



**Jims Fresh Vegetable Growers and Exporters Limited v Locland Limited & another (Environment & Land Case 277 of 2011) [2024] KEELC 6216 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6216 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 277 OF 2011  
OA ANGOTE, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**JIMS FRESH VEGETABLE GROWERS AND EXPORTERS LIMITED ..... PLAINTIFF**

**AND**

**LOCLAND LIMITED ..... 1<sup>ST</sup> DEFENDANT  
AJIT PATEL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Introduction**

1. Vide the Notice of Motion dated the 5<sup>th</sup> October, 2023, brought pursuant to the provisions of Articles 40 and 159 of *the Constitution* of Kenya, 2010, Sections 3, 13, 14 and 19 of the *Environment and Land Court Act*, 2011, and Order 51 of the *Civil Procedure Rules*, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants seek the following reliefs as against the Plaintiff:
  - i. Spent
  - ii. This Honourable Court be pleased to issue the Defendants/Applicants and their authorized agents, Moran Auctioneers, an order for the enforcement of Order No 3 of the Decree issued in this suit by the Hon Deputy Registrar on the 16<sup>th</sup> June, 2023 for the eviction of the Plaintiff, its servants, agents, assigns, employees and/or all other persons under the Plaintiffs' authority from land parcels no's Kajiado/Kitengela/5110 and Kajiado/Kitengela/ 8125 and for vacant possession of these properties to be delivered to the Defendants/Applicants.
  - iii. This Honourable Court be pleased to grant the Defendants/Applicants and their authorized agents, Moran Auctioneers, an order for police assistance into land parcels no's Kajiado/Kitengela/5110 and Kajiado/Kitengela/8125 for purposes of evicting the Plaintiff, its servants,



agents, assigns, employees and/or all other persons under the Plaintiffs' authority therefrom pursuant to Order No 3 of the Decree issued in this suit by the Hon Deputy Registrar on the 16<sup>th</sup> June, 2023 and for vacant possession of these properties to be delivered to the Defendants/Applicants.

- iv. This Honourable Court be pleased to issue an order directing the Officer in command of Kitengela Police Station or an officer under his command above the rank of Assistant Inspector to supervise and give assistance for purposes of maintaining law and order to secure the eviction of the Plaintiff, its servants, agents, assigns, employees and/or all other persons under the Plaintiffs' authority from land parcels no's Kajiado/Kitengela 5110 and Kajiado/Kitengela/8125 pursuant to Order No 3 of the Decree issued in this suit by the Hon Deputy Registrar on the 16<sup>th</sup> June, 2023 and for vacant possession of these properties be delivered to the Defendants/Applicants.
  - v. This Honourable Court be pleased to issue any other order that meets the ends of justice.
  - vi. Costs of this Notice of Motion application be provided for.
2. The Application is based on the grounds on the face of the Motion and supported by the Affidavit of Ajit Patel, the 2<sup>nd</sup> Defendant and Director of the 1<sup>st</sup> Defendant of an even date. He deponed that Judgement was delivered in this suit on the 5<sup>th</sup> May, 2020 in which the Court inter-alia, dismissed the Plaintiffs' suit and ordered its eviction from the parcels of land known as Kajiado/Kitengela/5110 and Kajiado/Kitengela/ 8125(hereinafter the suit properties) and that the Deputy Registrar thereafter issued a Decree on the 16<sup>th</sup> June, 2023 pursuant to the Courts Judgement aforesaid.
  3. He deponed that as advised by Counsel, the Decree of 16<sup>th</sup> June, 2023 is lawful, valid and has not been set aside or varied by a competent Court; that despite having been duly served with a demand letter on the 17<sup>th</sup> January, 2023, the Plaintiff has yet to vacate the property and the Defendants attempts to have them vacate has been futile; that the Plaintiffs' continual stay on the property is unjustifiable and constitutes a breach of the Plaintiffs' constitutionally guaranteed right to property and that the interests of justice dictate that the Motion is allowed.
  4. In response to the Motion, the Plaintiff through its Director, Mr. Sudhir Kent swore a Replying Affidavit on the 19<sup>th</sup> February, 2024. He deponed that as advised by Counsel, Judgement in the matter was delivered on the 5<sup>th</sup> May, 2020 and they have taken active steps to appeal the same; that on the Plaintiffs' instructions, Counsel filed an application for leave to file an appeal out of time being COACAPPL/E496/2023 and that should the present Motion be granted, the Motion at the Court of Appeal will be defeated and the Plaintiff will suffer irreparable loss.
  5. Mr Kent deponed that he is aware of the need to balance the rights of a successful litigant vis the right of an Applicant to lodge an appeal; that should the outcome be in its favour, it shall proceed to file a proper appeal; that as advised by Counsel, a notice of appeal was filed on the 12<sup>th</sup> May, 2020 and pursuant to Order 42 Rule 6(4) of the [Civil Procedure Rules](#), the Appeal is deemed as filed and that if the Plaintiff vacated the suit property upon delivery of the Judgement, despite having filed a Notice of Appeal, the object of the appeal would be rendered otiose.

### Submissions

6. The Defendants/Applicants filed submissions in support of the Motion on the 13<sup>th</sup> April, 2024. Counsel submitted that contrary to the Plaintiffs' assertions, the eviction orders will not defeat the Application in the Appellate court; that the orders aforesaid have subsisted since delivery of the



Judgement and no interim protective orders are in place and that similarly, no Appeal has been filed almost four years after the judgement.

7. It was submitted that as expressed by the Court in *Machira T/A Machira & Co Advocates vs East African Standard* [2002]EA, where an Applicant seeks a suspension of further proceedings or execution, they must demonstrate substantial loss giving specific details and particulars thereof and that in *James Wangalwa & Another vs Agnes Naliaka Chesoto*[2012]eKLR, it was held that the fact that execution has been put into motion or is likely to proceed does not in itself constitute substantial loss.
8. Counsel urged that no evidentiary material has been placed before the Court to justify the Plaintiff's non-eviction from the suit property; that they have continued to deprive the Defendants of the premises since determination of the suit and that having demonstrated the merits of its Motion, the Plaintiff should bear the costs thereof.
9. The Plaintiff/Respondent filed submissions dated the 3<sup>rd</sup> May, 2023[2024]. Counsel submitted that the Plaintiff is well aware of the Decree and admits that it is still in force and that nonetheless, they have a right not to be evicted pending the hearing and determination of the Application for leave to appeal out of time that is pending before the Court Appeal being Nairobi Civil Appeal (Application) No. E496 of 2023.
10. Counsel referred the Court to the case of *Rhoda Mukuma vs John Abuoga* [1988]KLR which, discussing the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, noted that the issue of substantial loss is the cornerstone of both jurisdictions and is what has to be prevented by preserving the status quo as such loss would render the appeal nugatory. Reliance was also placed on the case of *P.J. Dave Flowers Ltd vs David Simiyu Wamalwa* [2017] eKLR.
11. It was submitted that while it is the right of the successful litigant to enjoy the fruits of their Judgement, it is also incumbent on the Court to balance that right, against the right of the losing litigant to pursue an appeal; that the Plaintiffs' failure to deposit the sum of Kshs 10,000,000.00 as per the orders of Justice E.O Obaga on 30<sup>th</sup> September, 2021, was occasioned by previous Counsel who did not inform the Plaintiffs' Director, an elderly man of the same; that they are willing to deposit the same in the joint names of the parties within such a duration as this Court may direct and that costs ought to follow the event.

### **Analysis and Determination**

12. Having considered the Motion, response and submissions, the sole issue for determination is;
  - i. Whether an eviction order should issue against the Plaintiff in respect to land parcels number Kajiado/Kitengela 5110 and Kajiado/Kitengela/8125?
13. Vide the present Motion, the Defendants/Applicants are asking this Court to enforce its orders and have the Plaintiff evicted from the suit properties. Section 14 of the Environment and Land Court provides thus in this respect:

“A judgment, award, order or decree of the Court shall be enforceable in accordance with the Civil Procedure Rules.”
14. On its part, the *Civil Procedure Act*, under Section 38 empowers the Court to enforce execution of Decrees and provides as follows

“Subject to such conditions and limitations as may be prescribed, the Court may, on application of decree holder, order execution of the decree–....



(f) in such other manner as the nature of relief granted may require.”

15. Similarly, Order 22, Rule 29 provides:

“Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”

16. By way of brief undisputed background, the Plaintiff instituted this suit seeking to have the Defendants compelled to transfer the suit properties to it on account of having entered into an agreement for the purchase of the same. By way of Counterclaim, the Defendants sought inter-alia to have the Plaintiff’s case dismissed and to have the Plaintiff evicted from the properties and restrained from further interference thereon.

17. The Court heard the matter and vide its determination dated the 5<sup>th</sup> May, 2020 found that the Plaintiff had not established its case. The Court dismissed the Plaintiff’s case in its entirety and ordered inter-alia:

- i. A permanent injunction restraining the Plaintiff by itself, servants and/or agents or otherwise howsoever from planting or in any manner whatsoever dealing with land parcels No’s Kajiado/Kitengela/5110 and Kajiado/Kitengela/8125.
- ii. An order of eviction against the Plaintiff from land parcels No’s Kajiado/Kitengela/5110 and Kajiado/Kitengela/8125.
- iii. An order compelling the Plaintiff to remove the cautions over land parcels no’s Kajiado/Kitengela 5110 and Kajiado/Kitengela/8125.
- iv. General damages of Kshs 10,000,000/=.
- v. Interest on (4) above at the rate of 14% from the date of this Judgement.
- vi. Three quarters (3/4) of the costs of the Counterclaim.

18. The Defendants state that a Decree in this respect was issued on the 16<sup>th</sup> June, 2023 and they duly served the same upon the Plaintiff; that despite service aforesaid, and further attempts in this respect, the Plaintiff has yet to vacate the suit property and that the Plaintiffs’ continual stay on the suit property violates their rights to property.

19. On its part, the Plaintiff admits to knowledge of the Judgement and indeed service of the Decree. They contend that they cannot move out of the suit property on account of their application for leave to appeal out of time which is pending at the Court of Appeal and that should the Motion be found merited, and they are out of the property, their Appeal will be rendered nurgatory.

20. It is noted that the Plaintiff, in responding to this Motion, is essentially litigating aspects of stay of execution pending appeal. This is despite the fact that the Plaintiff had indeed filed an application for stay of execution pending appeal on the 3<sup>rd</sup> July, 2020. Vide the Motion, the Plaintiff urged that it would suffer substantial loss and the appeal would be rendered nurgatory should the stay be declined.

21. The Court found merit in the application and vide its Ruling of 30<sup>th</sup> September, 2020, granted the Plaintiff a conditional stay on condition that it gives a guarantee from a reputable bank in the sum of Kshs 10,000,000/= or in the alternative, deposit the sum of Kshs 10,000,000/= in a joint interest earning account in the names of the parties’ Advocates within 30 days. Admittedly this was not done



leading to the lapse of the stay orders. No attempts were made by the Plaintiff to seek to review the terms of the stay or seek an extension of the same.

22. The Plaintiff once again states that should it be evicted from the suit properties, it will suffer substantial loss and its intended appeal will be rendered nugatory. As aforesaid, this constitutes a re-litigation of their Motion for stay of execution which the Court is barred from entertaining.
23. In any event, the assertions of substantial loss should they vacate the property have not been proven. Further, and more crucially, it has been brought to the Court's attention through correspondence on the record that the leave to appeal out of time sought by Plaintiff has been denied by the Appellate Court. The Court is privy to the Court Appeal's decision in this respect - Jim's *Fresh Vegetable Growers & Exporters Limited vs Loiland Limited & another (Civil Application E496 of 2023)* [2024] KECA 608 (KLR) (24 May 2024) (Ruling) - Civil Application *E496 of 2023* delivered on the 24<sup>th</sup> May, 2024.
24. In view of the foregoing, no appeal is subsisting in this matter.
25. Ultimately, the Court finds that there are no reasons warranting the Plaintiff's continual stay on the suit properties. The Orders of this Court vide the Decree dated 16<sup>th</sup> June, 2023 remain valid Court orders which must be respected and obeyed. The Plaintiffs' continual stay on the suit properties serve no purpose than to deny the Defendants of their right to property upon successful litigation.
26. In the circumstances, the Court finds the Motion dated 5<sup>th</sup> October, 2023 to be merited and proceeds to allow it in the following terms:
  - i. An order does hereby issue directing the Plaintiff to vacate the suit properties, Kajiado/Kitengela/5110 and Kajiado/Kitengela/8125 within 30 days hereof failure to which the Defendants and/or their authorized agents, are at liberty to forcefully evict the Plaintiff.
  - ii. The Officer Commanding Station (O.C.S) Kitengela Police Station, is hereby directed to provide assistance and oversee the enforcement of the eviction under order (i).
  - iii. The Plaintiff be and is hereby ordered to pay the costs of the eviction exercise that may be incurred by the Defendants.
  - iv. The Plaintiff shall bear the costs of this Motion.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**O. A. ANGOTE**

**JUDGE**

**In the presence of;**

Mr. Wakhisi for Defendants/Applicants

No appearance for Plaintiff

Court Assistant- Tracy

