



Embu District Cooperative Union v County Government of Embu & another (Environment and Land Case 119 of 2014) [2025] KEELC 18526 (KLR) (10 December 2025) (Judgment)

Neutral citation: [2025] KEELC 18526 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE 119 OF 2014
AK BOR, J
DECEMBER 10, 2025**

BETWEEN

EMBU DISTRICT COOPERATIVE UNION PLAINTIFF

AND

COUNTY GOVERNMENT OF EMBU 1ST DEFENDANT

KENYA POWER & LIGHTING CO. LTD 2ND DEFENDANT

JUDGMENT

1. Through the amended plaint dated 8/7/2019, the Plaintiffs seek a permanent injunction to restrain the Defendants from working on, entering or interfering with the Plaintiff's two houses on plot number 1498 Embu town and the entire plot (the suit land). It also seeks an order for cancellation of the 2nd Defendant's lease over the suit land and for the land to be registered in the Plaintiff's name. The other reliefs sought are compensation for the value of the two permanent houses on the suit land, which were illegally demolished, at their current market value as well as costs of the suit.
2. The Plaintiff's case is that on or about 5/7/1956, the 1st Defendant allocated what is now plot no. 1498 in Embu town to the Plaintiff to enable it put up staff houses among other facilities. That around the same year, and with the consent and approval of the 1st Defendant, it put up two permanent houses as staff quarters on the plot. It contended that since then, it had been the owner or landlord of the two houses and the adjacent land which measures approximately $\frac{3}{4}$ of an acre.
3. The Plaintiff stated that it followed up the 1st Defendant to process the lease for the suit land over the years without success and that in the recent past, the 2nd Defendant started using about $\frac{1}{4}$ acre of the plot as an electricity pole yard and gave a verbal notice to their two tenants to vacate the two houses. Further, that they demolished the two permanent houses on the suit land. A search done at the lands office revealed that on 22/7/2010 the 1st Defendant leased the suit land to the 2nd Defendant.



It urged that those actions were fraudulently done in disregard of its rights over the suit land and set out particulars of fraud against the Defendants.

4. The 1st Defendant filed a defence and denied that it allocated any plot to the Plaintiff for any purpose or that any building plans were submitted for its approval. Further, it averred that the temporary allocation granted to the Plaintiffs in 1956 was done by strangers called the Embu Local Land Board and that the structures put up by the Plaintiffs were illegal and unauthorized. It prayed for dismissal of the Plaintiff's suit with costs.
5. The 2nd Defendant filed a defence and denied that the Plaintiff was allocated the suit land by the 1st Defendant or that it constructed two permanent houses with the 1st Defendant's consent. It averred that it was the absolute registered proprietor of the leasehold interest over the suit plot and denied the particulars of fraud pleaded against it. Further, it contended that what took place on 5/7/1956 was merely the approval of an application by Embu Coffee Co-operative Union Limited, and not by the Plaintiffs, for the issuance of Temporary Occupation Licenses (TOL) by the Embu Local Land Board, and that the 1st Defendant did not play any role in its approval. It pointed out that a license is revocable without notice at the instance of the giver. It urged that the Plaintiff's suit should be dismissed with costs.
6. During the hearing, the Plaintiff's manager, Luka Muriithi testified and reiterated that the Plaintiff was the licensee of plot no. 1498 for over 50 years having been licensed by the Embu Local Land Board, the current County Government of Embu, to use the land. He maintained that the 2nd Defendant was irregularly granted a lease over the suit land by the 1st Defendant. That on 20/6/2013, the 2nd Defendant entered the suit land and removed all the iron sheets from the houses on the land and dumped its electricity poles and materials claiming ownership of the plot. He stated that the Plaintiff's claim is for cancellation of the lease issued to the 2nd Defendant and registration of a lease in its favour.
7. On cross-examination, he acknowledged that the Plaintiff was never given a letter of allotment or granted a lease over the suit land. He stated that the Plaintiff pays rent and rates even though that evidence was not produced in court. He stated that the Plaintiff does not have any evidence from the Commissioner of Lands that allowed it to put up permanent structures on the suit land.
8. The Plaintiff produced the demand letter dated 5/3/2012, extract of minutes from the Embu County Council dated 5/7/1956 and copy of the register for plot No. 1498. It also produced electricity bills for Jane Muthoni Njeru and Mary Waithera Ngenga and letter dated 10/11/2009 to the County Council of Embu. Other documents produced were scanned photos of the two permanent houses before and after demolition, the letter dated 28/3/2012, valuation report, a bundle of letters, electricity bills dated 25/3/2012, 20/6/2008 and 21/7/2009 together with the letter dated 2/3/2012 from the Plaintiff to Mugambi Njeru & Company Advocates.
9. The 1st Defendant did not call any witnesses. The 2nd Defendant's witness, Jediel Muriuki reiterated that the 2nd Defendant is the absolute registered proprietor of the leasehold interest in the suit land and that the Plaintiff was not entitled to the land. He stated that vide the letter dated 25/8/1976, addressed to the Plaintiff, the Ministry of Lands informed the Plaintiff that the houses built on the suit land were constructed without the approval of the Commissioner of Lands and as such, they were illegally erected on the land. He averred that the 2nd Defendant had been using the suit land as it is entitled to use it and denied using only $\frac{1}{4}$ of the suit land. He stated that the 2nd Defendant operated an electricity pole yard and had a prefabricated building for its operations on the land.
10. The 2nd Defendant produced copies of the letter of allotment dated 9/6/2006, invoice from the Municipal Council of Embu dated 12/2/2009, bill from the Municipal Council of Embu issued on



- 15/4/2009 and receipt dated 15/4/2009 from the Land Office in Embu. He also produced a copy of the lease issued by the Commissioner of Lands on 25/1/2020, certificate of lease dated 28/7/2010 and copies of the letter dated 25/8/1976 from the Ministry of Lands, letter dated 2/11/1977 from the Municipal Council of Embu and the letter from the Ministry of Lands dated 25/5/1972.
11. Upon conclusion of the hearing, the court directed parties to file and exchange written submissions, which it has considered. The Plaintiff submitted that the title issued to the 1st Defendant was obtained fraudulently and unprocedurally because the conditions in the letter of offer were not complied with. That the issuance of the lease by the 2nd Defendant to the 1st Defendant after breach of the terms of the offer for lease reeked of fraud and collusion by the Defendants in unfairly depriving it of the suit land. Further, that none of the Defendants contested the validity of the minutes by the 2nd Defendant allocating it the suit land. It contended that the utility bills which the 1st Defendant issued to them disclosed that the suit land where the demolished houses sat belonged to them.
 12. The 2nd Defendant submitted that the Plaintiff did not produce any letter of allotment or receipts for payment of land rates or rent. It urged that the minutes dated 5/7/1956 from the defunct Embu Local Land Board produced by the Plaintiff showed that the Plaintiff was granted a TOL, which is revocable without notice. It maintained that from the letters of the Ministry of Lands dated 25/8/1976 and 2/11/1977, the Plaintiff was aware that it was in occupation of land reserved for the 2nd Defendant.
 13. The 2nd Defendant invited the court to find as was held in the case of Joseph N.K Arap Ngok v Moiyo Ole Keiwua and 4 others (1997) eKLR, that a TOL cannot hold as title to land can only come into existence after the issuance of a letter of allotment, meeting the conditions in the letter and thereafter issuance of a title document. It urged that it had availed such evidence while the Plaintiff did not.
 14. The issue for determination is whether the Plaintiff is entitled to the reliefs sought in the plaint. The Plaintiff's claim is that the issuance of the lease by the 1st Defendant to the 2nd Defendant over plot number 1498 was done irregularly and fraudulently, on the ground that the land had been allocated to the Plaintiff. It relied on the extract of minutes of a meeting of the Embu Local Land Board held on 5/7/1956, which indicated that the Plaintiffs could only be issued with TOL since the area was unsurveyed. The same minutes indicate that the Coffee Officer stated that even if they were issued with TOL, he was prepared to erect permanent buildings.
 15. The Plaintiffs did not tender any evidence to show that the TOL was converted into a formal letter of allotment or a lease. The Plaintiff contended that its efforts to obtain a lease from the 1st Defendant were met with unfulfilled promises. Based on these facts, the Plaintiffs' occupation of the suit land was solely on the basis of a TOL, which in law does not confer title or constitute proof of ownership of the land in question.
 16. The 2nd Defendant produced a letter of allotment dated 9/6/2006, and a lease issued on 28/7/2010 issued in its favour. It demonstrated that it paid rates to the County Council of Embu for 2009. The letters which the Defendant relied upon dated 25/8/1976 from the Ministry of Lands and 2/11/1977 from the Municipal Council of Embu to show that the Plaintiffs erected houses on the suit land illegally and that the land was earmarked for allocation to the 2nd Defendants, do not specify the parcel of land being referred to, and are therefore of evidentiary value is limited.
 17. The court is persuaded that the 2nd Defendants' claim of ownership over the suit land is supported by legal documents proving ownership. The Plaintiff neither proved fraudulent conduct on the part of the Defendants nor did it demonstrate that the issuance of the lease to the 2nd Defendant was tainted by irregularity or illegality. Utility bills do not prove ownership of land.



18. The Plaintiff failed to prove its case on a balance of probabilities. The suit is dismissed with costs to the Defendants.

DELIVERED VIRTUALLY AT EMBU THIS 10TH DAY OF DECEMBER 2025.

K. BOR

JUDGE

In the presence of: -

Ms. W. Njuguna holding brief for Mr. W. Gikonyo for the 2nd Defendant

Diana Kemboi- Court Assistant

No appearance for the other parties

