



**Petro Oil Kenya Limited v Kiraithe (Environment and Land Case
174 of 2013) [2025] KEELC 7678 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7678 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE 174 OF 2013
SO OKONG'O, J
NOVEMBER 6, 2025**

BETWEEN

PETRO OIL KENYA LIMITED PLAINTIFF

AND

GLADYS NDIRA KIRAITHE DEFENDANT

RULING

1. The Plaintiff brought this suit against the Defendant through a plaint dated 26th June 2013. The Plaintiff sought an order that the yearly rent determined and contained in the Report and Rental Valuation dated 17th May 2013 in respect of all that property known as Kisumu Municipality/Block 9/94 (hereinafter referred to as “the suit property”) be the rent payable by the Plaintiff to the Defendant for the first term of 10 years of the further lease between the Plaintiff and the Defendant, and for the subsequent term of 10 years, the rent to be determined by a valuer nominated by the Institution of Surveyors of Kenya. The Plaintiff also sought an order of specific performance of the terms of Clause 3 (f) of the lease compelling the Defendant to execute the further lease for the extended term of 20 years within a specified time; failure of which, the Deputy Registrar of the court would execute the lease on behalf of the Defendant. The Plaintiff also sought damages in addition to or instead of specific performance. The Plaintiff also sought a permanent injunction restraining the Defendant from interfering with the Plaintiff’s peaceful enjoyment of the suit property for the term of the further lease.
2. The Defendant filed an amended defence to the Plaintiff’s claim and a counterclaim against the Plaintiff dated 19th May 2015. The Defendant averred that she did not agree to extend the Plaintiff’s lease for a further term of 20 years. The Defendant averred that the Plaintiff had breached the lease between them. The Defendant prayed that the Plaintiff’s suit be dismissed and judgment be entered in her favour against the Plaintiff for possession of the suit property, mesne profits from 1st February 2013 to be assessed until possession is given, and costs of the suit and the counterclaim.



3. The suit was heard and, in a judgment delivered on 31st January 2023, the court granted the orders sought by the Plaintiff as prayed and dismissed the Defendant's counterclaim. The Defendant appealed the judgment, but no order of stay of execution was granted to the Defendant. The Plaintiff, which was the successful party in the suit, has now moved the court through a Notice of Motion application dated 10th March 2025, seeking the following orders;
 1. Spent
 2. That leave be granted to the firm of Otieno V.O Associates Advocates to come on record for the Plaintiff.
 3. Spent
 4. Spent
 5. That the court be pleased to direct the Institution of Surveyors of Kenya to appoint a new valuer to issue a Valuation Report bearing the full market value in conformity with the decree dated 1st March 2023.
 6. That the court be pleased to issue any other order deemed fit.
 7. That the costs of the application be provided for.
4. The application, which was supported by the affidavit of Ben King'ori dated 10th March 2025, was brought on several grounds. The Plaintiff averred that it was seeking the execution of the judgment delivered on 31st January 2023 in its favour. The Plaintiff averred that following the delivery of the said judgment, the Institution of Surveyors of Kenya appointed Dansal & Associates to conduct a valuation and come up with a report on the rent to be paid by the Plaintiff to the Defendant for the suit property in the subsequent 10-year period. The Plaintiff averred that it raised a complaint with the Institution of Surveyors on the manner in which Dansal & Associates conducted the valuation and arrived at the rent of Kshs. 400,000/- per month, which was beyond the rent for the comparable premises within the immediate neighbourhood. The Plaintiff averred that it engaged a competent registered valuer practicing as Ultimate Valuers, who assessed the rent for the suit property at Kshs. 320,000/- per month, all inclusive. The Plaintiff averred that the Institution of Surveyors of Kenya had failed to appoint an arbitrating valuer to conduct a fresh valuation despite the request for the same by the Plaintiff. The Plaintiff averred that the enforcement of the report by Dansal & Associates was unconscionable as the assessed rent was beyond the market rent of the suit property. The Plaintiff averred that it was invoking the court's inherent power to supervise the execution process by directing the Institution of Surveyors of Kenya to appoint a non-partisan valuer to come up with a value that reflects the true market rent for the suit property, having regard to the comparable premises.
5. The Defendant opposed the application through a replying affidavit sworn on 28th April 2025. The Defendant averred that the application lacked merit. The Defendant averred that the rent valuation for the suit property was carried out in accordance with the judgment of the court delivered on 31st January 2023. The Defendant averred that the Plaintiff accepted the assessed rent and made some payments before falling into arrears, prompting distress for rent to be levied against it. The Defendant averred that the Institution of Surveyors of Kenya appointed a valuer who assessed the rent payable. The Defendant averred that it was not necessary to ask the Institution of Surveyors of Kenya to appoint another valuer. The Defendant averred that under clause 4 of the lease between the parties, pursuant to which the rent valuation was done, the valuer's decision on rent was final and binding upon the parties. The Defendant averred that the rent assessment by Dansal & Associates contained in its report dated 11th July 2023 was binding on the parties. The Defendant averred that the Plaintiff had not demonstrated



sufficient grounds to warrant the grant of the orders sought. The Defendant averred that the court was functus officio and could not entertain the Plaintiff's application, which was like an appeal against the judgment of the court. The Defendant averred further that the application was brought after an unreasonable delay.

6. The application was argued through written submissions. The Plaintiff filed submissions dated 17th July 2025, while the Defendant filed submissions dated 22nd July 2025.

Analysis and Determination

7. I have considered the Plaintiff's application together with the affidavit filed in support thereof. I have also considered the replying affidavit filed by the Defendant in opposition to the application. Finally, I have considered the submissions by the advocates for the parties and the authorities cited in support thereof. The Plaintiff's application was brought principally under Section 34 of the [Civil Procedure Act](#), Chapter 21 Laws of Kenya, which provides as follows:

34. Questions to be determined by court executing decree

- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
- (2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.
- (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.”

8. I agree with the Plaintiff that this court has the power to determine issues arising between parties relating to the execution of a decree. The Plaintiff has contended that the court decree issued on 1st March 2023, arising from the judgment delivered herein on 31st January 2023, is being executed improperly. The Plaintiff has contended that the court must intervene to facilitate the proper execution of the said decree. As mentioned earlier in the judgment, the court had ordered that for the subsequent 10-year term of the lease between the Plaintiff and the Defendant, the yearly rent payable would be determined by a valuer nominated by the Institution of Surveyors of Kenya. This court order was anchored on Clause 4 of the lease between the Plaintiff and the Defendant, which provided as follows:

If any difference shall arise between the parties thereto touching on the rent payable after the expiry of the term hereby granted as provided by Clause 3(f) such difference shall be determined by an independent valuer appointed by the parties and in case of failure to agree by the Chairman of the Institute of Surveyors of Kenya and such valuer shall be deemed to be acting as an expert and not arbitrator and his decision shall be final and binding on both parties.”

9. It is common ground that following the judgment delivered herein on 31st January 2023, the Institution of Surveyors of Kenya, at the request of the Defendant's advocates, appointed a valuer by the name, Wycliffe Okeyo Ong'onge through a letter dated 13th April 2023 addressed to the Defendant's advocates and copied to the Plaintiff, to assess the rent payable by the Plaintiff to the Defendant for the



suit property for the further lease term of 10 years. It is common ground that upon his appointment, the said valuer, who practices in the name of Dansal & Associates, embarked on the assignment. He did the rent assessment and submitted to the parties a report dated 11th July 2023. The said valuer assessed rent for the suit property at Kshs. 400,000/- per month or Kshs. 4,800,000/- per year, exclusive of VAT. In the report, the valuer gave a detailed explanation of how he arrived at the said rent for the suit property, which he indicated to be the market rent.

10. It is this report that prompted the filing of the present application. The Plaintiff has claimed that the rent assessed by Wycliffe Okeyo Ong'onge appointed by the Institution of Surveyors of Kenya, is not the market rent for the suit property. The Plaintiff has contended that the rent is above the rent being paid for similar premises in the neighborhood of the suit property. The Plaintiff has averred that it engaged another valuer who assessed the monthly rent for the suit property at Kshs. 320,000/-. The Plaintiff has contended that the Institution of Surveyors of Kenya must appoint another valuer to undertake the rent assessment exercise for the suit property, in view of the perceived shortcomings in rent valuation by Wycliffe Okeyo Ong'onge.
11. I agree with the Defendant that the court cannot do what it has been invited to do by the Plaintiff. As I have mentioned earlier in the ruling, the court order for the rent to be assessed by a valuer nominated by the Institution of Surveyors of Kenya was based on the terms of the lease between the parties. The lease is clear that once appointed, the valuer would be deemed as an expert and not an arbitrator, and his determination of the rent would be final and binding on the parties. In its order, the court did not say that in the event one of the parties disagrees with the rent assessment by the valuer nominated by the Institution of Surveyors of Kenya, the Institution of Surveyors of Kenya would appoint a referee valuer or another valuer. The court could not have added such a term to its order as it would have conflicted with the terms of the lease between the parties. I agree with the Defendant that the rent assessment for the suit property was conducted in accordance with the terms of the court decree. There is no basis, therefore, for the intervention of the court.

Conclusion

12. In conclusion, I find no merit in the Plaintiff's application dated 10th March 2025. The application is dismissed with costs to the Defendant.

DELIVERED AND SIGNED AT KISUMU ON THIS 6TH DAY OF NOVEMBER 2025

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of;

N/A for the Plaintiff/Applicant

Mr. Wasonga for the Defendant/Respondent

Ms. J. Omondi-Court Assistant

