



REPUBLIC OF KENYA



**KENYA LAW**  
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**County Government of Kakamega v Staka (Environment & Land Case  
E021 of 2022) [2025] KEELC 512 (KLR) (12 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 512 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE E021 OF 2022**

**DO OHUNGO, J**

**FEBRUARY 12, 2025**

**BETWEEN**

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

**AND**

**ZABLON ANDERSON STAKA ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff moved the Court through Plaint dated 9<sup>th</sup> May 2022 wherein it averred that at all material times it was the lessor of the parcel of land known as Kakamega Municipality/Block II/240 (the suit property) in respect of which a lease was registered in favour of the Defendant for a period of 99 years with effect from 1<sup>st</sup> December 1991. That the Defendant breached special condition number 2 of the lease by failing to develop the suit property.
2. Consequently, the Plaintiff prayed for judgment against the Defendant for:
  - a. A declaration that the Defendant had breached the special condition number 2 on development to the registered lease of plot title number Kakamega Municipality/Block II/240 within Kakamega Municipality;
  - b. An order that the lease registered in favour of the Defendant with respect to plot title number Kakamega Municipality/Block II/240 is forfeited on account of breach of the special conditions; and
  - c. Such other order as the Honourable Court may deem fit and just.
3. The Defendant filed Statement of Defence dated 27<sup>th</sup> February 2023 in which he denied the allegations of breach and averred that he had made significant improvements on the suit property. He therefore urged the Court to dismiss the Plaintiff's case with costs.



4. At the hearing, Ronald Matende Omwoma testified for the Plaintiff and stated that he was a practicing Physical and Land Use Planner and a Land Administration Expert. He adopted his witness statement dated 24<sup>th</sup> November 2023 and produced copies of the documents listed as item numbers 1 to 8 in the Plaintiff's list of documents dated 9<sup>th</sup> May 2022 as well as a copy of the sole document in the Plaintiff's supplementary list of documents dated 24<sup>th</sup> November 2023.
5. Mr Matende stated in the Witness Statement that he was the Chairperson of the Appeals Panel of the Kakamega County Land Application, Extension of Leases and Land Administration Committee that was gazetted through Gazette Notice Number 103 dated 30<sup>th</sup> December 2020 and published in Gazette Volume CXXIII - No. 12 dated 15<sup>th</sup> January 2021 with a mandate to hear appeals from persons whose plots had been identified as undeveloped in breach of the special conditions of their allotment letters and leases. That the Committee was to thereafter make recommendations on repossession to the Plaintiff. He also stated that the Plaintiff as the lessor of the suit property published a report of undeveloped plots within Kakamega Municipality and that the Defendant was notified of hearings.
6. Mr Matende went on to state that the Defendant attended the committee's hearing on 23<sup>rd</sup> March 2021 where his "Decision Review Request" and oral submissions were considered. That in its recommendations, the committee advised the Plaintiff to repossess the suit property on account of breach of Special Condition Number 2 whereupon the Plaintiff issued to the Defendant a "Notice for Repossession" through letter dated 11<sup>th</sup> January 2022.
7. Mr Matende also testified that the Defendant had fully paid land rent and land rates when the committee visited the suit property and that the visit was conducted in the Defendant's absence. That at the time of the visit, the committee verified that the Defendant had installed water and sewage system, 3 phase power supply, had deposited building materials, installed automatic block making machine and had a car wash in the suit property. He added that there was also a permanent toilet on the land, but the activities were not in compliance with the terms of allocation since the Defendant was required to develop a residential house within 24 months of registration of the lease. He also stated that the building materials that they found on site were the type that could be used to put up a house. That since the lease was registered on 20<sup>th</sup> June 2007, the Defendant was required to submit development plans to the Plaintiff by 20<sup>th</sup> December 2007 and to develop the suit property by 20<sup>th</sup> June 2009.
8. The Plaintiff's case was then closed.
9. The Defendant testified next and stated that he was a resident of both Kakamega and Thika, and a contractor by profession. He adopted his witness statement dated 27<sup>th</sup> February 2023 and produced copies of the documents listed as item numbers I to III, V and VI in the Defendant's list of documents dated 27<sup>th</sup> February 2023. It has documents numbered I to VI. I produce items I to III, V and VI (P. exhibit 1 to 5 respectively).
10. The Defendant stated in the witness statement that contrary to the Plaintiff's allegations, he had extensively developed the suit property by installing on it a concrete block making machine to help him produce building blocks for developing the plot, installing a three phase power electricity and depositing 40 tons of ballast and 20 tons of sand plus over 200 pieces of round bars for construction. He added that in the year 2020, he applied to the Plaintiff for approval of building plans so that he could commence construction works but his efforts were frustrated when the relevant department at the Plaintiff's offices failed to approve the plans without giving him genuine reasons only for him to realize later that the Plaintiff had a hidden ulterior motive to repossess the suit property.



11. He further stated that the Plaintiff did not respond to his application but kept quiet and made him believe that that it had deferred the application only to serve him pleadings in this case. That his other reasons for not developing the suit property in enjoyable time were sickness and ultimate demise of his mother sometime in the year 2020. He also cited the COVID-19 pandemic and general economic recession and added that failure to develop the suit property was not deliberate. That he now has the money and that unless he is allowed to develop the suit property, he will suffer substantial damage which the Plaintiff cannot compensate.
12. The Defendant also testified that the car wash that Mr Matende referred to was not on the suit property but on a neighbouring plot. That he did not construct within 24 months and that as of the date of his testimony, he had not constructed any residential house on the suit property.
13. Defence case was then closed, after which parties filed and exchanged written submissions.
14. The Plaintiff filed written submissions dated 24<sup>th</sup> May 2024. It argued that Sections 12 (9) and 31 (2) of the Land Act which gives a lessor the relief of forfeiture on account of breach of special condition to a lease and empower the Court to grant forfeiture. It also relied on Article 60 (1) (c) of the Constitution and contended that land is to be held and used in a productive manner.
15. The Plaintiff referred to special condition numbers 2 and 5 in the lease issued to the Defendant and argued that the Defendant failed to present drawings by 20<sup>th</sup> December 2007 and further failed to develop the property by 20<sup>th</sup> June 2009, as was required under condition 5. It added that the Defendant admitted the non-compliance. Consequently, it contended that it followed due process and met the threshold for grant of forfeiture. It therefore urged the Court to grant it the reliefs sought in the plaint.
16. The Defendant filed written submissions dated 12<sup>th</sup> June 2024. He argued that the Plaintiff's claim that the suit property was undeveloped was incorrect since the property was partially developed and the Plaintiff's own witness confirmed so. He added that the decision to repossess was not transparent and lacked public participation. He wondered why National Land Commission was not involved and whether the process was initiated through a motion in the County Assembly or through executive process. He pointed out that the Plaintiff had continued to receive land rates from him even after initiating the process in 2021. He therefore urged the Court to dismiss the case for want of merit.
17. I have considered the pleadings, evidence, submissions and authorities cited. The issues that arise for determination are whether the Defendant breached the lease and whether the Plaintiff is entitled to the reliefs sought.
18. There is no dispute that the Plaintiff is the lessor while the Defendant is the lessee in respect of the suit property, pursuant to Certificate of Lease dated 20<sup>th</sup> June 2007. The said certificate was issued pursuant to a lease between the parties. The copy of the lease which the Plaintiff produced is undated. Nevertheless, the Certificate of Lease confirms that the said lease was registered on 20<sup>th</sup> June 2007.
19. A perusal of the Plaint shows that the term of the lease that the Plaintiff is accusing the Defendant of breaching is special condition number 2 which provides:

The Lessee shall within six calendar months of the actual registration of the lease submit in triplicate to the Local Authority plans (including block plans showing the positions of the buildings and system of drainage for the disposal of sewage, surface and sullage water) drawings, elevations and specifications of the buildings the Lessee proposes to erect on the land and shall within 24 months of the actual registration of the lease complete the erection of such buildings and the construction of the drainage in conformity with such plans, drawings, elevations and specifications as amended (if such be the case) by the



Local Authority: PROVIDED that notwithstanding anything to the contrary contained or implied by the Trust *Land Act* if default shall be made in the performance or observance of any of the requirements of this condition it shall be lawful for the County Council or any person authorized by the County Council to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the County Council in respect of any antecedent breach of any condition herein contained.

20. Considering that the lease was registered on 20<sup>th</sup> June 2007, special condition number 2 required the Defendant to submit plans by 20<sup>th</sup> December 2007 and to develop the suit property by 20<sup>th</sup> June 2009. Pursuant to special condition number 5, the property was to be used for residential purposes only. It follows therefore that the building contemplated under special condition number 2 was a residential building. There is no dispute that the Defendant neither submitted plans by 20<sup>th</sup> December 2007 nor developed a residential building in the suit property by 20<sup>th</sup> June 2009.
21. From the material that the Plaintiff availed, it is not possible to tell when the Plaintiff embarked on the process of establishing non-compliance with special condition number 2 and eventual repossession. All that we are told is about the appeal process. The Plaintiff's witness conceded that when the Plaintiff's appeal's committee visited the suit property while considering the appeal, the Defendant was fully up to date regarding payment of land rent and land rates. In other words, the Plaintiff had all along been receiving rates and rent from the Defendant. The witness further confirmed that the Defendant had installed water and sewage system, 3 phase power supply, had deposited building materials and installed automatic block making machine on the suit property besides having constructed a permanent toilet thereon. In his testimony, the Defendant explained that the machine was for making building blocks for purposes of constructing a house in compliance with the lease.
22. The Defendant also testified that he submitted building plans to the Plaintiff for approval, but the Plaintiff remained mum on his application only for it to start the repossession process. He also stated that he is ready to develop the suit property if his building plans were approved. The process of receiving, consideration and approval of building plans is purely within the Plaintiff's mandate, under the *Physical and Land Use Planning Act*. Despite the Defendant's protestations, the Plaintiff did not offer any evidence to controvert the Defendant's claims as to submission of plans and lack of action thereon. Development of the nature required in the lease cannot lawfully take place in the suit property without approval of building plans.
23. While the Defendant was clearly in breach of special condition number 2, I do not think the justice of the situation calls for forfeiture, especially where the Plaintiff has failed to explain its actions as regards the Defendant's building plans yet it has consistently received rent and rates from the Defendant since 20<sup>th</sup> June 2007 when the lease was registered. I also bear in mind the Plaintiff's acknowledgement that the Defendant has substantial ongoing activities in the suit property. The Plaintiff is a public entity, and it has a duty to clearly explain and justify its actions and omissions.
24. The parties should regularize their respective situations by the Plaintiff justly considering the Defendant's building plans. If he gets an approval, the Defendant should in turn develop the property in terms of the lease. In saying so, I am alive to the fact that forfeiture and repossession are statutory remedies. Should the Plaintiff establish valid grounds for forfeiture and repossession in the future, it can still approach the court on such new grounds. It must however demonstrate good faith in its actions.
25. In the result, I find no merit in the Plaintiff's case. I dismiss it. Considering the circumstances, I make no order as to costs.



**DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS  
12<sup>TH</sup> DAY OF FEBRUARY 2025.**

**D. O. OHUNGO**

**JUDGE**

Delivered in the presence of:

Mr Wabuko for the Plaintiff

No appearance for the Defendant

Court Assistant: B Kerubo

