



County Government of Kakamega v Chweya (Environment & Land Case E023 of 2022) [2024] KEELC 13915 (KLR) (16 December 2024) (Judgment)

Neutral citation: [2024] KEELC 13915 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E023 OF 2022
DO OHUNGO, J
DECEMBER 16, 2024**

BETWEEN

COUNTY GOVERNMENT OF KAKAMEGA PLAINTIFF

AND

HELLEN MORAA CHWEYA DEFENDANT

JUDGMENT

1. The Plaintiff, a County Government established under Articles 6 (1) and 176 of *the Constitution* of Kenya 2010, moved the Court through Plaint dated 9th May 2022. It averred that pursuant to a lease registered on 23rd November 2016, it leased to the Defendant the parcel of land known as Kakamega Municipality/Block I/623 (the suit property) for a period of 99 years with effect from 1st March 1996. That the Defendant breached special condition number 2 of the lease by failing to develop the suit property.
2. The Plaintiff therefore 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 I/623 within Kakamega Municipality;
 - b. An order that the lease registered on 23rd November, 2016 in favour of the Defendant 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. Although evidence of service of Summons to Enter Appearance was availed, the Defendant neither entered appearance nor participated in the trial.
4. At the hearing, the Plaintiff called Ronald Matende Omwoma who stated that he is a Physical Planner by profession, a Land Administration Expert and a retired Civil Servant having worked for the



government for 27 years as a Land Administration Officer. He adopted his Witness Statement dated 24th April 2024 as his testimony. He also produced copies of the documents listed as item numbers 1 to 6 in the Plaintiff's List of Documents dated 9th May 2022 as well as copies of the documents listed as item numbers item numbers 1 to 6 in the Plaintiff's Supplementary List of Documents dated 24th April 2024, as the Plaintiff's exhibits.

5. Mr Matende stated in the Witness Statement that he was a member 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 30th December 2020 and published in Gazette Volume CXXIII - No. 12 dated 15th 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 in response, the Defendant prepared and served upon the Plaintiff a "Decision Review Request" dated 3rd September 2020 for consideration by the Plaintiff and in which she stated that the suit property remained undeveloped. That the Committee physically inspected the suit property which was undeveloped.
6. Mr Matende further stated that on 16th February 2021, the Plaintiff published a notice in the daily newspapers inviting affected persons to pick suitable hearing dates for the consideration of their appeals and that the Defendant was invited for the Committee hearing on 6th April 2021 wherein she was represented by Agnes Mases Chweya. He added that the Committee considered the Defendant's appeal and thereafter made a recommendation advising the Plaintiff to repossess the suit property on account of nondevelopment. That the Plaintiff then issued to the Defendant a "Notice for Repossession" through letter dated 11th January 2022.
7. The Plaintiff's case was then closed. The Defence case was equally closed since there was no appearance for the Defendant.
8. Parties were then ordered to file and exchange written submissions. The Plaintiff filed submissions dated 24th May 2024. The Defendant did not file any.
9. The Plaintiff referred the Court to Sections 12 (9) and 31 (2) of the Land Act and argued that it is entitled to the remedy of forfeiture owing to breach of special condition number 2 in the lease which stipulated that the suit property be developed within Twenty Four months. The Plaintiff further argued that the Defendant breached the special condition on 23rd November 2008.
10. The Plaintiff also relied on Article 60 (1) of Constitution which provides that land shall be held, used and managed equitably, efficiently and productively. The Plaintiff further contended that it gave the Defendant ample time to give reasons for failure to develop the suit property, but the Defendant failed to give any valid reason despite acknowledging that she had not developed the suit property as per the terms of the lease. The Plaintiff therefore contended that it had established its case and urged the Court to grant it the reliefs sought.
11. I have considered the pleadings, evidence, submissions and authorities cited. The issues that arise for determination are whether there was breach and whether the Plaintiff is entitled to the reliefs sought.
12. The Plaintiff's case is unchallenged. Still, the Plaintiff must establish its case. From the material on record, it is not contested that a lease dated 6th August 2012 in respect of the suit property was issued to the Defendant and duly signed by her on 23rd November 2016. The lease was registered on 23rd November 2016 and a Certificate of Lease dated 24th November 2016 issued in the Defendant's name.



13. A perusal of the lease reveals that it has a section titled “Special Conditions.” Special Condition number 2 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.

14. The Plaintiff’s case is that the Defendant breached Special Condition number 2 by failing to submit plans within six calendar months of the registration of the lease and further by failing to develop the suit property within twenty four months of the registration of the lease. The Defendant has not offered any evidence to challenge the Plaintiff’s case. On the contrary, I note that the Defendant submitted a “Decision Review Request” dated 3rd September 2020 in which she stated that she submitted drawings for approval on 8th May 2019 to enable her to “start construction on the plot.”
15. The lease having been registered on 23rd November 2016, Special Condition number 2 required the Defendant to submit plans by 23rd May 2017 and to develop the suit property by 23rd November 2018. The Plaintiff has demonstrated that the Defendant neither submitted plans by 23rd May 2017 nor developed the suit property by 23rd November 2018. I am satisfied that the Defendant breached Special Condition number 2 of the registered lease. Consequently, the Plaintiff is entitled to the reliefs sought.
16. In the result, I enter judgment in favour of the plaintiff as follows:
- a. A declaration is hereby issued that the Defendant breached special condition number 2 of the lease dated 6th August 2012 and registered on 23rd November 2016, requiring development of title number Kakamega Municipality/Block I/623 within Kakamega Municipality.
 - b. An order is hereby made that the lease registered on 23rd November 2016 in favour of the Defendant is forfeited on account of breach of the special condition.
 - c. Considering that the Plaintiff did not pray for costs of the suit, I make no order as to costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF DECEMBER 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Wabuko for the Plaintiff

No appearance for the Defendant



Court Assistant: M Nguyayi

