rule 2(1) of the Civil Procedure Rules provides that in any suit for restraining the defendant from committing a breach of contract or other injury of any land, whether compensation is claimed in the suit or not, the plaintiff may at any time, pending the hearing of suit apply for temporary injunction to restrain the defendant from committing the breach of contract or injury complained of.
24. Order 40 Rule 2(2) of the Civil Procedure Rules says that in so doing, the court has to inquire as to damages, the duration of the injunction, keeping of an account, and giving security as it may deem it.
25. What the plaintiff is seeking is to restrain the defendant from executing on its contractual rights to terminate the land sale agreement, out of Clause No. 5.1 of the addendum agreement, following default and failure to remedy the default by the applicant. The respondent terms the acts of seeking restraining orders as inequitable and illegal.



26. Time without number, courts have said that parties are bound by their terms and conditions as reduced into a contract unless the same is vitiated by illegality, fraud, undue influence, is against public policy, or suffers from unconscionability.
27. Courts do not rewrite contracts but enforce them as held in *National Bank of Kenya -vs- Pipe Plastic Samkolit (K) Ltd* (supra).
28. The jurisdiction of this court to enforce a land sale contract is spelt out in Sections 38 and 150 of the *Land Act*, and Section 101 of the *Land Registration Act*, read together with the *Environment and Land Court Act*. The remedies for parties in breach of land contract agreements are set out in Sections 39, 40, 41, and 42 of the *Land Act*. The notice issued by the defendant to terminate the sale agreement falls under its rights in a land sale agreement.
29. A party seeking to repossess or regain possession of the subject land out of default is required to issue a notice and obtain an order of possession of the land from the court in accordance with Section 41 of the *Land Act*. There must be a notice showing the extent of the breach, whether it is capable of being remedied, the period within which to remedy, and the consequences of failure to remedy the default. Failure of the notice to comply with the Section does not render it invalid or absolve the defaulter from the consequences of not responding to the notice.
30. In this suit, I have not seen the statement of defence by the defendant. It is not clear if it is seeking an order for possession.
31. The applicant's main relief in the suit is to have the addendum agreement invalidated, while at the same time stopping the attempt by the respondent to repossess the subject matter on account of the earlier agreement. The applicant does not dispute that it breached the initial agreement, leading to the addendum.
32. Section 42(3) of the *Land Act* provides that if the court finds the breach of any term or condition of the contract incapable of being remedied, it may grant any other appropriate relief. The vendor under Section 40 of the *Land Act* has a right to damages and mesne profits from the purchaser for breach of a contract for a sale or any other duty to the vendor.
33. Section 40(2) thereof provides that any term expressed or implied in a contract or other instrument that conflicts with this Section shall be inoperative. The same applies to the purchaser under Section 42(5) of the Act. In other words, the court, by dint of Sections 40 and 42 of the *Land Act*, has the jurisdiction to look into whether or not the addendum agreement suffers from unconscionability, is in punitive terms, is oppressive, or was in total departure from the earlier agreement, such that it negated the clear provisions of Sections 40 and 42 of the *Land Act*.
34. The rights of the parties to the suit property include the terms of choses in action rights under a contract, and the right of action arising under a contract. Such a claim under Section 13 of the *Environment and Land Court Act* falls under this court, as held in *Philip Jalango -vs- Ryan Porperities Ltd* [2020] eKLR and *Peter Mukhanya Maloba -vs- Dennis Kusinyo* [2020] eKLR.
35. The applicant is seeking equitable relief to be assisted out of its own default in a land sale agreement. The respondent urges the court to refrain from exercising or extending such equitable relief to a party who is attempting to walk out of a contract and has come to it with unclean hands.



36. In *Fina Bank Ltd -vs- Spares & Industries Ltd* Civil Appeal No. 51 of 2000, the court said:
- “It is clear beyond peradventure that save for those special cases, where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity’s function to allow a party to escape from a bad bargain”.
37. In *Eldo City Ltd -vs- Corn Product (K) Ltd & Another* [2013] eKLR, the court said that a party can only be assisted to walk out of a transaction when the parties are already in consensus ad idem, and that such a finding is limited upto where parties are negotiating, otherwise mischievous parties with no intention of selling their merchandise may engage serious purchasers in a wild goose chase knowing very well that they can pull out at any stage.
38. The defendant has submitted that it has bent backwards to extend the completion date for two years, but it is now apparent as daylight that the applicant has no financial capacity or intention to complete the agreement.
39. The respondent says that the addendum agreement stood terminated by 6/2/2025 after the notice expired. In *Mwangi -vs- Kiiru* [1987] eKLR, the court held that one party to a contract may, out of the reason of the other’s default, be entitled to treat himself as discharged from liability to further perform his own unperformed obligation under the contract. The court said that after rescission, only those primary obligations falling due after the date of discharge will come to an end.
40. In this suit, the applicant came to court on 23/7/2025. It seeks to restrain the defendant from enjoying the consequences of a notice dated 8/7/2025. The basis of issuing the notice was that no single instalment falling due in 2025, as per the addendum agreement dated 9/8/2024, had been received by the date of the letter from the applicant. The notice referred to Clause 6 regarding the licence agreement and required the applicant to vacate the guest house within 7 days, and or up to 31/7/2025. The notice invoked Clause No. 5.2 on forfeiture of 50% of all the principal payments.
41. The letter was clear that the balance of the deposits would be paid after a resale of the property. The notice is the one that has triggered the case.
42. To be entitled to a temporary injunction, three hurdles have to be met. A prima facie case is established where, looking at the material presented, a right has been violated or breached to call for a rebuttal from the opposite side. See *Mrao Ltd -vs- First American Bank & 2 Others* [2003] eKLR. Irreparable damage refers to that which is real, apparent, and imminent. It cannot be quantified monetarily or compensated by way of damages. See *Nguruman Limited -vs- Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR).
43. Balance of convenience is the inconvenience occasioned to the plaintiff compared to the defendant if an injunction is not granted and the suit ultimately succeeds in favour of the plaintiff and vice versa. See *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* [2018] eKLR. Where the right exists but the breach is denied, the court looks into the circumstances of each party to determine where the balance of convenience lies. See *Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR.
44. In this application, the applicant has been blamed for coming to court with unclean hands. On the other hand, the applicant blames the defendant for issuing a premature notice or threatening to dispose of the suit property. The court notes that the addendum is to expire in November 2026. The equitable principle that a person must come to court with clean hands means that he who approaches the court of equity must fulfill all or substantially all his outstanding obligations before insisting on their rights. See *Simon Wahome Wachuhi -vs- Iriaini Tea Factory Ltd & 2 others* [2021] KEHC 8018 (KLR).-



45. I think the applicant has raised an arguable question, right or interest, whether the rescission and the repossession notice comply with the law. There will be irreparable loss and damage if the notice is effected and the applicant evicted before its suit is heard and determined. In the circumstances, the balance of convenience tilts in favor of maintaining the status quo.
46. The upshot is that I grant an order of temporary injunction pending hearing and determination of the suit on condition that the applicant clears all the pending monthly instalments and rental payments up to date, within 30 days from the date hereof; in default, the orders shall lapse.
47. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 22<sup>ND</sup> DAY OF OCTOBER 2025.**

In the presence of:

Court Assistant - Dennis

Inaimata for Nyamu for applicant present

Kayungira for respondent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

