



REPUBLIC OF KENYA



**KENYA LAW**  
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**Langata Community & 13 others v Optiven Limited & another (Environment and Land Case 8 of 2022) [2025] KEELC 7209 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7209 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT AND LAND CASE 8 OF 2022**  
**LC KOMINGOI, J**  
**OCTOBER 15, 2025**

**BETWEEN**

**LANGATA COMMUNITY ..... 1<sup>ST</sup> PLAINTIFF**  
**PETER M.M MUTUKU ..... 2<sup>ND</sup> PLAINTIFF**  
**MARGARET A OKELLO ..... 3<sup>RD</sup> PLAINTIFF**  
**JOSEPH MURUNGA ..... 4<sup>TH</sup> PLAINTIFF**  
**PHYLLIS LODENYI NJIRAINI ..... 5<sup>TH</sup> PLAINTIFF**  
**VINCENT ANGONA ..... 6<sup>TH</sup> PLAINTIFF**  
**SERAH MUTHONI KANYUGO ..... 7<sup>TH</sup> PLAINTIFF**  
**JOHN KAMAU MUTAHI ..... 8<sup>TH</sup> PLAINTIFF**  
**POLLY KANANU MBAABU ..... 9<sup>TH</sup> PLAINTIFF**  
**DAVID IGOGO KINUTHIA ..... 10<sup>TH</sup> PLAINTIFF**  
**SALOME MBEYU CHAMANJE ..... 11<sup>TH</sup> PLAINTIFF**  
**BETTY OPIYO ..... 12<sup>TH</sup> PLAINTIFF**  
**VICTORIA C ROTICH ..... 13<sup>TH</sup> PLAINTIFF**  
**DIANA B N TINDI ..... 14<sup>TH</sup> PLAINTIFF**

**AND**

**OPTIVEN LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**SMALL & MEDIUM ENTREPRENEURIAL RESOURCE CENTRE .... 2<sup>ND</sup>**  
**DEFENDANT**



## JUDGMENT

1. By way of a Plaint dated 27<sup>th</sup> April 2021, the Plaintiffs claim that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly carried out an investment in agribusiness with the aim of selling the investment to the Plaintiffs. Through contracts between the Plaintiffs and the Defendants signed between 3<sup>rd</sup> July 2017 and 12<sup>th</sup> May 2018, the Plaintiffs agreed to buy into the investment which comprised of parcels of land and greenhouses under the Defendants management in a project referred to as 'Kilimo Tujijenge.' It was a term of the agreement that upon completion of payment, each Plaintiff would receive a plot of land containing a managed greenhouse which would fetch seasonal profits of Kshs. 175,000.
2. It is their case that, the Defendants failed to adhere to their contractual obligations. On 27<sup>th</sup> March 2018, the 2<sup>nd</sup> Defendant cancelled the contract but did not refund the Plaintiffs money despite numerous requests. The Plaintiffs thus claimed that the Defendants breached the contract; misrepresented to them the terms of the investment, expected returns and completion of the project; and acted fraudulently by selling a non-existent investment.
3. They therefore sought the following reliefs;
  - a. Special damages for the Plaintiffs at a total cost of Kshs. 13,340,000 and total cost of lost income of Kshs. 48,300,000.
  - b. General damages
  - c. Mesne profits
  - d. Costs of the suit
  - e. Interest on (a), (b) and (c) at Court rates.
  - f. Any other relief that this Hon. Court may deem fit and just to grant.
4. The 1<sup>st</sup> Defendant in their Statement of Defence dated 15<sup>th</sup> June 2021 denied being in a joint venture with the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant acknowledged that it sold specific parcels of land to the Plaintiffs independent of any advertisements from anyone and that in the contract there was no obligation to construct greenhouses or avail any other investment opportunities. The 1<sup>st</sup> Defendant denied the allegations of fraud, misrepresentation or breach of contract. It maintained that it was a stranger to any contractual breaches between the Plaintiffs and the 2<sup>nd</sup> Defendant.
5. The 2<sup>nd</sup> Defendant neither entered appearance or filed their defence despite evidence of service.
6. On the hearing day, only the Plaintiffs were present.

### **Evidence of the Plaintiffs**

7. PW1, Peter Muia Munandi Mutuku, representing the Plaintiffs, adopted his witness statement dated 7<sup>th</sup> April 2021 as his evidence in chief and produced his bundle of documents as exhibits in this case.
8. At the close of the oral testimony, the Plaintiffs filed their final written submissions.

### **Submissions of the Plaintiff**

9. Counsel for the Plaintiffs submitted that the Plaintiffs' evidence was uncontroverted and had thus proved that the Defendants breached their contractual obligations. As such they were entitled to



the prayers sought. Reference was made to the following cases: Dolores Collins vs Eng. John Okuna Okango eKLR, Mairy Valji v Janendra Raicharde eKLR and Alex Kipchirchir Rono vs Lamson Enterprises Limited eKLR.

10. At the time of writing this Judgement, the 1<sup>st</sup> Defendant had not filed its submissions.

### **Analysis and Determination**

11. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:

- i. Whether the Plaintiffs have proved their case on a balance of probabilities.
- ii. Whether the Plaintiffs are entitled to the reliefs sought;
- iii. Who should bear costs of the suit?

12. In this suit, the Plaintiff has sought damages against the defendants on the grounds of breach of contractual obligations. The 1<sup>st</sup> Defendant denied that it was in any investment partnership or contractual relationship with the 2<sup>nd</sup> Defendant and the Plaintiffs. It acknowledged that it sold some parcels of land to the Plaintiffs.

13. The question before this court is whether the Plaintiffs have proved that there was breach of contractual obligations by the Defendants to warrant issuance of the reliefs sought.

14. It is trite law that he who alleges must prove. Section 107 and 108 of the Evidence Act is clear that he who alleges must prove. It reads;

“Section 107(2): When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Section 108: The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. “

15. It is not in dispute that the 1<sup>st</sup> Plaintiff purchased a parcel of land from the 1<sup>st</sup> Defendant. To prove their case, the 1<sup>st</sup> Plaintiff produced an offer letter from the 1<sup>st</sup> Defendant dated 5<sup>th</sup> December 2016. The offer letter addressed to the 1<sup>st</sup> Plaintiff reads: “... Optiven Ltd offers to sell you plot No. J299 measuring ¼ of an acre (Kilimo Tujjenge Project) ... at an investment price of Kshs. 490,000...”

16. They claim that the purchase price was paid and the parcel: Kajiado/Lorngosua/7659 measuring 0.1 hectares was registered on 11<sup>th</sup> May 2018 in favour of the 1<sup>st</sup> Plaintiff's through its Trustees.

17. It is also on record that the 1<sup>st</sup> Plaintiff paid the 2<sup>nd</sup> Defendant Kshs. 1,740,000 for purchase of six greenhouses and produced acknowledgement receipts in this regard.

18. To further support their claim against the 2<sup>nd</sup> Defendant that they made payments for greenhouses, the 1<sup>st</sup> Plaintiff produced a letter dated 3<sup>rd</sup> July 2017 from the 2<sup>nd</sup> Defendant, addressed to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. This letter confirms that the 2<sup>nd</sup> Defendant was in receipt of Kshs. 1,740,000 for six greenhouses. It also confirms that the project would begin in September 2017.

19. However, the letter dated 27<sup>th</sup> March 2018 from the 2<sup>nd</sup> Defendant's Director but does not specify who it is addressed to, cancelled its contracts “with all the investors”. The letter reads in part: “... that as per communication, the project was to begin in June 2017 after completion of the infrastructure by the 1<sup>st</sup> Defendant. However, the 1<sup>st</sup> Defendant delayed the project due to unavailability of water as



initially projected as well as difficult political climate in 2017...” The letter also stated that the project was further stalled by the suit of instituted against them by the 1<sup>st</sup> Defendant.

20. The 1<sup>st</sup> Plaintiff responded through their letter dated 19<sup>th</sup> November 2018 asking for a refund of Kshs. 2,010,384 which was Kshs. 1,740,000 paid for six greenhouses together with an interest of Kshs. 270,384.
21. There have been no other correspondences between the parties, save for demand letters dated 20<sup>th</sup> April 2018, 19<sup>th</sup> November 2018 and 16<sup>th</sup> November 2020 asking for refund of the money paid for the greenhouses.
22. This Court finds that there is proof that the 1<sup>st</sup> Plaintiff indeed paid for the six greenhouses but the same were not delivered as agreed. It is also on record that the 2<sup>nd</sup> Defendant cancelled the said contract for reasons already stipulated above. This only means that, once the contract was cancelled, then the Plaintiffs ought to have been returned to their initial position to evade any further loss or damages.
23. Whereas, the 1<sup>st</sup> defendant denies being in a partnership with the 2<sup>nd</sup> Defendant, the contract dated 3<sup>rd</sup> July 2017 is between the 1<sup>st</sup> Plaintiff and both Defendants. In this agreement, the 1<sup>st</sup> plaintiff was to purchase land from the 1<sup>st</sup> defendant and invest Kshs. 290,000 for the “Kilimo Tujjenge” project. The 2<sup>nd</sup> Defendant was to Install greenhouses, provide farm management support for three years with each year having two seasons, purchase all the farm produce and make payments to the 1<sup>st</sup> Plaintiff. There is also an email addressed to the 2<sup>nd</sup> Plaintiff in October 2017 titled ‘Kilimo Tujjenge Journey’, where the 1<sup>st</sup> Defendant informed the 2<sup>nd</sup> Plaintiff of the progress and challenges of the project.
24. I am satisfied that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were in partnership. It is also on record that the 2<sup>nd</sup> Defendant received Kshs. 1,740,000 from the 1<sup>st</sup> Plaintiff for the purchase of the six greenhouses.
25. It is also on record that the following consents were recorded between some plaintiffs herein and the 1<sup>st</sup> Defendant as follows:
  - i. Consent dated 26<sup>th</sup> April 2022 between the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Plaintiff- Margaret A. Okello for payment of Kshs. 290,000, with each party bearing their own costs of the suit.
  - ii. Consent dated 4<sup>th</sup> November 2022 between the 1<sup>st</sup> Defendant and the 7<sup>th</sup> Plaintiff- Serah Muthoni Kanyugo for payment of Kshs. 290,000, with each party bearing their own costs of the suit.
  - iii. Consent dated 18<sup>th</sup> January 2022 between the 1<sup>st</sup> Defendant and the 10<sup>th</sup> Plaintiff- David Igogo Kinuthia for payment of Kshs. 290,000, with each party bearing their own costs of the suit.
  - iv. Consent dated 12<sup>th</sup> January 2022 between the 1<sup>st</sup> Defendant and the 14<sup>th</sup> Plaintiff- Diana B. N. Tindi for payment of Kshs. 1,740,000, with each party bearing their own costs of the suit.
  - v. Consent dated 22<sup>nd</sup> January 2022 between the 1<sup>st</sup> Defendant and the 12<sup>th</sup> Plaintiff- Betty Opiyo (Nawiri Queens) for payment of Kshs. 3,770,000, with each party bearing their own costs of the suit.
26. While the Plaintiff outlined persons who had allegedly purchased greenhouses from the Defendants, the only evidence produced was in regards to the 1<sup>st</sup> Plaintiff. He told the court that he was testifying on behalf of the remaining plaintiffs.
27. This Court therefore finds that the 2<sup>nd</sup> – 9<sup>th</sup>, 11<sup>th</sup> - 13<sup>th</sup> Plaintiffs are entitled to refund of the purchase of the greenhouses by the Defendants.



28. The Plaintiffs also sought for mesne profits. However, this Court finds that mesne profits being akin to special damages, the same ought to have been specifically pleaded and proved as held by the Court of Appeal in *Samaki Industries (K) Limited v Kenya Ports Authority* [2024] KECA 794 (KLR). The relief for mesne profits is hereby declined.
29. I agree with the Plaintiffs that they suffered loss when the project did not take off. I award Kshs.500,000/= , general damages which I think is reasonable.
30. The upshot of the matter is that the Plaintiffs herein have proved their case as against the Defendants on a balance of probabilities.
31. Accordingly Judgement is entered for each of the 1<sup>st</sup>, 2<sup>nd</sup> -9<sup>th</sup>, 11<sup>th</sup> – 13<sup>th</sup> Plaintiffs as against the Defendants jointly and severally as follows;
- a. A refund of Kshs.290,000/=.
  - b. General damages of Kshs.500,000/=
  - c. Costs of the suit and interest.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 15<sup>TH</sup> DAY OF OCTOBER 2025.**

**L. KOMINGOI**

**JUDGE**

In The Presence Of:

Mr. J. Ngugi for the Plaintiffs.

N/A for the 1<sup>st</sup> Defendant.

N/A for the 2<sup>nd</sup> Defendant.

Court Assistant – Peter.

