



24 Key Legal Principles From the Supreme Court in

Kwanza Estates Limited v. JKUAT

Every Litigation Lawyer/Litigant Should Know



A. CONTEXTUAL OVERVIEW

Every Supreme Court case tells its own story, but in [*Kwanza Estates Limited v Jomo Kenyatta University of Agriculture and Technology \[2024\] KESC 74 \(KLR\)*](#), the Court goes beyond storytelling to clarify 23 key legal principles that every litigation lawyer must understand. Cases like this one are a goldmine for litigation lawyers, offering invaluable lessons—from the mistakes made by parties to the skillful advocacy by counsel.

Being the apex court, the Supreme Court sometimes extends grace in explaining certain authorities and legal principles. This grace is not merely a concession but an opportunity that can save you years of trial and error in the field. By engaging with the Court's reasoning and understanding the jurisprudence, litigation lawyers gain insights that would otherwise require decades of experience to master. That is to say, reading presents from the court can be a shortcut for those serious about mastering the craft of litigation.

This particular case brings to the fore the Court's examination of key aspects of contract law and the enforcement of breach of contract some of which are highlighted below.

B. THE TWENTY-FOUR (24) PRINCIPLES EITHER MENTIONED OR EXPLAINED IN THE CASE.

1. Sanctity of Contracts (*Pacta Sunt Servanda*)

Principle: Agreements freely entered into by parties must be honored and upheld by the courts unless extraordinary circumstances render them impossible to perform.

Key Points

- ❖ Courts are reluctant to interfere with contracts unless required by justice or equity.
- ❖ Parties should live with the consequences of their agreements unless the doctrine of frustration or force majeure applies.

Example in the Case: The petitioner argued that the lease had no break clause and should bind the parties until the agreed term.

Dispute Avoidance/ Litigation Tip: Always advise clients to anticipate future risks and provide for contingencies in their agreements.

2. Holistic Interpretation of Contracts

Principle: Contracts should be read as a whole to discern the intentions of the parties, rather than interpreting clauses in isolation.

Key Points:

- ❖ Courts examine all provisions collectively.

- ❖ Ambiguities are resolved against the drafter (contra proferentem rule).

Example in Case: The Court of Appeal found that the phrase “or sooner determination” implied an option for early termination when read in context.

Dispute Avoidance/ Litigation Tip: Draft contracts with clarity and ensure consistency among clauses to avoid disputes over interpretation.

3. Doctrine of Frustration

Principle: A contract is discharged when an unforeseen, supervening event renders performance impossible or radically different from what was contemplated.

Key Elements

- ❖ The event must not be self-induced.
- ❖ The event must fundamentally alter the contract’s purpose.
- ❖ Financial hardship alone is insufficient.
- ❖ Temporary difficulties do not qualify as frustration.

Example in the Case: The Court held that COVID-19 lockdowns did not constitute frustration because the respondent resumed operations elsewhere.

Case Law Cited: *Davis Contractors v Fareham UDC (1956)*; *Charles Mwirigi Miriti v Thananga Tea Growers Sacco Ltd (2014)*.

Dispute Avoidance/ Litigation Tip: Build detailed evidence to show how the event made performance impossible.

4. Force Majeure as a Contractual Doctrine

Principle: Courts cannot impose a force majeure clause if it is not included in the contract.

Key Points

- ❖ Force majeure must be explicitly stated in contracts.
- ❖ Without such a clause, frustration is the only recourse.

Example in the Case: The lease lacked a force majeure clause, leading to reliance on frustration.

Dispute Avoidance/ Litigation Tip: Include detailed force majeure clauses in contracts to safeguard clients.

5. Force Majeure and Its Distinction from Frustration

Principle: Force majeure clauses, unlike frustration, must be explicitly included in contracts to excuse performance due to extraordinary events.

Key Points:

- ❖ Force majeure encompasses natural and man-made events like floods, wars, or strikes.
- ❖ Without a force majeure clause, only the doctrine of frustration applies.

Example in Case: The lease lacked a force majeure clause, so frustration was invoked instead.

Dispute Avoidance/ Litigation Tip: Draft detailed force majeure clauses specifying covered events and procedural requirements.

6. Temporary vs. Permanent Impossibility

Principle: Temporary hardship or impossibility does not discharge contracts unless it renders performance entirely meaningless.

Example in Case: The court noted that the pandemic caused temporary financial strain but did not permanently preclude the respondent from operating.

Dispute Avoidance/ Litigation Tip: Distinguish between short-term disruptions and long-term impossibility when advising clients.

7. Principle of Restitutio in Integrum (Restoration to Original Position)

Principle: Remedies aim to restore parties to their pre-contractual position in case of frustration.

Key Points:

- ❖ Partial frustration is not recognized in common law.
- ❖ Frustration terminates the contract immediately and fully.

Example in the Case: The respondent sought to restore the premises as part of discharging its obligations.

Dispute Avoidance/ Litigation Tip: Ensure remedies align with the principle of fairness when crafting settlement terms.

8. Legal Implications of Acts of God on Contracts

Principle: Unfortunate and unforeseen events like COVID-19 can be considered frustrating if they fundamentally alter the purpose or practicability of the contract.

Key Considerations:

- ❖ The court examined comparative jurisprudence globally to assess the impact of the COVID-19 pandemic.
- ❖ Temporary lockdowns were insufficient for frustration unless they permanently disrupted operations.

Example in the Case: The court held that the respondent's financial hardship from the pandemic did not justify termination.

Dispute Avoidance/ Litigation Tip: Prepare detailed evidence of how the unfortunate events you seek to rely on specifically affected performance.

9. Importance of Clear Break Clauses

Principle: Break clauses allow parties to terminate contracts early under specific conditions. Without them, termination is governed by contract law principles.

Key Points

- ❖ Break clauses must specify notice periods and procedures.
- ❖ Ambiguities may lead to disputes and litigation.

Example in the Case: The petitioner argued the absence of a break clause made the lease binding for its full term.

Dispute Avoidance/ Litigation Tip: Draft unambiguous break clauses to provide flexibility while minimizing disputes.

10. Burden of Proof in Contractual Disputes

Principle: The party alleging frustration or force majeure must prove the event occurred, its impact, and its unforeseeability.

Key Points

- ❖ Evidence must demonstrate impossibility, not mere difficulty.
- ❖ Self-induced frustration is not excusable.

Example in the Case: The respondent was unable to show absolute impossibility of performance.

Dispute Avoidance/ Litigation Tip: Gather robust evidence to substantiate claims of frustration.

11. Comparative Analysis in Legal Reasoning

Principle: Courts can use international case law as persuasive authority, especially in novel issues like the impact of COVID-19.

Example in Case: The court referred to decisions from Canada, the United States, South Africa, and Ireland to evaluate how jurisdictions approached pandemic-related contractual disputes.

Litigation Tip: Stay abreast of global legal developments to strengthen arguments in unprecedented cases. Leverage global insights while tailoring arguments to domestic legal frameworks.

12. Principle of Freedom to Contract

Principle: Parties are free to structure their contracts as they wish, and courts will enforce the terms as written unless they contravene public policy or statutory law.

Application in the Case: The court respected the terms of the lease agreement, emphasizing that parties must bear the consequences of their bargains, including the absence of a force majeure clause.

Dispute Avoidance/ Litigation Tip: Tailor contracts to address potential risks and clearly define each party's obligations.

13. Equitable Doctrine: No Escape from a Bad Bargain

Principle: Courts do not allow parties to escape contracts simply because they have become unprofitable or unfavorable.

Example in the Case: The court held that financial hardship due to declining enrollment and COVID-19 did not absolve JKUAT from its contractual obligations.

Dispute Avoidance/ Litigation Tip: Encourage clients to consider all contingencies, especially in long-term agreements.

14. Force Majeure and the Concept of Implied Terms

Principle: In the absence of an express force majeure clause, courts do not infer one unless explicitly agreed upon by the parties.

Example in the Case: The court refused to rewrite the lease to include a force majeure clause, reinforcing the need for explicit contractual terms.

Dispute Avoidance/ Litigation Tip: Negotiate and draft detailed boilerplate provisions to safeguard against unforeseen events.

15. Strict Interpretation of Economic Hardship

Principle: Economic hardship or financial strain alone does not justify termination or modification of a contract unless it constitutes absolute impossibility.

Application in the Case: JKUAT's reliance on declining student numbers and cash flow challenges was insufficient to invoke frustration.

Dispute Avoidance/ Litigation Tip: Collect robust evidence to distinguish between hardship and impossibility.

16. Doctrine of Self-Induced Frustration

Principle: A party cannot rely on frustration if they contributed to or caused the frustrating event.

Example in Case: JKUAT's financial difficulties partly stemmed from prior policy changes and its reliance on a single revenue stream (self-sponsored students).

Dispute Avoidance/ Litigation Tip: Always analyze the actions of your client to determine whether frustration can be credibly invoked.

17. Materiality in Lease Agreements

Principle: Material terms of a lease (such as rent obligations and termination provisions) must be respected unless mutually amended.

Example in Case: The court enforced rent obligations up to the termination date and dismissed claims for rent beyond the vacated period.

Dispute Avoidance/ Litigation Tip: Clearly define material terms and avoid ambiguities to minimize disputes.

18. The Principle of Unjust Enrichment

Principle: A party cannot seek to benefit unfairly from a contractual arrangement at the expense of the other party.

Example in Case: The Court of held that requiring JKUAT to pay for the unused lease period would amount to unjust enrichment for Kwanza Estates.

Dispute Avoidance/ Litigation Tip: Craft claims and defenses to highlight fairness and equity, especially when seeking damages.

19. Application of the Contra Proferentem Rule

Principle: Ambiguities in a contract are resolved against the party that drafted it.

Example in Case: The court interpreted the term “or sooner determination” against Kwanza Estates, the drafter of the lease.

Dispute Avoidance/ Litigation Tip: Avoid vague or conflicting language in contracts to mitigate risks of unfavorable interpretations.

20. Judicial Reluctance to Rewrite Contracts

Principle: Courts avoid modifying or rewriting contractual terms to favor one party unless justice demands intervention.

Example in Case: The court emphasized its role in interpreting and enforcing contracts, not creating new terms.

Dispute Avoidance/ Litigation Tip: Anticipate potential disputes during contract drafting to reduce reliance on judicial discretion.

21. Burden of Proof and Evidentiary Standards

Principle: The burden of proof lies with the party claiming relief, and they must meet the required evidentiary standard.

Example in Case: JKUAT had to prove that COVID-19 fundamentally altered the performance of the lease but fell short of demonstrating absolute impossibility.

Dispute Avoidance/ Litigation Tip: Develop comprehensive evidence to support or rebut claims of frustration, force majeure, or breach.

22. Principle of Commercial Certainty

Principle: Courts uphold contractual certainty to ensure stability and predictability in commercial transactions.

Application in Case: The court underlined that contracts should only be terminated or modified under exceptional circumstances.

Dispute Avoidance/ Litigation Tip: Avoid introducing speculative or overly broad claims to preserve commercial certainty.

23. The Role of Consent Judgments

Principle: Consent judgments are binding and enforceable but do not preclude subsequent disputes over related issues.

Example in Case: The parties agreed on restoration costs, but other aspects of the lease remained contested.

Dispute Avoidance/ Litigation Tip: Ensure consent judgments are precise in scope to avoid future conflicts.

24. The Measure of Damages in Breach of Contract

Principle: General damages for breach of contract are not awarded in addition to quantified or special damages. The measure of damages is determined by the principle established in **Hadley v. Baxendale (1854)**, which limits recovery to losses arising naturally from the breach or those reasonably foreseeable at the time the contract was formed.

Examples in Case Law

- ❖ **Dharamshi v. Karsan [1974] EA 41:** Established the principle in East Africa.
- ❖ **Postal Corporation of Kenya v. Gerald Kamondo Njuki t/a Geka General Supplies [2021] eKLR:** Reaffirmed the non-award of general damages alongside special damages.
- ❖ **Standard Chartered Bank Limited v. Intercom Services Ltd & Others [2004] eKLR:** Highlighted the need for foreseeability and connection to the breach.
- ❖ **Coast Bus Service Ltd v. Sisco Murunga Ndanyi & Others (Civil Appeal No. 192 of 92):** Reinforced the necessity of pleading and proving special damages.

Dispute Avoidance/Litigation Tip

In breach of contract cases, ensure that losses claimed are precisely quantified and backed by evidence. Avoid reliance on general damages for breach, as they are not permissible under established jurisprudence. Always clearly plead special damages in your pleadings to maximize recovery.

C. ABOUT THE AUTHOR

The Author, [Benson Odiwuor Otieno](#), is a Lawyer, Legal Researcher, Legal Compliance & Dispute Avoidance Strategist, Litigation Strategist & Draftsman.

What He Does in Contract Dispute Avoidance

Consider having your contracts reviewed by an enthusiastic litigation lawyer, like Odiwuor, who is naturally inclined to spot those pesky pitfalls and ensure your contracts have the flexibility and clarity they desperately need. With such a review, you will not just have a legally sound contract, but one that can actually survive the unpredictable chaos of the real world.

What he does as Litigation Strategist & Draftsman

Cases are won based on the strength of pleadings—the paperwork submitted to the court. This work is typically done behind the scenes in the chambers of the advocate or the litigant. Very few cases are won purely through the exchange of words in hearings with pleadings already filed. Benson specializes in drafting, reviewing pleadings, and advising on the strategic steps necessary to build a compelling case. His focus is on ensuring that every document submitted to court is not just legally sound, but strategically aligned to maximize the chance of success.

What He Does as a Legal Researcher

As a legal researcher, he explores legal precedents, statutes, and case law to uncover every relevant detail that could influence your case or strategy. Whether you are gearing up for a trial or seeking answers to complex legal questions, his meticulous research guarantees you are not overlooking any critical information. With a wealth of up-to-date legal knowledge, he helps you navigate the complexities of the law, to ensure that you are always a step ahead.

Contact Benson Odiwuor

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