



REPUBLIC OF KENYA



KENYA LAW
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County Government of Kakamega v Ali (Environment and Land Case E008 of 2022) [2025] KEELC 5417 (KLR) (16 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5417 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE E008 OF 2022**

**A NYUKURI, J
JULY 16, 2025**

BETWEEN

COUNTY GOVERNMENT OF KAKAMEGA PLAINTIFF

AND

SALIM ALI DEFENDANT

JUDGMENT

Introduction

1. Vide a plaint dated 9th 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/296 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 averred that it was at all material times the lessor of the plot title No. Kakamega Municipality Block III/296 within Kakamega Municipality (Suit property). That a lease was registered in respect of the suit property on 28th November, 2007 and a certificate of lease issued to the defendant on 4th October 2011, subject to the agreements and other matters contained in the registered lease. The plaintiff's complaint was that the suit property has remained undeveloped for over 10 years since the certificate of lease was issued.
3. It also stated that in line with its development aspirations to elevate Kakamega Municipality to city status, it expressed its intention to lawfully repossess public land which had been allocated to persons in Kakamega Municipality but which had remained undeveloped for inordinate periods of time. That to this end, it published a notice with the list of undeveloped plots, and that in order to give affected individuals a fair hearing before repossession proceedings, it constituted an appeals panel of the Kakamega County Land Application, Extension of Leases and Land Administration Committee



vide Gazette Notice No. 103 dated 30th December 2020 published in Gazette Volume CXXIII – No. 12 dated 15th January 2021 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. It was the plaintiff's averment that on 16th February 2021, the plaintiff 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 defendants failed to appear before the committee which in turn made recommendations based on the material on record. That having considered the defendants' matter the committee recommended that the plaintiff repossess the suit property on account of fundamental breach of Special condition No. 2 in the registered lease regarding development which required the defendant in six months from the registration of the lease, to submit to the plaintiff building plans in respect of the suit property and within 24 months to complete building thereon.
5. That the plaintiff proceeded to issue the defendants with 'notice for repossession' in its letter dated 11th January 2022 which notice was served on the defendant on 31st January 2022 through WhatsApp platform. The plaintiff averred that the defendant had breached terms of the lease dated 4th October 2011. It stated the particulars of breach as failure to submit to the local authority proposed building plans within reasonable time and failure to develop the property for 10 years from the date of issuance of the certificate of lease.
6. The plaintiff maintained that the defendants' breach had the consequence of compromising the plaintiff's development agenda to the detriment of the residents of Kakamega Municipality. It argued 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 a member 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 testified that the defendants 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 further stated that the defendants were granted opportunity to be heard before the Appeals Panel upon being given notice, but that they failed to show up and the Appeals Panel recommended for repossession of the suit property by the plaintiff. He produced repossession notice, certificate official search, lease, Appeals Committee Report's excerpt and advertisement. That marked the close of the plaintiff's case.
9. The plaintiff filed written submissions dated 28th February 2025, in support of its case.

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. Reliance was placed on the case of *Kahindi Ngala Mwangandi v Mtana Lewa v (2014) eKLR* for the proposition that it is against public interest to allow a scarce resource like land to be abandoned in perpetuity.
11. It was further submitted 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*.



Further 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.

12. The court was further referred to Section 31 of the Land Act 2012 in regard to forfeiture and the case of Melisa Awuor Odera v Keringet Estates Limited (2021) eKLR for the proposition that where there is breach of terms of the lease, the lessor can exercise his right of forfeiture.
13. Counsel argued that the plaintiff having proved that the defendant violated the terms of the lease by failing to develop the suit property in 24 months of the registration of the lease and the plaintiff having issued the relevant notices and given the defendant opportunity to be heard, the plaintiff is entitled to the orders sought.

Analysis and determination

14. The court has carefully considered the 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 and whether an order of forfeiture of lease in regard to the suit property should issue.
15. This matter proceeded ex parte, since despite service, the defendant neither entered appearance nor filed defence. Nonetheless, 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 argued 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 who is the defendant herein to submit 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. 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 has some considerable degree of control over such land to the extent that the lease is a conditional lease. Section 2 of the Land Act requires the NLC to maintain a register of all public land converted to private land by allocation.
17. Allocation of public land is for sustainable development purposes and not for speculation. Article 60 of the Constitution provides for principles of land policy requiring that land shall be held, used and managed in an equitable, efficient, productive and sustainable manner. It 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. Essentially, even upon conversion of public land to private land by allocation, the national or county Government as the case may be, still superintends the holding, use and management of such land, which has to meet the threshold of equity, efficiency, productivity and sustainability. If the private land holder who is the lessee fails to meet this threshold, the land reverts to the lessor being the national or county Government as the case may be. Although allocation of public land confers rights of private



ownership allowing the lessee to have exclusive and quiet possession of the land, the allocation and lease is conditional to the extent that if the lessee does not develop the land, it will revert to the Government. In short, upon allocation of public land, the law expects the lessee to add value to the land by developing the same in accordance with the terms of the lease. The covenant to develop the land is inherently fundamental to the lease instrument that breach of the same would automatically cancel the lease.

19. 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.”

20. Thus, where allocated public land is not developed as envisaged in the lease, then such land cannot be said to have been held or used equitably, productively or sustainably. Equitable use of land entails allowing only those persons who can develop land to continue holding public land, and where those given such land hold it without using it productively, 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 a scarce resource like land to lie abandoned in perpetuity.

21. 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) 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—**
 - (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.”**



23. Essentially, the National or County Government as the case may be, may apply 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. In such a case, the Court has jurisdiction to declare a lease forfeited.
24. The Black's Law Dictionary, 11th 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.”
25. Therefore, forfeiture means losing a right, privilege or property without compensation, as a result of violating a contractual or legal obligation or covenant.
26. 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.
27. 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.”
28. 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.”

29. In the instant case, the plaintiff demonstrated that the lease instrument granted to the defendant required him to submit development plans in 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. The evidence given by the plaintiff show that the defendant failed to develop the suit property yet the lease was registered on 4th October 2011, which was outside the agreed period. The excerpt of the Appeals Panel Committee report shows that no development is on the suit property. In the premises, I find and hold that the defendants breached the fundamental terms of the lease herein, and therefore the plaintiff was at liberty to exercise its right of forfeiture.

30. Regarding compliance with the forfeiture process, the evidence presented by the plaintiff shows that the plaintiff not only give the defendant a notice of forfeiture in the Newspaper of 16th February 2021 and by WhatsApp on 31st January 2022, but also availed him opportunity to be heard before the Appeals Panel of the Kakamega County Land Application, Extension of leases and Land Administration Committee which had been Gazetted in the Kenya Gazette Volume CXXIII – No. 12 dated 15th January 2021, before the right of forfeiture was exercised. This suit having been filed on 13th May 2022, it is clear that the defendant has had more than 30 days to offer to remedy the breach, but they did not do so. I am therefore satisfied 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.

31. In the end, I am satisfied that the plaintiff has proved its case on the required standard and the same 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/296 is hereby forfeited on account of the defendant’s lack of development of that property.

32. It is so ordered

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 16TH 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

