



**Nairobi City County v Langton Investment Limited & another (Environment & Land Case E177 of 2024) [2025] KEELC 75 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 75 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E177 OF 2024**

**MD MWANGI, J  
JANUARY 16, 2025**

**BETWEEN**

**NAIROBI CITY COUNTY ..... PLAINTIFF**

**AND**

**LANGTON INVESTMENT LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MERON LIMITED ..... 2<sup>ND</sup> DEFENDANT**

*(n respect of the Notice of Motion dated 26th July 2024 by the 1st Defendant/Applicant brought under the provisions of Order 2 Rule 15 (1) (b), (c), & (d) of the Civil Procedure Rules and the inherent power of the court seeking to strike out the suit herein with costs)*

**RULING**

**Background**

1. The application before me is by the 1<sup>st</sup> Defendant seeking to strike out the Plaintiff's suit with costs. The application is premised on the grounds on the face of it and on the supporting affidavit of David Mucai Kunyiha sworn at Nairobi on the 26<sup>th</sup> July 2024.
2. The 1<sup>st</sup> Defendant asserts that the Plaintiff has no legal basis to make claims over its land as it is not public land. The suit is therefore frivolous vexatious and an abuse of the process of court intended only to vex and cause the 1<sup>st</sup> Defendant unnecessary anxiety and expense. The 1<sup>st</sup> Defendant points out that it is the 7<sup>th</sup> suit filed against it concerning the suit property and is part of a series of cases filed to violate its ownership rights and ensure that the 2<sup>nd</sup> Defendant retains its illegal possession of the suit property.
3. The Applicant asserts that the Plaintiff's suit has no foundation and justiciable cause of action as the suit property has not been unlawfully alienated, nor has there been any breach of the special conditions as alleged to warrant the suit property reverting to the state.



4. The 1<sup>st</sup> Defendant/Applicant further asserts that it lawfully applied to and received approval from both the national government and the then defunct Nairobi City Council for residential developments on the suit property.
5. It is the Applicant's case that the Plaintiff has circumvented the law and the laid down legal procedures by failing to serve upon it the notice prescribed under Section 31 of the Land Act specifying the special conditions allegedly breached prior to filing this suit in court.
6. Finally, the 1<sup>st</sup> Defendant/Applicant alleges that the Plaintiff's suit is riddled with falsehoods. It singles out the claim by the Plaintiff that the change of user of the suit property was approved by the Ministry of Land And Settlement without reference to the defunct Nairobi City Council as one such falsehoods.

### **Response by the plaintiff**

7. The Plaintiff responded to the 1<sup>st</sup> Defendant's application by way of the replying affidavit sworn by Cecelia Koigu at Nairobi on 29<sup>th</sup> August 2024. She deposes that striking out of pleadings is a drastic measure that should only be resorted to when a pleading is a complete sham which is not the case herein.
8. It is the Plaintiff's case that the process of change of user involving the suit property was improper in view of the special conditions contained in the grant I.R. 57909 that specified that the suit property was to be used for educational purposes only. If the land was not utilized for the intended purpose, the term created would ipso facto be determined and the land would be deemed to have automatically reverted to the government without the necessity of a formal surrender thereof.
9. The Plaintiff asserts that the entire process of change of user and the subsequent surrender of the original grant and issuance of the new grant was illegal and fraudulent. Even if approval was obtained from the defunct Nairobi City Council, the same is self-defeating and was obtained through unscrupulous and fraudulent means. The Plaintiff further alleges that the change of user was allegedly obtained before the transfer from Kohlenberg foundation to the 1<sup>st</sup> Defendant further confirming its irregularity.
10. The Plaintiff asserts that it has therefore raised triable issues and should be accorded an opportunity to prosecute its case.
11. In regard to the notice under Section 31 of the Land Act, the deponent asserts that it is reserved for the National Land Commission. Further that the section does not prohibit any party from instituting a suit regarding the legality of the change of user for a property. Further, that the change of user and breach of special conditions of the grant was done in the 1990s prior to the promulgation of the Constitution of Kenya, 2010 through which the National Land Commission was established.
12. The Plaintiff terms the 1<sup>st</sup> Defendant's application as misguided misconceived and an abuse of the process. It prays for the dismissal of the application.

### **Re-joinder by the 1<sup>st</sup> defendant**

13. In its further affidavit sworn by David Mucai Kunyiha on 17<sup>th</sup> September 2024, the 1<sup>st</sup> Defendant/Applicant reiterated its position and affirmed that the change of user was made by Harit Sheth Advocates who were acting for both the Kohlenberg Foundation and the 1<sup>st</sup> Defendant.
14. The 2<sup>nd</sup> Defendant did not respond to the 1<sup>st</sup> Defendant's application. Through its advocates on record, the 2<sup>nd</sup> Defendant informed the court that it was in support of the 1<sup>st</sup> Defendant's application.



## Court's directions

15. The court's directions were that the application be canvassed by way of written submissions. The 1<sup>st</sup> Defendant/Applicant and the Plaintiff complied and filed their respective submissions which now form a part of the record of this court. The court has had occasion to read and consider the submission in making this ruling.

## Issues for determination

16. Having considered the 1<sup>st</sup> Defendant's application, the response by the Plaintiff as well as the plaintiff filed herein with the accompanying documents and the submissions filed by the parties, I am of the considered view that the main issue for determination and upon which the 1<sup>st</sup> Defendant's application revolves is whether the Plaintiff complied with the provisions of the law, particularly Section 31 of the Land Act prior to filing this suit and whether the non-compliance is fatal to the suit.
17. The Plaintiff's suit was initiated by way of the plaint dated 30<sup>th</sup> April 2024 supported by the verifying affidavit of Cecelia Koigu sworn on the same date. The Plaintiff prays for four main prayers namely;
- a. A declaration that the change of user of grant I.R. 57907 from educational purposes to residential purposes through the issuance of grant I.R. 152720 to the 1<sup>st</sup> Defendant was irregular, thus illegal, null and void.
  - b. A declaration that pursuant to special condition 4 contained in Grant I.R. 57907, the suit property reverted to the Government following breach of special conditions 3 as unalienated land and is therefore public land in line with article 62 (1) (a) of the Constitution.
  - c. An order directing the Chief Land Registrar to rectify by cancellation of all the entries relating to the transfer of the land to the 1<sup>st</sup> Defendant, transfer to the 2<sup>nd</sup> Defendant, subdivision of the land and the resultant certificates of lease being Nairobi Block 219/48/49/50/51/52 & 53.
  - d. An order of vacant possession of the suit property.
18. The Plaintiff's suit is clearly one for forfeiture of land for the alleged breach of conditions/covenants in the original grant. It is on the same basis (breach of covenants) that the Plaintiff seeks the incidental declaration that the change of user of the grant was irregular. The main purpose and intent of the Plaintiff's suit is forfeiture of the suit property. That is why it seeks cancellation of the transfers to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and ultimately an order of vacant possession.
19. The Court of Appeal in the case of Shree Visa Oshwal Community Nairobi Registered Trustees – vs Attorney General, Commissioner of Lands, Cabinet Secretary in charge of Education and Gideon Kioko Mbuvi (2019) KECA 942 (KLR), had occasion to consider the provisions of Section 31 of the Land Act and categorically stated that it is a procedure deliberately set out to cushion lessees against arbitrary deprivation of property.
20. The Court of Appeal particularly stated that.

“Considering the principle of sanctity of title and bearing in mind that the length of the lease (99 years), the procedure set out above is intended to cushion lessees against arbitrary deprivation of property. In the words of Article 40(2), Parliament cannot enact any law that would permit the state or any person to arbitrarily deprive another person of his property or any interest in or take away his right over any property of any description. The suit property being land held by the Appellant under a leasehold tenure is, by dint of article 64(b) of the



Constitution private land. Therefore, the appellants could only be dispossessed of it in the public interest and even then in accordance with the law.”

21. It is the Constitution 2010 that vests public land in the County Governments as the Plaintiff articulates in its pleadings. It is the same constitution that safeguards the right to property and prescribes the due process to be followed. The Plaintiff’s position in its submissions amounts to approbating and reprobating at the same time.
22. The issuance of the notice under Section 31 of the Land Act is a mandatory prerequisite to the filing of a suit or commencement of an action in court for recovery of land be it by the Nation Land Commission established under Article 167 of the Constitution to inter alia manage public land on behalf of the National and County Governments or by either the National or County Governments upon whom public land is vested in in trust for the people of Kenya.
23. The Plaintiff’s suit was filed prior to the issuance of the mandatory notice under Section 31 of the Land Act. That is an undisputed fact. I therefore allow the 1<sup>st</sup> Defendant’s application and hereby strike out the Plaintiff’s suit in its entirety with costs to the 1<sup>st</sup> Defendant.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 16<sup>TH</sup> DAY OF JANUARY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Njiru h/b for Mr. Kiragu Kimani S.C for the 1<sup>st</sup> Defendant/Applicant

Ms. Muthoni h/b for Ms. Maina for the Plaintiff/Respondent

N/A for the 2<sup>nd</sup> Defendant

Court Assistant: Mpoye

