

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE
ELC NO. E034 OF 2025

FLOW FARM LIMITED-----
PLAINTIFF/APPLICANT

VERSUS

ORGANICS 4 ORPHANS INTERNATIONAL
(THRIVE FOR GOOD EAST
AFRICA)-----DEFENDANT/RESPONDENT

RULING

1. On **22/10/2025**, the court granted a conditional temporary injunction in favour of the plaintiff. The defendant, through an application dated **5/12/2025**, seeks an eviction of the plaintiff from the suit premises, payment of rent at **Kshs. 150,000/=** per month with effect from **29/11/2025** till eviction date, and the OCS, Kitale Police Station, to oversee the eviction from **L.R. No. 2116/1090** (I.R No. **51922**), by maintaining peace and security during the eviction.
2. The application is based on the grounds on its face and in a supporting affidavit of Ambrose Motian, sworn on **5/12/2025**. It is deposed that despite the temporary orders of injunction, the conditions set therein have not been met in compliance with the

order in the ruling of **22/10/2025** and orders of **14/11/2025**.

3. The applicant deposes that on **22/11/2025**, they were granted peaceful handover by one of the directors of the plaintiff, but after that, on **29/11/2025**, the daughter of the director, Marion Chege, unlawfully re-entered the premises using hired goons and forcefully retook possession of the suit property, despite court orders aforementioned.
4. The applicant deposes that the continued default has made it impossible to resell the property and access funds necessary to continue its charitable activities, which benefit over **200,000** Kenyans in sustainable farming and food security, despite entering into the sale of the subject property over two years ago.
5. It is not disputed that the order of this court issued on **14/11/2025** became spent by effluxion of time on **22/11/2025** after the plaintiff defaulted in meeting the terms and conditions of the order.
6. The claim by the plaintiff was opposed through a statement of defence and counterclaim dated **5/9/2025**. It is not clear if they paid the requisite filing fees for the counterclaim to make it a proper pleading in this suit.

7. Among the reliefs sought in the counterclaim is vacant possession, repossession of the suit property, and the OCS Kitale Police Station, to oversee the repossession by providing security during the exercise, to ensure peace and order.
8. The defendant's substantive prayer in the counterclaim is a declaration that the addendum agreement dated **9/8/2024** is legally binding and stands terminated by virtue of **Clauses 5.1.** and **5.2.**
9. The question of title or ownership of the suit premises and the basis upon which the plaintiff took vacant possession, or rights of either party to the sale agreement and its addendum, if there is default or breach, are issues which are yet to be heard and determined.
10. Eviction of a party by a land owner from private land is governed by **Section 152E** of the Land Act. It is only after compliance with preliminaries thereof that a court may confirm the notice and order the person to vacate or vary, alter, suspend, or make an addition to the notice as it deems equitable and just, under **Section 152F** thereof.
11. In **Julius L. Marten -vs- Caleb Arap Rotich [2021] eKLR**, the court held that any eviction order has far-reaching implications and entail the forceful

removal of a party from land that he has been occupying or possessing for some time, and before such an order is issued, a court must be satisfied on its merits, which means any person who stand to be affected by any order the court will make, is entitled to be heard.

12. In *Witmore Investment Ltd -vs- County Government of Kirinyaga & Others [2016] eKLR*, the court held that where a party seeks an order that in effect appears to resolve with finality an issue in controversy, or a contested issue, the application ceases to be interlocutory, and it is a misconception to describe it as such.

13. In my view, therefore, substantive orders may not be issued at an interlocutory stage, especially in this matter where the suit is yet to be heard on merits. Needless to say, even if the court were to find merit in the application, the applicant has not established that it has complied with the procedure in **Section 152E** of the Land Act and served the notice of eviction upon the respondent.

14. In the interest of justice, the parties should be heard first, as there are issues as alluded above in the

pleadings, which *viva voce* evidence has to be tendered instead of dealing with them in a summary manner. See **Benson Wekesa Milimo -vs- National Land Commission & 2 others [2021] KECA 970 (KLR).**

15. The upshot is that I find the application dated **5/12/2025** lacking merit. It is dismissed with no order as to costs.

16. Parties to comply with **Order 11** of the Civil Procedure Rules by **30/4/2026**.

17. Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **18th** day of **February 2026**.

In the presence of:

Court Assistant - Dennis

Kayugira for defendant/applicant present

Plaintiff absent



**HON. C.K. NZILI
JUDGE, ELC KITALE.**