



**Gikonyo v Wanachuo Investment Limited & another (Environment and Land
Case 133 of 2018) [2025] KEELC 8558 (KLR) (9 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8558 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 133 OF 2018
JA MOGENI, J
DECEMBER 9, 2025**

BETWEEN

LYDIA WANGARI GIKONYO PLAINTIFF

AND

WANACHUO INVESTMENT LIMITED 1ST DEFENDANT

**JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND
TECHNOLOGY 2ND DEFENDANT**

RULING

1. Coming up for determination is a Notice of Motion application dated 8/04/2025 filed by the Plaintiff/Decree Holder seeking the following orders:
 1. That an order be and is hereby issued requiring the valuation by a Court-mandated valuer to determine the value of one acre of commercial land around the original LR No. 10877 Thika District.
 2. That an order be and is hereby issued requiring the Judgment Debtors to pay the Decree-Holder the money equivalent of one acre of commercial property based on the valuation in 1) above.
 3. That costs be provided for.
2. The application is premised on the grounds annexed and the Supporting Affidavit of Lydia Wangari Gikonyo sworn on even date. She averred that she is the Plaintiff/Decree Holder and she is an employee of the 2nd Defendant. That a consent Judgment was entered in favour of the parties on 19/12/2022 to the effect that the Defendants would surrender to the Plaintiff one acre of commercial land out of the original LR No. 10877 Thika District within 60 days.



3. According to her the Decree was issued on 6/12/2024 and it was drawn with input and concurrence of the Defendants' Counsel and even when they made amendments to the document all the proposals were incorporated in the final Decree, as evidenced by annexures LWG1 and 2.
4. However, 2 years after the consent Judgment the Defendants who are Judgment Debtors are yet to give the Plaintiff the one-acre commercial property ordered in the Judgment and Decree.
5. It is the Plaintiff's prayer that to preserve the dignity of the Court it should order that a valuation be mandated to determine the value of the one-acre commercial property on LR 10877 Thika District.
6. Upon determination the Defendants to be ordered to pay the Plaintiff money equivalent of the one-acre commercial property on LR 108877 Thika District.
7. The application is opposed by the Respondent vide a Replying Affidavit sworn by Nickson Chege on the 29/05/2025. He informed the Court that he is a Committee Member of the 1st Defendant and is authorized to swear the Replying Affidavit.
8. He stated that the Plaintiff's averments that the 1st Defendant is not complying with the Decree is totally untrue and that the Applicant is guilty of non-disclosure of material facts on what transpired after the consent Judgment was entered.
9. It is his contention that on or about December 2022 or January 2023, the Plaintiff accompanied by her husband Rev. Charles Wachira contacted the Defendants and they with officials and surveyors of 1st Defendant went to Karangaita Scheme to identify commercial properties.
10. That the group identified six (6) commercial plots Numbers 27, 28, 29, 30, 31 and 32 which were allocated to the Plaintiff and Share Certificates were issued in Plaintiff's name as per annexure 'A'. That the combined approximate acreage in the Karangaita Scheme is 0.4384 acres (0.1774 hectares). He further averred that plots 25 and 26 at the Scheme would have been allocated to the Plaintiff but they were unavailable.
11. According to the deponent for the 1st Defendant, they agreed with the Plaintiff and her husband that the Defendant would allocate them the balance of the land at the 1st Defendant's other Scheme called JKUAT Staff Housing Project Phase 1 in Kalimoni Juja Town off Thika Road near Juja Farm Known as LR No. 18697.
12. From his averments he said that they had an agreement following the new developments and they allocated the Plaintiff four (4) plots Numbers 93, 94, 95 and 113 whose Share Certificates they gave the Plaintiff. Accordingly, it is the Respondent's position that plots 93, 94 and 95 were equal to three quarters of an acre and upon re-survey the Plaintiff was asked to surrender plot 113 to the 1st Defendant and so the 1st Defendant is in the process of recovering plot 113. Thus, the combined size of plots 93, 94 and 95 in the Staff Housing Project on LR No. 18697 is 0.7364 acres (0.2978 hectares)
13. That annexure 'B' are the true copies of the Share Certificates issued to the Plaintiff and the combined acreage of the land allocated to the Plaintiff is 1.1742 acres (0.4752 hectares) which exceeds one (1) acre. But plot 113 is to be recovered back.
14. He further averred that he was aware that there was interference with one of the plots allocated to the Plaintiff and the Plaintiff's Advocate notified the 1st Defendant vide a letter of demand as evidenced vide annexure 'C'. Yet he states that the Plaintiff after the allotment took possession and has since fenced the plots and is farming on the properties without interference. Accordingly, the Plaintiff has been asked to pay survey, transfer fees and stamp duty in order that title deeds can be issued in her name but she has not complied.



15. The 1st Defendant is surprised at the Plaintiff's allegations inspite there having been a cordial settlement of the Plaintiff's claim as stated above. Therefore the 1st Defendant prays that the Affidavit in opposition to the Plaintiff's application be dismissed.
16. In response to the 1st Defendant's Replying Affidavit, the Plaintiff filed a Supplementary Affidavit dated 20/07/2025 and confirmed that she was indeed allocated 6 commercial plots on the Karangaita Scheme being plot numbers 27, 28, 29, 30, 31 and 32 measuring ½ acre.
17. It is however her case that the 1st Defendant has not disclosed to Court that its initial Letter of Allocation to the Plaintiff had 8 plots including plot 25 & 26 which was a double allocation since the same had been allocated to a third party before the Plaintiff.
18. That annexure 'LWG2' is the Letter of Allocation dated 24/03/2023 and that the Defendant allocated to the Plaintiff plot numbers 93, 94, 95 and 113 on JKUAT Staff Housing Project Phase I but of all those, only Plot Number 113 was clean because the other three allocations were resisted by the community and beacons planted by the Defendant were uprooted.
19. It is the Plaintiff's averment that the local community is of the view that the plots were public utility areas and therefore even if the Defendants prepared certificates in the Plaintiff's name as evidenced in Annexure 'B' of the Replying Affidavit but that she have never been given the same, nor is it feasible for the Plaintiff to take them.
20. That annexure "LWG2" is a copy of a letter from Kalimoni Mountain View Association evidencing the tensions that have made the purported allocation by the Defendant of plot numbers 93, 94 & 95 untenable. So, the uncontested allocation is for four plots namely 27, 28, 29, 30, 31 & 32 (O.4384 acres) and Plot Number 113 (1/4 acre), leaving a balance owed the Plaintiff by the Defendant of 0.316 acres.
21. According to the Plaintiff, she contends that it is therefore not true that the 1st Defendant allocated her more than one acre of land and that they need to recover any land from her. She also avers that she has never taken possession of and fenced the plots and hence is farming on the said plots on the JKUAT Staff Housing Project Phase 1 because the community resisted that allocation which fact the 1st Defendant is well aware of though he has not disclosed to the Court.
22. The Plaintiff contends that the plots allocated under the JKUAT Scheme are public utility plots which she cannot take since they are not available for reallocation.
23. It is her averment that she was never asked to pay survey, transfer fees and stamp duty as alleged at paragraph 18 of the Replying Affidavit and that the 1st Defendant has failed to satisfy the Court Decree choosing to do it piecemeal and that is why the Plaintiff's prayer for a valuation is legitimate because she wants to monetize the balance of her Decree. Since according to her the 1st Defendant/Judgment Debtor are treating the Court Decree with contempt and thus abusing Court.
24. Parties elected to canvass the application by way of written submissions. However, when the parties appeared in Court on 21/07/2025, the Plaintiffs informed the Court through their Counsel Ms Khisa that they were not going to file any written submissions but that they will rely on the content in their Supporting Affidavit and Supplementary Affidavit.
25. Therefor the 1st and 2nd Defendants filed their joint written submissions dated 11/08/2025. In their written submissions they identified three issues for determination which are as follows:
 - i. Whether the Plaintiff's application is proper?



- ii. Whether the Plaintiff's application has satisfied the threshold to vary or set aside the Consent Judgment? and
 - iii. Whether the 1st and 2nd Defendants have satisfied their obligations as per the Consent Judgment?
26. The 1st and 2nd Defendants reiterated the content of their Replying Affidavit submitting that they had complied with the consent order by having allocated the Plaintiff an equivalent of 1 acre as per annexure 'A' and 'B' filed with the Replying Affidavit.
 27. They also submitted that since a Consent Judgment has the same effect as a Judgment delivered by Court and it binds all parties, it can only be set aside on property established grounds.
 28. According to the 1st Defendant the Plaintiff seeks to depart from agreed terms which had provided for the mode of settlement and now she seeks a fundamentally different mode of payment being monetary compensation. That a Consent Judgment is like a contract and can only be set aside if there are grounds to necessitate the setting aside like such as fraud, collusion, mistake or misrepresentation. In the instant application the 1st Defendant avers that the Plaintiff has not pleaded any of the grounds to persuade the Court that the Consent Judgment should be set aside.
 29. That the application has failed to satisfy the threshold of setting aside. That infact the Plaintiff was allocated more than one acre and the 1st and 2nd Defendant having erroneously allocated approximately 1.1742 acres they are currently in the process of recovering the excess which measures 0.475 acres as evidence vide the Demand Letter dated 5/03/2024 from the Plaintiff's Counsel which acknowledges that the Plaintiff's allocation save for plot 95 has issues. Applicant had filed. The Respondent failed to do so despite directions of the Court taken on the 6/10/2021.
 30. The 1st and 2nd Defendants are of the view that the only outstanding issue is acquisition of titles since the Plaintiff has not catered for the cost of survey, transfer and payment of stamp duty. They observe that the Plaintiff approached this Court with unclean hands.

Analysis and Determination

31. I have considered the Application and I find that there is no dispute that the Plaintiff/Applicant and the Defendants/Respondents herein entered into the subject Agreement. The issue is whether the Respondents have frustrated the Plaintiff by not performing their contractual obligation there-under and defaulted in honoring the same.
32. As a matter of fact, both parties have not disputed the fact that there has been part performance of the Consent Judgment. The Plaintiff on her part stated as captured at paragraph 20 above "..... So the uncontested allocation is for four plots namely 27, 28, 29, 30, 31 & 32 (0.4384 acres) and Plot Number 113 (1/4 acre). Leaving a balance owed the Plaintiff by the Defendant of 0.316 acres."
33. A Court will generally not vary a consent Judgment solely because of non-performance by the Defendant. A consent Judgment is considered to have the effect of a binding contract and can only be set aside or varied on grounds that would invalidate a contract itself (e.g. fraud, collusion, mutual mistake, or misrepresentation).
34. Instead of varying the original terms, the standard procedure for non-performance is for the aggrieved party to apply to the Court for enforcement of the existing consent Judgment.
35. In the instant case the Plaintiff has sought to have the Court vary a Consent Order to monetize an order for compensation by hiving off an acre of land as the Consent Order stated.



36. In the case of Brooke Bond Liebig (T) Limited v Mallya (1975) E. A. 266, Law J A, said as follows:
- “The circumstances in which a consent Judgment may be interfered with were considered by this Court in Hirani v Kassam (1952), 19EACA 131, where the following passage from Seton on Judgments and Orders, 7th edition, Vol. 1 p. 124 was approved:
- “Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them ... and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the Court ... or if consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the Court to set aside an agreement.”
37. In the instant case there is nothing to show that such circumstances existed. There is no claim of fraud or collusion. The consent was entered into freely and it is unambiguous. There is nothing to show that there could have been mistake or misapprehension. As Windham, J, said, in the introduction to the passage quoted at paragraph 36 above from Hiranj’s case, “a Court cannot interfere with a consent Judgment except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.”
38. In his Judgment in the case of Flora Wasike v Destimo Tamboko (1988) 1 KAR 625, Hancox J A (as he then was) said in his Judgment at page 626 –
- “It is now settled law that a consent Judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out.”
39. The circumstances under which a Consent Order or/Agreement can be set aside have been alluded to by the Respondent in the authorities that the 1st Respondent referred to. Basically, that it should be a factor that can vitiate a contract.
40. In the case of Ismail Surnderji hirani v Noorali Kassam (1952) 19 EACA 131, where it was held that:
- “Prima facie any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action and on those claiming under them and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the Court or if consent was given without sufficient material facts or in misapprehension or in ignorance of material facts or in general for a reason which would enable the Court to set aside agreement.” (emphasis added)
41. It follows that the Court can set aside a consent order for any other factors that vitiate a contract “general reason” that would meet the ends of justice. Again, the other authority cited by the Respondent clearly enables the Court to set aside a consent agreement for other reasons other than fraud, collusion, illegality, misrepresentation, public policy and so on. The decision cited by the Respondent of Flora Wasike v Destimo Wamboko (supra), does emphasize this.
42. In the instant case the Respondents have not fulfilled their obligation to hire off an acre of land in the commercial area although they have allocated a number of plots to the Plaintiff which she has acknowledged. On her part the Plaintiff now seeks monetary compensation claiming that the Respondents have not obeyed the Court Judgment for two years. A claim that is denied and also the Court from the evidence presented has noted that there is part performance of the contract.



- 43. Plot No. 95 which is problematic according to both parties needs to be addressed. A fact that the Respondents have submitted they are aware and they will expedite and deal with a replacement. As a matter of fact, the Respondents submitted that they had allocated more than the one acre they were required to and are now in the process of recovery.
- 44. The Plaintiff denied delaying the process of transfer for not paying surveyor's fees, transfer fees and stamp duty. Though she denied she has not presented in Court the documents to support her position.
- 45. In conclusion, I note that both parties to the consent Judgment have outstanding tasks to undertake, the Plaintiff needs to pay for the transfer fees, survey fees and the stamp duty for the plots already transferred to her. The 1st and 2nd Defendants have to replace plot No. 95 considered to have public utilities and which cannot be occupied by the Plaintiff. The consent Judgment was issued two years ago and so the parties need to conclude all processes appertaining thereto within the next six (6) months in any case not later than July 2026.
- 46. The Application dated 8/05/2024 is unmerited and so I dismiss it and direct that each party bears their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 9TH DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.

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MOGENI J.
JUDGE

In the presence of:

Ms. Khisa for the Plaintiff

1st and 2nd Defendants – Absent

Mr. Melita – Court Assistant

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MOGENI J
JUDGE

