



Kamau & another (Suing as Administrators of the Estate of Patrick John Kamau (Deceased)) v Miramar International College Limited (Environment and Land Case E001 of 2023) [2025] KEELC 5734 (KLR) (28 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5734 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E001 OF 2023**

JM ONYANGO, J

JULY 28, 2025

BETWEEN

NJOMO KAMAU 1ST PLAINTIFF

EMILY WANJIKU KAMAU 2ND PLAINTIFF

**SUING AS ADMINISTRATORS OF THE ESTATE OF PATRICK JOHN KAMAU
(DECEASED)**

AND

MIRAMAR INTERNATIONAL COLLEGE LIMITED DEFENDANT

JUDGMENT

1. Njomo Kamau and Emily Wanjiku Kamau the Plaintiffs herein filed suit against Miramar International College (the Defendant) vide a Plaint dated 3/7/2023 in their capacity as Administrators of the Estate of Patrick John Kamau. In the said Plaint, they claim that they leased agricultural land known as Land Reference No. 13136/39 in Juja Sub-County, Kiambu County (hereinafter referred to as the suit property), to the Defendant company for a term of six years commencing 1/6/2020. It is their position that the Defendant took possession of the suit property and made various developments on it, including the construction of greenhouses, boreholes, and temporary structures, which were sublet to third parties for farming activities.
2. The annual rent payable under the said Lease was Kshs 1,000,000 for the first year commencing 1/06/2020, Kshs 1,060,000 for the second year, Kshs 1,123,600 for the third year, Kshs 1,191,016. for the fourth year, Kshs. 1,262,477 for the fifth year and Kshs 1,338,225.60 for the sixth year respectively.
3. The Plaintiffs state that the annual rents for each year were payable on the 1st day of June of every year. They further state that the Defendant defaulted in payment of the rent for the second year of the leasehold term from 1/06/2021. This prompted the Plaintiffs to serve a demand on 13/06/2022 for



- payment of outstanding annual rent for the year 2021-2022 amounting to Kshs 1,060,000 and rent for the year 2022-2023 amounting to Kshs 1,123,600 as well as a notice of intention to terminate the Lease and re-enter the suit property in the event of further default of the said rent.
4. The Plaintiffs assert that despite the demand and a formal notice of breach and termination dated 15/6/2022, the Defendant failed to remedy the default, prompting them to re-enter and repossess the suit property on or about 8/4/2023.
 5. The Plaintiffs list the following as the particulars of breach of the lease agreement by the Defendant:
(i) Failure or default in payment of annual rent for the years 2021-2022 and 2022-2023 as and when required by the Lease; (ii) Failure to pay contractual penalty on late payments and rent arrears; (iii) Failure to yield up the suit property following termination of the Lease by a notice dated 15/06/2022 by the Plaintiffs to the Defendant; (iv) Failure to execute a surrender and discharge of the suit property from the Lease consequent to the termination; (v) Failure to pay mesne profits after the Lease was terminated by notice of breach and termination of the lease on 15/06/2022; and (vi) Failure to restore the suit property to its original state at the commencement of the Lease or pay the costs thereof.
 6. It is further the Plaintiffs' position that the Defendant failed to yield up the suit property in accordance with the lease terms, including removing its structures and restoring the land to its original condition. They contend that the Defendant remains in constructive possession of the land and is therefore liable to pay mesne profits equivalent to the rent for the period of continued occupation and non-compliance.
 7. The Plaintiffs also claim that the Defendant's continued non-performance and refusal to engage in arbitration proceedings despite having been served with the arbitration notices amounted to frustrating the arbitration process. They later discovered that the Defendant was effectively a shell company, incapable of satisfying any arbitral award, prompting them to terminate the arbitration proceedings to mitigate on the losses given that the ex-parte proceedings were onerous.
 8. They added that this court has jurisdiction to determine this suit and specifically to order cancellation of the lease on the suit property and rectification of the land register, which reliefs are the exclusive jurisdiction of this court and not arbitration.
 9. They seek the following reliefs:
 - i. A sum of Kshs 1,060,000 being rent for the period commencing 1/6/2021 to 31/5/2022 under the Lease dated 1/6/2020 between the Plaintiffs and the Defendant.
 - ii. A sum of Kshs 1,123,600 being rent for the period commencing 1/6/2022 to 30/5/2023.
 - iii. Late payment charges on (i) (a) and (b) above at the rate of 5% per month from 1/6/2021 and 1/6/2022 respectively until payment in full.
 - iv. An order of rectification by cancelling the Defendant's Leasehold interest by Lease dated 1/6/2020 between the Plaintiffs and the Defendant registered on 19/2/2020 on the Land Register of the Plaintiffs' Property known as Land Reference Number 13136/39 (originally Number 13136/3/4) situate along Kenyatta Road in Kiambu County measuring 10.19 hectares.
 - v. A mandatory injunction directing the Defendant whether by itself or through its servants, agents, employees, assigns or anybody claiming under it to forthwith remove all its movable and immovable properties from the Plaintiff's property known as Land Reference Number 13136/39 (originally Number 13136/3/4) situate along Kenyatta Road in Kiambu County measuring 10.19 hectares and restore the said land to the original state as at 1/06/2020 on the



commencement of the Lease dated 1/06/2020 between the Plaintiff and the Defendant for lease of the above land within 45 days of this Order and in default, the said immovable and movable properties be removed and sold to cater for yielding up and restorative costs of the said land.

- vi. A permanent injunction restraining the Defendant whether by itself and or through its servants from re-entering, remaining thereon, cultivating and or in any way using or interfering with quiet possession, enjoyment and use of the Plaintiffs' property known as Land Reference Number 13136/39 (originally Number 13136/3/4) situate along Kenyatta Road in Kiambu County measuring 10.19 hectares other than compliance with prayer (v) above.
 - vii. Reimbursement of electrical restorative works and securing the Defendants water plumbing control unit.
 - viii. Costs of the suit.
 - ix. Any other relief that the Court may deem just and fit to grant.
10. Despite being served with the summons and the hearing notice through the Daily Nation newspaper dated 2/2/2024, pursuant to the order of the court given on 23/1/2024, the Defendant neither entered appearance nor filed a Defence. The suit therefore proceeded undefended.

Plaintiffs' Case

11. Njomo Kamau who testified as PW1 adopted his witness statement dated 3.7.2023 as part of his evidence in chief. He produced the documents in his List and Bundle of Documents dated 3.7.2023 containing 8 documents as Plaintiff's Exhibits 1-8.
12. PW1 testified that he is an advocate of the High Court of Kenya practising at C.M Advocate LLP located in Upper Hill. He told the court that he is one of the Plaintiffs in the matter and an Administrator of the Estate of the late Patrick John Kamau, alongside his mother, Emily Wanjiku Kamau.
13. It was his testimony that the deceased, his late father, was the registered proprietor of land parcel number 13136/39 (the suit property), measuring approximately 10.19 hectares and situated along Kenyatta Road in Juja Sub- County. He explained that the Estate had leased a portion of the suit property to the Defendant, Miramar International College Limited, under a lease agreement effective from 1/6/2020 to 31/5/2026.
14. PW1 stated that although the Defendant paid rent for the first year (June 2020 to May 2021), they failed to remit rent for the subsequent periods, specifically, from June 2021 to May 2022, and again from June 2022 to May 2023. He told the court that a demand notice was issued in June 2021, and a further demand was made in June 2022, but both were ignored by the Defendant. He stated that due to the continued default, the Plaintiffs issued a termination notice dated 15/6/2022, to which there was also no response, prompting them to repossess the suit property and evict the occupants.
15. He explained that the Defendant had established some basic infrastructure on the land including greenhouses which he had sublet to student farmers, who grew crops in greenhouses. The lease agreement, he clarified, had allowed them to re-enter the property in the event of a breach, particularly in the case of non-payment of rent.
16. PW1 told the court that upon re-entry, only one student was found still operating within the greenhouses, while the rest of the green houses had been abandoned. He noted that there were approximately 30 greenhouses on the portion of the land leased, which he estimated to be around



- 10 acres. According to him, the Defendant had not only failed to pay the outstanding rent but also failed to remove their installations, including the greenhouses, which had since deteriorated. Other developments made by the Defendant included a borehole, water tanks, pumps, temporary iron sheet structures, and an electricity connection.
17. He further testified that the lease agreement stipulated that the Defendant was to remove all structures and fixtures upon termination of the lease. However, as at the date of the hearing, the Defendant had not complied with this obligation, despite the lease interest having been registered on the title.
 18. PW1 stated that following continued default by the Defendant, the Plaintiffs attempted to invoke the arbitration clause in the lease agreement. However, despite commencement of arbitration proceedings, the Defendant failed to participate or attend. He told the court that their advocate served the relevant suit documents upon the Defendant via registered post, as physical service was not possible. Their offices appeared closed, and attempts to trace them even through looking at the information in the CR2, was unsuccessful. This, he explained, necessitated the filing of the current suit.
 19. PW1 also testified that after repossessing the property, they took steps to secure it by hiring a guard. He made reference to paragraph 17 of his witness statement, where he had stated that the Defendant had made an illegal electricity connection, and the water plumbing unit had been left exposed, making it vulnerable to theft.
 20. Lastly, he referred the court to pages 106 to 107 of his trial bundle, which contained a handwritten quotation from a local electrician who had disconnected the illegal electricity supply and replaced it with a lawful one, at a cost of Kshs 33,080.

Plaintiffs' Submissions

21. Upon conclusion of the hearing, the court directed the Plaintiff to file written submissions. The Plaintiffs' submissions dated 5/3/2025 were filed by Litoro & Omwebu Advocates. After summarizing the evidence, counsel for the Plaintiffs identified the following issues for determination:
 - i. Whether the Plaintiffs have proved rental arrears of Kshs 2,183,600 accumulated by the Defendant from 1/06/2021 to 31/05/2022 and 1/06/2022 and 30/05/2022?
 - ii. Whether an order should issue for cancellation of the leasehold interest by lease dated 1st June 2020 between the Plaintiffs and the Defendant?
 - iii. Whether an order for mandatory and permanent injunction should be issued against the Defendant either by itself or its agents, employees, assigns or anybody interfering with quiet possession and enjoyment of the Plaintiffs property.
 - iv. Whether the Plaintiffs should be awarded Kshs 33,088 as reimbursement of electrical restorative works and securing the Defendants water plumbing control unit?
22. On the first issue, counsel submitted that the Plaintiffs had entered into a lease agreement dated 1/2/2021 with the Defendant, which was subsequently registered on 19/2/2020(sic). It was counsel's submission that the lease clearly outlined the annual rent payable over a 6-year period, with specific sums due for each year as set out in clause 2.1 (a-f) of the lease.
23. He stated that the Defendant only paid rent for the first year and subsequently defaulted from 1/6/2021 onwards. He added that as a result, the Plaintiffs issued a demand notice on 13/6/2022, which went unheeded prompting the Plaintiffs to issue a notice of breach and termination dated 15/6/2022.



24. Counsel relied on *National Bank of Kenya Ltd vs Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR, emphasizing that parties are bound by the terms of their contracts unless fraud, coercion, or undue influence is pleaded and proved. He also referred to the decision in *Centurion Engineering & Builders Ltd vs Kenya Bureau of Standards* [2023] eKLR, which restated the principle that an offer accepted through performance becomes binding.
25. He submitted that the Defendant was contractually obligated to pay annual rent commencing every 1st day of June under clause 3 of the lease, and having failed to do so, the arrears amounting to Kshs 2,183,600 were proved. It was his submission that, under clause 3:2 of the lease, the Plaintiffs were entitled to interest at the rate of 5% per month on the outstanding sums. Counsel maintained that the rental arrears had been clearly demonstrated and should be awarded as prayed.
26. On whether an order should be issued for cancellation of the leasehold interest dated 1/6/2020 between the Plaintiffs and the Defendant, counsel submitted that the Plaintiffs had exercised their right to terminate the lease following the Defendant's continued default and served a notice of termination dated 15/6/2022. It was his submission that according to the lease agreement, the Plaintiffs are entitled to seek cancellation of the Defendant's leasehold interest registered to the title to the suit property on 19/2/2020.
27. He contended that despite initiating arbitration as required under the lease, the Defendant failed to participate in the proceedings or appoint an arbitrator, effectively frustrating the arbitration process. Counsel explained that the Plaintiffs discovered the Defendant was a shell company with no attachable assets or financial means to satisfy an award or decree. Counsel added that the revelation prompted the Plaintiffs to terminate the arbitration proceedings and pursue relief before this Court.
28. He argued that cancellation of the leasehold interest falls within the exclusive jurisdiction of this court. He therefore urged the Court to cancel the Defendant's leasehold interest signified in the lease dated 1/6/2020.
29. On whether an order for mandatory and permanent injunction should be issued against the Defendant, counsel submitted that the Plaintiffs were entitled to the two injunctions to prevent the Defendant from interfering with the quiet possession of the suit property. He relied on the case of *Shariff Abdi Hassan vs Nadhif Jama Adan* [2006] eKLR, which in turn cited *Locabail International Finance Ltd vs Agro-Export and Another* [1986] 1 All ER 901 for the principle that a mandatory injunction may be granted in clear cases where a summary act is required, or where the defendant obtained advantage through a blatant unlawful act.
30. Counsel further referred to *Kamau Mucuha vs The Ripples Ltd* (Civil Application No. Nai 186 of 1992 (unreported) and *East African Fine Spinners Ltd vs Bedi Investment Ltd* [2004] eKLR, maintaining that the Plaintiffs' rights were clear and the acts to be remedied (removal of structures and restoration) were straightforward.
31. It was counsel's submission that the Plaintiffs had demonstrated ownership of the suit property as Administrators of the Estate, and that allowing the Defendant to remain in possession would cause harm that could not be adequately compensated by damages. He cited *Tinga Traders Ltd* [2016] eKLR and *Joseph Siro Mosioma vs Housing Finance Company of Kenya & 3 Others* [2008] eKLR, to buttress his submissions.
32. He pointed out that the Plaintiffs had established their title, while the Defendant who had defaulted on their obligations could not benefit from continued possession. He relied on *Nguruman Ltd vs Jan Bonde Nielsen & Others* [2014] eKLR on the three pillars for granting an injunction: a prima facie case, irreparable harm, and balance of convenience. He also relied on the decision in the case



of Kenya Breweries Ltd & Another vs Washington Okeyo [2002]eKLR where the Court of Appeal emphasized that a permanent injunction is issued after the Plaintiff has proved their case on the balance of probabilities.

33. He emphasized that the Defendant was a shell company with no assets and that the continued breach warranted injunctive relief. He also referred to Mutisya vs Mwanzia [2022]eKLR where similar injunctive orders were issued on similar facts.
34. Counsel therefore urged the Court to issue a mandatory injunction directing the Defendant to remove their movable and immovable structures from the suit property and restore it to the state it was in as at 1/6/2020. He also prayed for a permanent injunction restraining the Defendant or their agents from re-entering or interfering with the Plaintiffs' property.
35. On whether the Plaintiffs should be awarded Kshs 33,080 as reimbursement for electrical restorative works and securing the Defendant's water plumbing control unit, counsel submitted that upon re-entry, the Plaintiffs discovered that the Defendant had carried out an illegal electricity connection and had left the water plumbing unit exposed to theft.
36. He explained that rectification works were carried out at a cost of Kshs 33,080, and evidence of the same had been annexed to the trial bundle at pages 106 to 107. It was his submission that this sum was reasonably incurred and had been satisfactorily proved, warranting reimbursement.
37. In conclusion, counsel submitted that the Plaintiffs had proved their case on a balance of probabilities. He prayed that judgment be entered in their favour as pleaded. He also sought costs of the suit.

Analysis And Determination

38. I have carefully considered the pleadings, oral and documentary evidence presented by the Plaintiffs, the submissions and authorities cited to me as well as the relevant law. The main issues for determination are:
 - i. Whether the Plaintiffs have proved breach of the lease by the Defendant.
 - ii. Whether the Plaintiffs are entitled to the rental arrears and to interest for late payment at the rate of 5% per month from 1/6/2021 and 1/6/2022 respectively until payment in full.
 - iii. Whether the Plaintiffs are entitled to the cancellation of the lease and rectification of the land register.
 - iv. Whether the Plaintiffs are entitled to injunctive reliefs sought.
 - v. Whether the Plaintiffs should be awarded Kshs 33,088 as reimbursement of electrical restorative works and securing the Defendants water plumbing control unit?

Whether the Plaintiffs have proved breach of the lease by the Defendant.

39. The Plaintiffs' case is that they entered into a 6-year lease agreement with the Defendant for the lease of the suit property. According to the Plaintiffs, the Lease commenced on 1/2/2020 and the annual rent payable under the said Lease was Kshs 1,000,000 for the first year, Kshs 1,060,000 for the second year, Kshs 1,123,600 for the third year, Kshs 1,191,016. for the fourth year, Kshs. 1,262,477 for the fifth year and Kshs 1,338,225.60 for the sixth year respectively. The annual rents for each year were payable on the 1st day of June of every year.
40. PW1 produced the lease agreement dated 1/2/2021 into evidence as Plaintiffs' Exhibit 3, outlining rent obligations from Kshs 1,000,000 in year 1 to Kshs 1,338,225 in year 6. The Plaintiffs further adduced



evidence in form of the demand letters dated 13/6/2022 and 29/6/2022 to show that the Defendant failed to pay rent for two consecutive years as follows: (i) Kshs 1,060,000 for the year 2021-2022 and (ii) Kshs 1,123,600 for the year 2022-2023. The Defendant did not respond or remedy the breach prompting the Plaintiffs to serve them with a notice of termination of the lease. PW1 adduced a copy of the letter of termination dated 13/6/2022 as part of the Plaintiffs' evidence. I am satisfied that the Defendant breached the lease agreement through continued non-payment of rent. Given that the Defendant never participated in the proceedings, the assertions by the Plaintiffs and the evidence produced by them remain uncontroverted. I also note that despite the matter having been referred to arbitration the defendant failed to attend and the arbitration clause was therefore incapable of being performed with the result that the dispute has to be decided by this honourable court.

Whether the Plaintiffs are entitled to the rental arrears and to interest for late payment at the rate of 5% per month from 1/6/2021 and 1/6/2022 respectively until payment in full.

41. The Plaintiffs have already proved the default by the Defendant to pay rent for the period between 1/6/2021 to 31/5/2022 and 1/6/2022 to 31/5/2023. They are therefore entitled to the arrears amounting to Kshs 2,183,600.
42. Clause 3.2 of the Lease adduced by PW1 dated 1/2/2021 provides for interest at 5% per month on overdue rent. The Plaintiffs' claims for arrears totaling Kshs 2,183,600 are well documented and uncontroverted. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd [2001] eKLR*, the Court of Appeal reiterated that parties are bound by the terms of their contract unless fraud or mistake is proven. None is alleged here. I therefore find the claim for rental arrears and interest is proved and payable.

Whether the Plaintiffs are entitled to the cancellation of the lease and rectification of the land register.

43. The Plaintiffs seek cancellation of the lease interest registered on 19/02/2021. From the evidence on record, the Plaintiffs issued a proper notice of termination dated 13/6/2022, after prolonged default. Re-entry into the suit property occurred on 8/4/2023, in accordance with Clause 6.1 of the Lease. Section 73 of the *Land Act*, 2012 provides that:

- “(1) Subject to the provisions of Section 76 and to any provisions to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee:-
- (a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease; or
 - (b) is adjudicated bankrupt; or(c)being a company, goes into liquidation.
- (2) The right of forfeiture may be:
- (a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or
 - (b) enforced by action in the court.”

44. This court is of the view that upon lawful termination, the leasehold interest ceased. The Defendant no longer holds any registrable interest in the suit property. I find it just and lawful to cancel the lease and direct the Chief Land Registrar to rectify the register.



Whether the Plaintiffs are entitled to injunctive reliefs sought.

45. The Plaintiffs' have proved that they are the Administrators of the Estate of the late Patrick John Kamau who is the registered proprietor of the suit property. They have also proved that the Defendant is in breach of the lease agreement entered into on 1/2/2020.

46. The principles that guide the court in granting an injunction are set out in the celebrated case of *Giella vs Cassman Brown & Company Limited* [1973]. E.A 358 as follows:

“First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide it will decide the application on a balance of convenience.”

47. Further, in the case of *Mutisya vs Mwanzia*(supra)Justice Naikuni stated that:

“..In this instant application, the Plaintiff through the filed pleadings and the testimony adduced in Court and which was never rebutted, she demonstrated that she was the registered owner to the suit land. Clearly, she has "a prima facie" case. In the course of time, she undertook several development activities on the suit land which included the construction of a residential Swahili house on it in compliance with the law. She left a three (3) feet space in between her property and the others. Her plot is adjacent to that of the Defendant.

...The state of affairs necessitated the filing of this suit against him. In the given circumstances, therefore, it is my view that the balance of convenience tilts towards favouring the Plaintiff. In summary, all the conditions for the grant of prohibitory injunction and mandatory injunction have been fully met.”

48. From the Plaintiffs' evidence on record, it is my finding that they have met the threshold for the grant of an injunction. Similarly, the Plaintiffs are entitled to an eviction order in the event that the Defendant does not vacate the suit property.

Whether the Plaintiffs should be awarded Kshs 33,088 as reimbursement of electrical restorative works and securing the Defendants water plumbing control unit?

49. PW1 testified that the Defendant had made an illegal electricity connection on the suit property prompting them to hire a local electrician who had disconnected the illegal electricity supply and replaced it with a lawful one, at a cost of Kshs 33,080. The Plaintiffs adduced hand written notes by one Kamau as evidence of the amount incurred in the connection of the electricity at the suit property. This court finds that the notes are sufficient to prove that the said amounts were incurred.

50. The upshot is that the Plaintiffs have proved their case on a balance of probabilities and I enter judgment for the Plaintiffs and make the following final orders:

- a. An order is hereby issued directing the Chief Land Registrar to cancel the Defendant's leasehold interest signified by the Lease dated 1/6/2020 between the Plaintiffs and the Defendant registered on 19/2/2021 on the Land Register of the Plaintiffs' Property known as Land Reference Number 13136/39 (originally Number 13136/3/4) situate along Kenyatta Road in Kiambu County measuring 10.19 hectares.



- b. An order is hereby issued against the Defendant to vacate and/or be evicted from the Plaintiffs' parcel of land known as Land Parcel Number 13136/39 (originally Number 13136/3/4) situate along Kenyatta Road in Kiambu County within 30 days from the date of this judgment - mandatory injunction to remove their movable property with 30 days.
- c. A permanent injunction is hereby issued restraining the Defendant whether by itself and or through its servants from re-entering, remaining thereon, cultivating and or in any way using or interfering with quiet possession enjoyment and use of Land Parcel Number 13136/39 (originally Number 13136/3/4) situate along Kenyatta Road in Kiambu County, save for the purpose of complying with order (b) above.
- d. The plaintiff is entitled to Kshs 30,080 as special damages.
- e. The Defendant to pay the rent arrears of Kshs 2,183,600 together with interest at the rate of 5% per month from 1/6/2022 until payment in full.
- f. The Defendant shall bear the costs of the suit.

DATED, SIGNED AND DELIVERED AT THIKA THIS 28TH DAY OF JULY 2025.

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J. M. ONYANGO

JUDGE

In the presence of:

Mr Kinyanjui for Mr. Litoro for the Plaintiff

No appearance for the Defendant

Court Assistant: Hinga

