



**Matoya & another v Attorney General & 4 others (Environment and Land Case 24 of 2020) [2025] KEELC 8049 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8049 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND CASE 24 OF 2020**

**M SILA, J**

**NOVEMBER 19, 2025**

**BETWEEN**

**BEATRICE MATOYA ..... 1<sup>ST</sup> PLAINTIFF**

**TABITHA BONARERI MATOYA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**HON ATTORNEY GENERAL ..... 1<sup>ST</sup> DEFENDANT**

**COMMISSIONER OF LANDS ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, KISII ..... 3<sup>RD</sup> DEFENDANT**

**HENRY MANYANGE MATOYA ..... 4<sup>TH</sup> DEFENDANT**

**JAMES MANYANGE OBIRI ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. This suit was commenced through a plaint filed on 3 January 2020. The plaintiffs are administrators of the estate of Walter Matoya (deceased). The first three defendants are respectively the Attorney General, the Commissioner of Lands, and the Land Registrar Kisii. The 4<sup>th</sup> and 5<sup>th</sup> defendants are respectively Henry Manyange Matoya alias Henry Matoya Manyange sued as administrator of the Estate of Francis Obaga Matoya alias Otworri Matoya (deceased) and James Manyange Obiri sued as ‘the only surviving 1<sup>st</sup> line beneficiary of Zacharia Obiri Matoya (deceased)’. The subject matter of the suit is Kisii Town Block III/140 which is a developed property in Kisii Town with tenants, being a leasehold title under the Gusii County Council. The plaint is long and winded and not very elegantly drafted. However, I understand it to be the plaintiffs’ case that on 28 October 1967, The Gusii County Council, the lessees, issued an allotment letter to the suit land to Kisii Vegetable and Fruit Supplies Store offering a lease for 33 years from 1 May 1967. This entity Kisii Vegetable and Fruit Supplies Store was said to have been owned by Walter Matoya who then included his two brothers Zacharia Matoya and Francis



- Matoya, into the business. It was alleged that through fraud the other two partners registered the suit property in their names leaving out the name of Walter Otworu Matoya who was the principal partner. It was claimed in the plaint that in June 2009, the Government approved extension of the lease for a further 66 years effective 1 May 2000 but the Commissioner of Lands had not drawn the said lease because none of the beneficiaries had a confirmed grant. The plaintiffs averred that it is the 4<sup>th</sup> and 5<sup>th</sup> defendants enjoying the rent from the premises to the exclusion of the estate of Walter Matoya. In the plaint they wished to have a rectification of the register and compensation for moneys they have lost.
2. The matter proceeded ex parte before Onyango J, who delivered judgment in favour of the plaintiffs on 23 September 2021. She found that the letter of allotment dated 28 October 1967 was in name of Kisii Vegetable and Fruits Suppliers Store which was owned by three persons but the lease was only issued to two, i.e Zachary Matoya and Francis Matoya, leaving out the name of Walter Matoya. The court however held that it could not issue an order of rectification or cancellation of title as the term of the lease had expired. The court thought however that the successor of the Commissioner of Lands ought to consider including the administrators of Walter Matoya in the renewed lease.
  3. On 2 February 2022, a notice of appointment of advocates was filed by M/s Omwando Mbaka & Company Advocates on behalf of the 4<sup>th</sup> & 5<sup>th</sup> defendants. An application dated 3 February 2022 was subsequently filed to set aside the judgment citing that they were not served. In a ruling delivered on 4 May 2022 the court was persuaded to set aside the judgment.
  4. Subsequently, the 4<sup>th</sup> defendant filed a defence and counterclaim on 8 July 2023. Inter alia he pleaded that the mere fact that a letter of allotment was sent to the address of Kisii Vegetable & Fruit Suppliers Store, did not mean that there was a nexus between the suit property and the business venture. It was averred that Zacharia Matoya and Francis Matoya got registered as tenants in common in equal shares on 1 May 1967, and that since then, it is the family of the original allottees who have been in possession to the exclusion of the plaintiffs. They pleaded that at no time during his lifetime did Walter Matoya complain. It was denied that there was approval for the extension of lease. It was also raised that the 5<sup>th</sup> defendant had no capacity to be sued. In his counterclaim, the 4<sup>th</sup> defendant pleaded that Francis Matoya died on 30 April 2000 and Zacharia Matoya died on 15 October 2001. He asserted that they were the joint proprietors; that on the suit land they developed a commercial building; and that their families are the ones in control of the building and the tenants therein. He pleaded that on 1 December 2012, he applied for renewal of the lease but the lease is yet to be renewed and no communication has been forthcoming from the National Land Commission (NLC or 'the Commission'). He asked for a declaration that they have an overriding and legitimate expectation of renewal of the lease and for an order to compel the NLC renew the lease in his name and in the name of the legal representative of the estate of Zakaria Matoya.
  5. On 25 July 2024, I pointed out to the parties that the issue before court relates to renewal of a lease which expired in 1997. I was of the view that renewal of leases is a mandate of the National Land Commission. I proposed to refer the dispute to the National Land Commission for the Commission to make a decision on the renewal of the lease. I thought that if any party is aggrieved by their decision, they can pursue remedies through other available legal channels. The plaintiffs had no objection to the proposal and neither did Mr. Mbaka, learned counsel for the 4<sup>th</sup> & 5<sup>th</sup> defendants. I thus made an order referring the dispute to the National Land Commission.
  6. The National Land Commission filed a report on the dispute dated September 2025 signed by the Chairman, Gershom Otachi Bw'Omwanwa, EBS. The report provides an analysis of the respective cases of the parties and the recommendation is as follows :

The commission hereby recommends that :



The letter of allotment dated 28<sup>th</sup> October 1967, issued to Kisii Vegetables & Supplies Stores, constitutes the valid and legitimate foundation for property rights in Kisii/Municipality/Block III/140.

The lease should be renewed in favor of Kisii Vegetables & Supplies Stores or its legal successors, reflecting the legitimate chain of title established through proper legal procedures.

7. Ms. Bellinda Akelo and Ms. Obino filed the report and confirmed it to be the report of the Commission when the matter came up for mention before me on 30 September 2025. There was mention of some parties not having the report and I directed that it be served and for parties to take instructions and I caused the matter to be mentioned on 14 October 2025.
8. On the said day, the plaintiffs and the Attorney General had no issue with the report being adopted. Mr. Mbaka however submitted that he is opposed to the report. He raised various issues including that a lease cannot be renewed to a business name; that besides, the recommendation to renew in name of Kisii Vegetable & Supplies Stores is untenable as the registered business name from the documentation presented is Kisii Vegetable and Fruit Suppliers Store; that the allotment letter relied upon does not tally with the name they are recommending for renewal; that the report is not dated; that the report does not elaborate who attended the proceedings and when they were carried out; that after the parties closed their cases in April 2025, the Commission embarked on a fishing expedition looking for documents; that counsel wrote to the Commission asking them to share whatever they have gathered before they make a decision so that they can contribute to it but this did not happen; that the Commission wrote letters to various entities but the report does not give the response of these entities; that the letter from Business Registration Service dated 22 May 2025 (that which gave the registration particulars of Kisii Vegetable and Fruit Suppliers Store) was responding to a letter dated 24 April 2025 whose contents are unknown; that the plaintiffs availed evidence that the business entity had three partners; that the import of the letter from Business Registration Service (BRS) is to hand over the property to one partner who never participated in the acquisition of the property; that the Commission recommended issue of lease on a letter of allotment that was never acted upon; that an allotment letter which has not led to processing of a lease amounts to nothing; that the allotment letter of the 4<sup>th</sup> & 5<sup>th</sup> defendants tally with the lease. He also sensationally claimed that there was no fairness and that the Chairman of the Commission was seen walking with the plaintiff to his office. He submitted that the agreement of the parties to submit themselves to the Commission was not an agreement to be subjected to illegalities. He pointed out that the 4<sup>th</sup> respondent has a counterclaim. He also submitted that he had filed contempt proceedings on 12 November 2024 against the Commission which has never been withdrawn and submitted that his client was victimized based on that application. He wanted his client to be given a day in court and avail evidence.
9. I have taken all the above into account.
10. It is common ground that at the moment, nobody holds a title to the land parcel Kisii Municipality/Block III/140. This is because the lease issued to Zakaria Matoya and Francis Matoya expired. The certificate of lease displayed shows that it was issued for a term of 33 years from 1 May 1967. It means therefore that the lease expired on 1 May 2000. The legal position is that there has been no proprietor since 1 May 2000. This is in line with the decision of the Supreme Court in the case of *Sehmi & another v Tarabana Company Limited & 5 others* (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April



2025) (Judgment). In that case, a leasehold title had expired but renewal was made to a third party. On the question of the status of the lease upon its expiry, the Supreme Court stated as follows :

By the time the suit land was allocated to the 2<sup>nd</sup> respondent, the lease had long expired. We are therefore in agreement with the Court of Appeal's conclusion that the lease having expired, the land had reverted to the Government. It was no longer a leasehold estate, but government land within the meaning of the Government Lands Act (now repealed). Where did this cruel reality leave the appellants? What rights, if any did the appellants have over the suit land? It was submitted without constestation at the trial court, that after the expiry of the lease, the appellants continued in possession of the land, while paying the applicable land rates and rent. What then was the legal status of the appellants with regard to the land? Can the appellants be considered as having acquired an equitable interest in the land by virtue of their continued stay upon the same? We think not, since through effluxion of time, and reversion to the Government, the lease had become extinguished for all purposes. No equitable interest over the land could survive such extinction. Whatever remained in favour of the appellants over the land, could at worst be regarded as "a tenancy at will" or at best "a mere equity".

11. In our case, the leasehold title expired on 1 May 2000. The land thus reverted to public land but of course with the option to renew the lease.
12. Renewal of leases is covered in the [Land Act](#), 2012. where Section 13 states as follows :
13. Lessee pre-emptive rights to allocation
  - (1) Before the expiry of the leasehold tenure, the Commission shall—
    - (a) within five years, notify the lessee, by registered mail, of the date of expiry of the lease and inform the lessee of his or her pre-emptive right to allocation of the land upon application, provided that such lessee is a Kenyan citizen and that the land is not required by the national or county government for public purposes; and
    - (b) if within one year the lessee shall not have responded to the notification, publish the notification in one newspaper of nationwide circulation.
  - (1A) Where a lease is not granted after an application under subsection (1), the Commission shall give the lessee the reasons for granting the lease, in writing.
  - (2) The Commission may make rules for the better carrying out the provisions of this section, and without prejudice to the generality of the foregoing, the rules may provide for the following—
    - (a) prescribing the procedures for applying for extension of leases before their expiry;
    - (b) prescribing the factors to be considered by the Commission in determining whether to extend the tenure of the lease or re-allocate the land to the lessee;
    - (c) the stand premium and or the annual rent to be paid by the lessee in consideration of extension of the lease or re-allocation of the land;
    - (d) other covenants and conditions to be observed by the lessee.



13. Apart from Section 13 above, there is presently The Land (Extension and Renewal of Leases) Rules, Legal Notice No. 281 of 2017, which came into effect on 8 December 2017. Rules 5, 6 and 7 are applicable. They provide as follows :

5. Renewal of expired leases after expiry

- (1) Where the term of the lease has expired, the Commission shall require the lessee to apply for renewal of the lease in Form LA 23 set out in the Schedule.
- (2) In order to determine whether to grant or not grant renewal, the Commission shall require, whether the lessee is a citizen or non-citizen—
  - (a) in the case of a company, the names of the directors and their citizenship status including a search from the Registrar of Companies showing the shares of each director;
  - (b) clearance certificate relating to all land rates and rents, from the relevant organ; and
  - (c) proof that the lessee has complied with the terms and conditions of the lease.
- (3) In instances of substantial transactions, the Commission shall, in consultation with the national or county government ensure that—
  - (a) the renewal is beneficial to the economy and the country as a whole;
  - (b) the investment purpose is in accordance with the national or regional or county policies and plans; and
  - (c) the renewal is in public interest, public safety, public order, public morality, public health and land use planning.
- (4) The Commission shall carry out a site inspection to verify the status of developments.

6. Commission to seek for recommendations

- (1) The Commission shall within seven days of receipt of an application under rule 5(1), forward the application to the County Executive Committee Member responsible for matters relating to land in the relevant county government for consideration.
- (2) The County Executive Committee Member responsible for matters relating to land in the relevant county government shall before the determining an application for renewal of lease under rule 5(1) seek representations from the relevant authorities.
- (3) The County Executive Committee Member responsible for matters relating to land in the relevant county government shall consider the representations of the relevant authorities and approve the renewal of the lease where favorable representations for renewal of the lease are received.
- (4) Where approval of renewal of the lease is granted, the Commission shall—
  - (a) require the lessee to have the land revalued to determine the payable land rent and other requisite fees;
  - (b) require the lessee to have the land re-surveyed and geo-referenced; and



- (c) issue a new letter of allotment in Form LA 5 set out in the Schedule for the parcel and a new lease shall be issued in accordance with the provisions of the Act and these Rules.
  - (5) Where the national or county government needs land for public purpose in accordance to section 13 of the Act and upon satisfying themselves that the land is included in the National or County Spatial Plan and cities and urban area plans under *County Governments Act* (Cap. 265) and *Urban Areas and Cities Act* (Cap. 275) respectively, the national or county government shall notify the Commission of its intention not to renew the lease.
  - (6) The notice under paragraph (5) shall include the justification for the need of the land for public purpose.
  - (7) Upon notification under paragraph (6)—
    - (a) the national or county government shall carry out an inventory of the developments on the land;
    - (b) the lessee shall be required not to put up new developments or improvements thereon.
  - (8) Where the renewal of lease is not granted by the county government, the Commission shall communicate the decision to the applicant within seven days of receipt of the decision and advise the applicant of the right of appeal to the Commission.
7. Independent Appeals Committee
- (1) A lessee who is aggrieved by the decision not to extend or renew a lease may within thirty days, of receipt of the decision, appeal to the Commission through the office of the Commission in the respective county.
  - (2) The Commission shall within thirty days of receipt of an appeal the matter to an ad hoc Independent Appeals Committee established by the Commission at the county consisting of—
    - (a) a representative from the Commission, who shall be the chairperson of the committee;
    - (b) a representative from Kenya Institute of Planners;
    - (c) a representative from Institution of Surveyors of Kenya;
    - (d) a representative from Law Society of Kenya;
    - (e) a representative from Kenya Bankers Association; and
    - (f) a representative from Kenya Private Sector Alliance.
  - (3) The ad hoc Independent Appeals Committee shall hear and determine appeals within sixty days from the date of receipt of the appeal.
  - (4) The decision of the ad hoc Independent Appeals Committee shall be binding and any party dissatisfied with the decision may appeal to the court.



14. It will be seen from the foregoing that where the lease is expired, the lessee applies for renewal to the National Land Commission. The Commission is then to seek the recommendations of the County Executive Committee Member responsible for land within the County (CEC, Lands). The CEC, Lands then considers the representations of the relevant authorities before arriving at a decision. If the County Government does not agree to the renewal of the lease, the Commission will communicate that decision. There is a right to appeal to the Independent Appeals Committee and a further appeal to the court.
15. From the foregoing, and strictly speaking, the court comes at the tail end on appeal. In our case, the parties first came to court. The court with concurrence of the parties referred the matter to the National Land Commission. Probably there would have little problem if all parties were agreeable to the decision of the National Land Commission but we have a complication herein because the 4th defendant/counterclaimant is not agreeable to the decision. Where does that leave us ?
16. We cannot bypass the role of the County Government as provided by law which I have already elaborated above. However, given that there is a dispute, the CEC Lands will, in addition to seeking representations from the relevant authorities as required by Rule 6 above, also proceed to hear the parties who are interested in the renewal of the lease, that is, the plaintiffs, the 4th defendant and the legal representative of Zakaria Matoya.
17. As I have stated the court ought to come at the tail end and now I have my doubts as to whether this court has any jurisdiction in the matter herein. After delivery of this ruling I will give directions on that issue.
18. For the moment, and for the above reasons, I will order the CEC Lands, Kisii County Government, to proceed and handle the dispute regarding the renewal of the lease as provided in Rule 6 of the above rules. However, since the matter has already been before the Commission, I waive the need for notification from the Commission under Rule 6 (1). In other words it is not necessary in the circumstances of this case for parties to go back to the commission for the commission to forward the form LR 23 to the CEC Lands. What I will direct is for the parties who wish to have the lease renewed in their favour to fill in the LR 23 Form and present it to the CEC Lands within the next Seven (7) days together with a copy of this ruling. The CEC Lands, will then proceed to hear the parties on the issue, seek the recommendations from the other authorities, and make a decision.
19. I am afraid that given the above, i.e the need for a determination by the County Government, through the CEC, Lands, as required by Rule 6 above, the court cannot adopt the decision of the Commission.
20. The parties to act as directed above and the CEC Lands to proceed accordingly. Until the CEC Lands, Kisii County Government, makes a decision, the status quo on the suit property to be maintained.
21. The order to the CEC Lands be extracted by any party, and be served forthwith upon the County Attorney, Kisii County, who is the legal adviser of the County Government, and the CEC Lands, Kisii County. Upon service, the CEC Lands, to issue the necessary directions to the parties on the hearing of the dispute.
22. Orders accordingly.

**DATED AND DELIVERED THIS 19 DAY OF NOVEMBER 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**



Delivered in presence of :

Beatrice Matoya – 1st plaintiff (acting in person)

Mr. Nyamweya for 2nd plaintiff

Mr. Wabwire, State Counsel for the 1st & 2nd defendants

N/A for 3rd defendant

Mr. Mbaka for the 4th & 5th defendants

Court Assistant – Michael Oyuko.

