



**County Government of Kakamega v Mulama (Environment and Land  
Case E22 of 2022) [2025] KEELC 5524 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5524 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND CASE E22 OF 2022**

**A NYUKURI, J  
JULY 23, 2025**

**BETWEEN**

**COUNTY GOVERNMENT OF KAKAMEGA ..... PLAINTIFF**

**AND**

**BONFACE LUKULU MULAMA ..... DEFENDANT**

**JUDGMENT**

1. In a plaint dated 9<sup>th</sup> May 2022, the plaintiff sought against the defendant the following orders;
  - a. An order that the lease in respect to land parcel title number Kakamega/Municipality/Block III/123 be forfeited on account of lack of development; and
  - b. Such other order as the Honorable court may deem fit and just.
2. The plaintiff stated that it was at all material times the lessor of the plot title No. Kakamega Municipality/Block III/123 within Kakamega Municipality (Suit property). Further that a lease was registered in favour of the defendant on 26<sup>th</sup> October 2007 and a certificate of lease issued to him in regard to the suit property on 23<sup>rd</sup> December 2016. That the lease was subject to the agreements therein. The plaintiff complained that from the time of registration of lease to date (a period of over 5 years) the suit property remains undeveloped. It further asserted that it expressed its intention of lawfully repossessing undeveloped allocated public land within Kakamega Municipality, which will be in accordance to its development aspirations to elevate Kakamega Municipality to city status.
3. It stated that to achieve its aspirations, it published a notice with the list of undeveloped plots, and constituted an Appeals Panel of the Kakamega County Land Application, Extension of Leases and Land Administration Committee vide Gazette Notice No. 103 dated 30<sup>th</sup> December 2020 published in Gazette Volume CXXIII – No. 12 dated 15<sup>th</sup> January 2021 so as to give affected individuals a fair hearing before repossession proceedings. That the Panel was tasked to hear the affected individuals who



had breached the special conditions on their allotment letters and leases and make recommendations on the question of repossession of public land by the plaintiff.

4. The plaintiff further stated that on 16<sup>th</sup> February 2021, it proceeded to publish a notice in the Daily Newspapers inviting persons affected by the notices to pick suitable hearing dates for the consideration of their appeals. That the defendant was accorded an opportunity to be heard before the Appeals Panel, and that the latter upon considering the material before it, made recommendations that the plaintiff should repossess the suit property on account of the defendant's breach of a fundamental term of the lease, by his failure to develop the suit property for a period of over 5 years after registration of the lease.
5. That it issued the defendant with notice for repossession vide its letter dated 11<sup>th</sup> January 2022 which notice was served on the defendant on 31<sup>st</sup> January 2022 through WhatsApp platform. The plaintiff averred that the defendant had breached terms of the lease. It enumerated the particulars of breach as being failure to submit to the local authority proposed building plans within reasonable time from the date of issue of certificate of lease, and failure to develop the property for over 10 years from the date of issuance of the registered lease.
6. The plaintiff maintained that the consequence of the defendant's breach was the compromise the plaintiff's development agenda to the detriment of the residents of Kakamega Municipality. The plaintiff emphasized that it complied with the law in seeking forfeiture.
7. Upon service, the defendant neither entered appearance nor filed defence. The case was heard by way of viva voce evidence. The plaintiff presented one witness.

#### **Plaintiff's evidence**

8. PW1 was Ronald Matende Omwoma, a practising private physical Planner and Land Administration Consultant, who had been appointed by the plaintiff as a member of the Appeals Panel of the Kakamega County Land Application, Extension of Leases and Land Administration Committee. He adopted the contents of his witness statement dated 29<sup>th</sup> April 2024 as his evidence in chief. His testimony was that the defendant had breached Special Condition 2 of the lease by failing to present building plans to the plaintiff in six months of registration of lease and also failing to develop the suit property in accordance with the terms of the lease. He added that the defendant was heard before the Appeals Panel and that the Appeals Panel recommended for repossession of the suit property by the plaintiff on account of failure to develop the suit property. The witness produced the list of plots to be repossessed, repossession notice, certificate of official search, letter, excerpt of committee report, lease, advertisement and gazette notice. That marked the close of the plaintiff's case.
9. In support of its case, the plaintiff filed written submissions dated 12<sup>th</sup> February 2025.

#### **Submissions**

10. Counsel for the plaintiff submitted that Article 60 (1) of [the Constitution](#) required sustainable, efficient, equitable and productive use, management and holding of public land. The court was referred to the case of *Kahindi Ngala Mwangandi v Mtana Lewa v (2014) eKLR* for the argument that it is against public interest to allow a scarce resource like land to be abandoned in perpetuity.
11. It was also contended for the plaintiff that where allocated public land is not developed, the same should revert to the national or county government as provided for in section 12(9) of the [Land Act](#). Reliance was placed on the case of *Republic v County government of Siaya Ex parte Ruth Akello Were, Rosella Nyanja (Interested party) (2021) e KLR* to buttress this argument.



12. Regarding forfeiture, reference was further made to provisions of Section 31 of the *Land Act* in and the case of *Melisa Awuor Odera v Keringet Estates Limited* (2021) eKLR for the proposition that where there is breach of terms of a lease, the lessor is at liberty to exercise his right of forfeiture.
13. Counsel maintained that the plaintiff is entitled to the orders sought as it had proved that the defendants violated the terms of the lease by failing to develop the suit property within the period provided in the leased and also shown that it had issued the relevant notices and given the defendants opportunity to be heard, thereby complying with the procedure for forfeiture.

### **Analysis and determination**

14. The court has carefully considered the plaintiff's pleadings, evidence and submissions. The issues that arise for the court's determination are whether the defendant breached the terms of the lease issued to him on 23<sup>rd</sup> December 2016 and whether an order of forfeiture of lease in regard to the suit property should issue.
15. Notwithstanding the fact that this matter was undefended, the plaintiff bears the burden of proving its claim. Section 107 of the *Evidence Act* places the burden of proof of a claim on the claimant, whether or not the claim is defended. In the instant case, the plaintiff contended that it granted a lease in favour of the defendant in regard to the suit property and that the defendant breached Special Condition No. 2 of the lease which required the lessee to submit his building plans to the local authority for the development of the suit property within six months of registration of the lease and to develop the land in 24 months of the registration of the lease. That the said Special Condition No. 2 had a default clause that stated that noncompliance thereof would grant the lessor the right to re-enter the land.
16. Section 2 of the *Land Act* requires the NLC to maintain a register of all public land converted to private land by allocation. Therefore, where public land is converted to private land by allocation, the National or County Government as the case may be, through the National Land Commission (NLC) still bears a considerable degree of control over such land as the lease is a conditional lease.
17. Public land is allocated for purposes sustainable development and not for speculation. Article 60 of *the Constitution* provides for principles of land policy and requires that land shall be held, used and managed in an equitable, efficient, productive and sustainable manner. The same provides as follows;

“Principles of land policy.

60. Land in Kenya shall be held, used and managed in a manner that is equitable,
  - (1) efficient, productive and sustainable, and in accordance with the following principles—
    - a. equitable access to land;
    - b. ....
    - c. sustainable and productive management of land resources;”

18. Therefore, even upon conversion of public land to private land by allocation, the National or County Government as the case may be, through the National Land Commission still superintends the holding, use and management of such land, which has to meet the threshold of equity, efficiency, productivity and sustainability. If the lessee fails to meet this threshold, the land reverts to Government. Upon allocation of public land, there must be value addition by the lessee in terms of development of the allocated property to the extent provided for in the lease. The covenant to develop the land is so



central and fundamental to the lease instrument that breach of the same would automatically cancel the lease.

19. Therefore, where public land is allocated to private individuals yet those individuals fail to develop the land, then such land cannot be said to have been held or used productively or sustainably. Equitable use of land entails allowing only those who can develop land to continue holding public land, and where those who have been allocated such land fail to use it productively as required in the lease, equity will require that it be taken away from them and given to those who can put it to productive use. As was held in the case of *Kahindi Ngala Mwangandi v Mtana Lewa* [2014] e KLR, it is against public interest and *the Constitution* to allow land to lie abandoned in perpetuity.
20. Where public land allocated to a private individual is not developed as required in the lease instrument, the land automatically reverts back to the National or County Government as the case may be. Section 12 (9) of the *Land Act* provides as follows;

“Where the land allocated under subsection (8) is not developed in accordance with the terms and conditions stipulated in the lease, that land shall automatically revert back to the national or county government, as the case may be and the Commission shall include in its annual report the status of implementation of this subsection.”
21. The Black’s Law Dictionary, 11<sup>th</sup> Edition defines forfeiture as;

“The divestiture of property without compensation. The loss of a right, privilege or property because of a crime, breach of obligation, or neglect of duty. Title is instantaneously transferred to another, such as the government, a corporation or a private person. A destruction or deprivation of some estate or right because of the failure to perform some contractual obligation or condition.”
22. Therefore, forfeiture means losing a right, privilege or property without compensation, as a result of breaching a legal or contractual obligation or covenant.
23. Section 31 of the *Land Act* provides for forfeiture of lease in respect of public land that was converted to private land by allocation, where there is breach of covenant as follows;

“Forfeiture of lease if rent unpaid or for breach of covenant



(1)	<p>If any part of the rent or royalties reserved in a lease under this Act is unpaid for a period of twelve months after becoming due, or if the lessee breaches any express or implied covenant, the national government or county government, as the case maybe may—</p> <table border="1" data-bbox="671 383 1390 875"> <tr> <td data-bbox="671 383 850 607">(a)</td> <td data-bbox="850 383 1390 607">serve a notice upon the lessee, specifying the rent or royalties in arrears or the covenant of which a breach has been committed; and</td> </tr> <tr> <td data-bbox="671 607 1031 875">(b)</td> <td data-bbox="1031 607 1390 875">commence an action in Court for the recovery of the land at any time at least one month after serving the notice contemplated in paragraph (a).</td> </tr> </table>	(a)	serve a notice upon the lessee, specifying the rent or royalties in arrears or the covenant of which a breach has been committed; and	(b)	commence an action in Court for the recovery of the land at any time at least one month after serving the notice contemplated in paragraph (a).
(a)	serve a notice upon the lessee, specifying the rent or royalties in arrears or the covenant of which a breach has been committed; and				
(b)	commence an action in Court for the recovery of the land at any time at least one month after serving the notice contemplated in paragraph (a).				
(2)	In an action commenced under subsection (1)(b) on proof of the facts, the Court shall declare the lease forfeited, subject to relief upon such terms as may appear just.				
(3)	If the Court has declared a lease to be forfeited under subsection (2), the national government or county government, as the case maybe may re-enter upon the land.				
(4)	In exercising the power of granting relief against forfeiture under this subsection (1) the Court shall be guided by the principles of the doctrines of equity.”				

24. Essentially, on application by the National or County Government as the case may be, for the recovery of land, where the lessee fails to pay reserved rent for twelve months or where they breach any of the covenants of the lease, and after the National or County Government has served on the lessee one month’s notice stating the breached covenant or unpaid rent, the Court has jurisdiction to declare a lease forfeited.
25. In the case of *Nyoro v Karinstreap Investment Limited* (Environment & Land Case E100 of 2020) [2023] KEELC 16911 (KLR) (20 April 2023) (Judgment), the court held that where the lessee breaches the terms of the lease, the lessor’s right to forfeiture comes into play and as long as the lessor



follows the right procedure in exercising their right of forfeiture, they are entitled to an order of the court enforcing that right and cancelling the lease.

26. Whether a lease is in regard to public or private land, (community land excluded), the process of forfeiture is the same. Section 73 (1) of the [Land Act](#) provides as follows;

“Lessor’s right of forfeiture

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.
3. The acceptance by the lessor of any rent after the service of a notice of forfeiture under section 75 does not operate as a waiver of the lessor’s right of forfeiture unless the lessor has by any other positive act shown an intention to treat the lease as subsisting.”

27. Section 75 of the [Land Act](#) provides as follows;

“Notice before forfeiture

Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a notice of not less than thirty days—

(a)	specifying the particular breach complained of; and
(b)	if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and
(c)	in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,



and the lessee has failed to remedy the breach within thirty days thereafter, if it is capable of remedy, and to make reasonable compensation in money.”

28. In the instant case, the plaintiff has shown that the lease instrument granted to the defendant placed a duty on him to submit development plans within six months of registration of the lease and develop the land as per the terms of the lease in 24 months from the date of registration of the lease. However, the defendant failed to present building plans and also developed the suit property up to date, which is a period of over 10 years. In the premises I find and hold that the defendant breached the fundamental terms of the lease herein, and therefore the plaintiff’s right of forfeiture had accrued.
29. On whether the plaintiff complied with the process for forfeiture, the evidence presented demonstrated that the plaintiff gave the defendant a notice of forfeiture in the Daily Newspaper of 16<sup>th</sup> February 2021, and another notice served by WhatsApp on 31<sup>st</sup> January 2022. It also availed the defendant an opportunity to be heard by its Appeals Panel before the right of forfeiture was exercised. This suit having been filed on 13<sup>th</sup> May 2022, it is clear that the defendant had had more than 30 days to offer to remedy the breach, but did not do so. For those reasons, I find and hold that the plaintiff complied with the required procedure in exercising its right of forfeiture and is therefore entitled to the orders sought in the plaint.
30. Ultimately, I find and hold that the plaintiff has proved its case on the required standard and its claim is hereby allowed as prayed. Consequently, an order is hereby issued that the lease in respect to land parcel title No. Kakamega Municipality/ Block III/123 is hereby forfeited on account of the defendant’s lack of development of the land.
31. It is so ordered

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 23<sup>RD</sup> DAY OF JULY, 2025**

**A. NYUKURI**

**JUDGE**

In the presence of;

Mr. Wabuko holding brief for Ms MMBaka for the plaintiff

No appearance for the defendant

Court Assistant: M. Nguyai

