



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLC E005 OF 2024

HENRY GIKONYO MWANGI.....PLAINTIFF
=VERSUS=
SALOME NYAMBURA MWANGI.....1ST DEFENDANT
FABIANO KAMAU MWANGI 2ND DEFENDANT
PATRICK KANURI MWANGI.....3RD DEFENDANT
WILSON CHEGE MWANGI.....4TH DEFENDANT
LUCY NJAMBI MWANGI.....5TH DEFENDANT
JOHN MUIRURI MWANGI6TH DEFENDANT
JAMES KABACHA MWANGI..... 7TH DEFENDANT

JUDGMENT

(1)The Plaintiff seeks the following reliefs against the Defendants both jointly and severally.

- a) **Damages for the construction of the Retail Dispensing site amounting to Kshs. 52,000,000/=.**
- b) **Loss of expected income by the Plaintiff in the sum of Kshs. 40,000,000/=.**
- c) **Legal fees expended in Murang’a Environment and Land Court case No. E005/2022, Fabiano Kamau Mwangi vs. Rubis Energy Kenya Ltd and another and Murang’a Chief Magistrate’s Court Succession Cause No. 555 of 2016 in the matter of the Estate of Joseph Mwangi Kabachia (deceased) in the sum of Kshs 650,000/=.**
- d) **Compensation and Loss of Profits to Rubis Energy (k) Ltd.**
- e) **General damages.**
- f) **Costs of this suit and interest.**

This is as per the plaint dated 29-2-2024.

(2)The Plaintiff’s case is as follows. Firstly, the Plaintiff who is a businessman leased a portion of L.R. No. Loc.11/Maragri/1806, suit land measuring 96x83 feet from the second Defendant. The leasing was under two agreements dated 1-11-2025 and 4-5-2016. Secondly, it was

known to the Defendants that the Plaintiff was leasing the land for the purpose of constructing a petroleum retail dispensing site otherwise known as Petrol Station. Thirdly, the Plaintiff constructed the Petrol Station on the suit land at a cost of Kshs 52,000,000/=. Fourthly, owing to the nature of Petroleum marketing in Kenya, the Plaintiff entered into a dealer arrangement with Gulf Energy Limited which was later taken over by Rubis Energy (Kenya) Ltd. He did this with the knowledge and consent of the Defendants. The reason for this dealer arrangement was the mutual understanding that for the Plaintiff to recoup the investment and make a profit, he had to engage a renowned Petroleum marketing Company such as Gulf Energy Limited. The current existing lease between the Plaintiff and Rubis Energy (Kenya Ltd) lasts up to 6-2-2031. Fifthly, on 18-3-2022, the second Defendant instituted proceedings against Rubis Energy Kenya Ltd in Murang'a Environment and Land Court case No. E005 of 2022, Fabiano Kamau Mwangi vs. Rubis Energy Kenya Limited and Another and on 26-1-2023, the Court granted orders that led to the closure of the petrol station. Eventually on 28-9-2023, ELC Suit No. E005/2022 was struck out for the reason that the second Defendant lacked the requisite *locus standi* to institute the suit since he was not the administrator of the estate of Joseph Mwangi Kabachia as per the order in Murang'a Chief Magistrate's Succession Cause No. 555 of 2013. Even after the striking out of the suit in the ELC, the Defendants have barred the Plaintiff from the suit premises and every effort made by the Plaintiff to resolve the dispute has been futile. Sixthly, the Defendants filed Succession suit No. 555 of 2016 at the Murang'a Chief Magistrates Court listing the suit land as part of the estate of Joseph Mwangi Kabachia (deceased) without regard to the Plaintiff's interest in the land. Rubis Energy Kenya Ltd has demanded compensation for closure of the Petrol station from the Plaintiff. Finally the Plaintiff blames the Defendants for colluding and deceiving him into entering the lease on the pretext that they would let him enjoy the land, going back on the agreement to his detriment and attempting to distribute the suit land without considering his lease and heavy investments.

(3) In support of his case, the Plaintiff filed the following evidence.

(a) Witness statement which is undated.

(b) Copies of lease agreements dated 1-11-2025 and 4-5-2016.

- (c) Copy of sublease between the Plaintiff and Rubis Energy Kenya PLC dated 7-2-2021.**
- (d) Copy of agreement between the Plaintiff and Gulf Energy dated 21-10-2016.**
- (e) Copy of ruling dated 28-9-2023 in Murang'a ELC Case No. E005/2022.**
- (f) Copy of order dated 29-9-2023 in ELC E005/2022.**
- (g) Copies of letters by Chief Murang'a.**
- (h) Copy of bills of quantities for the proposed cost of the Petrol station on the suit land.**
- (i) Other relevant documents.**

(4)The 3rd , 4th, 5th and 6th Defendants in a written statement of defence dated 14-10-2024 admitted the contents of the plaint including the damages.

The 1st, 2nd and 7th Defendant denied the Plaintiff's claim in their respective defences dated 3-4-2024, 19-4-2024 and 2-6-2024. Their defences are as follows. Firstly, the 1st Defendant avers that it is the Plaintiff who is in breach of the agreement because he has not fulfilled his obligation because he has never paid the rent as agreed. He only paid Kshs 5000/= to the 1st Defendant via Mpesa on 2/1/2024 which money the 1st Defendant returned. Secondly, the Plaintiff has no direct interest in the suit land because he is not a dependant of the deceased. In the counterclaim, the 1st Defendant seeks the following orders against the Plaintiff.

- (i) A declaration that he is a trespasser on the suit land.**
- (ii) Eviction of the Plaintiff from the suit land.**
- (iii) General damages.**
- (iv) Costs of the counterclaim.**

(5)The 2nd Defendant's defence is as follows. Firstly, when it is true that he leased the portion of the suit land which is the subject of this case, he made it very clear to the Plaintiff that the case was subject to a succession cause. It was a term of the lease agreement that the Plaintiff would not sublease the premises without prior consent in writing from the 2nd Defendant. Secondly, with intent to cheat and deceive the 2nd Defendant, the Plaintiff breached the first agreement by entering into yet another agreement with the rest of the Defendants without repudiating the first lease agreement. Thirdly, the Plaintiff is guilty of failure to pay the agreed rent. Finally, the Plaintiff is not entitled to the sums claimed and he should prove them strictly.

(6)The defence by the 7th Defendant is more or less similar to that by the 1st and 2nd Defendants.

(7)In support of their defences, the Defendants filed the following documents.

- (i) Copy of lease agreement dated 4-5-2016.**
- (ii) Copy of Mpesa statement dated 1-1-2024.**
- (iii) Copy of the proposed subdivision of L.R. No. Loc 11/Maragi/1806.**
- (iv) Copy of the letter dated 18-2-2021.**

(8)At the trial on 3-6-2025, the Plaintiff , the first, 2nd and 7th Defendants testified by adopting the evidence that they had filed. They were then subjected to cross-examination by the opposite party. The 3rd, 4th, 5th and 6th Defendants admitted the Plaintiff’s claim fully.

(9)Counsel for the parties filed written submissions dated 14-7-2025, and 11-7-2025 while the 1st, 2nd and 7th Defendants filed theirs dated 24-7-2025. It is only the Counsel for the Plaintiff who identified the issues for determination as follows.

(i) Whether all the Defendants entered into lease agreements with the Plaintiff.

(ii) Whether judgment should be entered against the 3rd, 4th, 5th and 6th Defendants.

(iii) Whether the Plaintiff’s claim is merited and whether the Court should enter judgment as prayed for in the plaint.

(10) I have carefully considered all the evidence adduced in this case by all the parties including the witness statements, documents and testimony at the trial. I find that the issues as identified by the Plaintiff’s counsel will adequately determine the dispute.

(11) On the first issue, I find that the Defendants signed the second lease agreement dated 4-5-2016. It is only the 7th Defendant who denies having signed the said agreement but in cross-examination by Mr. Mbugua on 3-6-2025 he said the following.

“The signature on the lease agreement is mine. It is similar to the ones on the documents that I have filed. By then, the Plaintiff had built the petrol station...”

This is at page 42 of the handwritten record. The first and second Defendants did not deny having signed the lease agreement. I find it proved by the Plaintiff and admitted by all the Defendants that they signed the lease agreement.

- (12) I will determine the second and third issues simultaneously because they are one and the same. I find that the Plaintiff's claim against all the Defendants including those who have admitted for not proved the following reasons.
- Firstly, the Plaintiff did not adduce any evidence to prove that it cost him Kshs 52 million to build the Petrol station. He did not produce a single receipt or bank statement to prove his claim. There is no evidence that it is him and not Rubis Energy and Gulf Energy that built the Petrol Station. No evidence was adduced to show that he had Kshs 52 million in the bank account and how he spent it in constructing the petrol station on the suit land.
- (13) Secondly, the Plaintiff did not adduce any evidence to show his monthly or daily income. There is no single bank statement to prove this crucial aspect of the case. He has nothing to show how the figure of Kshs 40 million has arrived at. There should be a credible and well supported breakdown showing how the claimed figure of Kshs 40 million came to be.
- (14) Thirdly, the Plaintiff has not explained how legal fees expended in **Murang'a ELC Case No. E005/2023** and **Murang'a Magistrate's Succession Cause No. 555 of 2016** could not be recovered in those suits as party to party costs as is the practice and why they should be recovered in this particular suit. In any event, the decrees in those cases were ever filed in this case.
- (15) Fourthly, the Plaintiff has not proved or explained why loss of profits to Rubis Energy (K) Ltd should be paid at all by the Defendants without Rubis being a party in this suit. In any case, there is not even an iota of evidence filed by the Plaintiff to prove the amounts involved and how they were arrived at.
- (16) Fifthly, it is not clear to me, and it was incumbent upon the Plaintiff to prove this, who between the Plaintiff, the Defendants and Rubis Energy operates the Petrol station and for how long? All this evidence was necessary and the Plaintiff was the one expected to adduce it.
- (17) Sixthly, the Plaintiff has not adduced tangible evidence to prove that he has been paying the agreed rent to the Defendants. He should have filed such evidence.

(18) Under **Section 107 and 108 of the Evidence Act**, it was the Plaintiff who had the burden of proof to establish his claim against the Defendants on a balance of probabilities. This is because, he is the party who would fail if no evidence was adduced on either side. It is my finding that the Plaintiff has failed to discharge the burden placed on him by law for the reasons already given.

(19) The claims under paragraphs **(a)** and **(d)** of the plaint are all in the nature of special damages because the plaint seeks specific amounts. It is trite law that special damages must not only be specifically pleaded but also strictly proved. As was held in the case of **Hahn v. Singh [1985] KLR 716**,

“... for they are not direct natural or probable consequence of the act complained of and may not be inferred from the act. The degree of certainty and particularity of proof required depends on the circumstances and nature of the acts themselves.”

(20) Looking now at the counterclaim by the first Defendant, I find that the Plaintiff is not a trespasser on the suit land because he is there with the consent of all the Defendants who signed the lease agreement dated 4-5-2016. It is also my finding that the second lease agreement dated 4-5-2016 overrules the earlier one of 1-11-2015. The Plaintiff could therefore lawfully sublease the suit parcel to a third party.

(21) For the above stated reasons, I find **no merit** in the Plaintiff's claim as well as the 1st Defendant's counterclaim. I dismiss the suit and counterclaims with no order as to costs primarily because both parties should live harmoniously and awarding costs will further escalate the acrimony.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 1st day of December, 2025.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Mwangi Njonjo.

Plaintiff's Counsel – Mr Mbugua holding brief.
Defendants - Present in person .