



Keiro & another (Suing as the Chairman and the Secretary of Bellevue Estate Development Association) v Lapfund & 7 others (Environment & Land Case E328 of 2022) [2023] KEELC 20299 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20299 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E328 OF 2022
EK WABWOTO, J
SEPTEMBER 28, 2023**

BETWEEN

**RICHARD KEIRO 1ST PLAINTIFF
STEVEN BAYLEY 2ND PLAINTIFF
SUING AS THE CHAIRMAN AND THE SECRETARY OF BELLEVUE ESTATE
DEVELOPMENT ASSOCIATION**

AND

**LAPFUND 1ST DEFENDANT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 2ND
DEFENDANT
COUNTY GOVERNMENT OF NAIROBI 3RD DEFENDANT
PS MINISTRY OF ENVIRONMENT 4TH DEFENDANT
PS MINISTRY OF LANDS 5TH DEFENDANT
KENYA URBAN ROADS AUTHORITY (KURA) 6TH DEFENDANT
KENYA AIRPORT AUTHORITY 7TH DEFENDANT
THE HON ATTORNEY GENERAL 8TH DEFENDANT**

RULING

1. This ruling is in respect to two applications dated July 6, 2022 and March 24, 2023. The notice of motion application dated July 6, 2022 was accompanied by affidavits sworn by Richard Keiro and Steven Bayley. The plaintiffs sought the following orders:



- i. ...Spent...
 - ii. That this court be pleased to issue stay of orders and/or injunction against any planning, preparation and/or commencing of development by the 1st defendant /respondent herein, upon plot numbers Nairobi/Block 98/104, Nairobi/Block 98/105, Nairobi Block 98/106, Nairobi/Block 98/107 and Nairobi/Block 98/108 until the suit herein is heard and determined.
 - iii. That the costs of this application be costs in the cause.
2. The application was made on the grounds that:
 - i. The 1st defendant has acquired certificates of title to the plots herein above cited
 - ii. The parcels of land in respect of which the 1st defendant/respondent has acquired title to, have been part of an access road for use by occupants of Bellevue Estate and playground for Bellevue Estate children.
 - iii. The 1st defendant has carried out preparatory steps towards commencing construction/development of 2300 apartments upon land amounting to approximately 5 acres.
 - iv. Upon development of proposed apartments a population of about 10,000 persons will be added to the community of people occupying the area.
 - v. The sudden enlarging of the population in occupation of a small area will lead to enhanced volumes required in terms of water for use and sewerage service in the area.
 - vi. Blocking only provided access road to create space for development by the 1st defendant means that vehicles to and from Bellevue Estate and the now development will suffer chock hold in and or out of their residences.
 - vii. The intended development is a threat to the environment as at now and into the future due to consequences of population explosion in a sudden manner, within a small space.
 - viii. The proposed development will breach all international requirements for sustainable development because it will grievously injure the environment for the current generation in occupation of Bellevue Estate and also derogate the environment for use by future generation.
3. The application dated March 24, 2023 sought for stay and injunction orders stopping construction works currently being carried out by the 1st defendant in LR No 209/8790. The said application was premised on the grounds that;
 - a. That the 1st defendant purported certificate of title upon which they are purportedly carrying out construction are fake and/or non-existent.
 - b. That the 1st defendant is committing criminal trespass.
 - c. That unless this court issues orders estopping current construction works upon land belonging to the plaintiffs, the court will be aiding and abetting commission of a crime.
 - d. That the grant of injunction prayed will not prejudice the defendants because any authority condoning or granting approval for the illegality currently being perpetuated on land will also be engaging in crime contrary to public interest.
4. The 1st defendants filed submissions dated July 10, 2023 in which it was submitted that the applications were baseless. It was argued that all necessary approvals were obtained from the relevant bodies



including NEMA, Kenya Airports Authority (KAA), Kenya Civil Aviation Authority (KCAA) and Nairobi City County Government. It was further argued that the plaintiffs would not suffer irreparable harm since all negative impacts had been mitigated and addressed in various approvals and permits obtained. On a balance of convenience, the 1st defendant argued to have invested huge sums of monies with the project estimated to cost approximately Kshs 11 billion and further delay would mean its members may not get any return on their investment.

5. The 2nd defendant filed a replying affidavit sworn by Zephaniah Ouma dated April 4, 2023 and submissions dated June 13, 2023, in which it was argued that an environmental impact assessment had been undertaken and a license approved in favour of the 1st respondent. It was further submitted that the right course of action available to the plaintiffs was outlined at section 129 of *EMCA* through an appeal to the National Environment Tribunal which in this instance had not been done. In response to the application dated March 24, 2023, it was submitted that matters of land ownership and trespass did not fall within the jurisdiction of the 2nd defendant and for that reason, they would not participate in the application.
6. The 3rd defendant filed grounds of opposition dated June 5, 2023 on the grounds. The grounds of opposition were to the effect that;
 - i. That the court lacked jurisdiction as the issues raised should be determined before the liaison committee.
 - ii. The application offends the *Physical Planning Act*, section 10(2)(a) and (e) that any and all complaints shall be heard at first instance by the Liaison Committee
 - iii. The application violates the provisions of section 129 and 130 of the *Environmental Management and Coordination Act, 1999*(EMCA)
 - iv. The application is misconceived, frivolous, inconsequential and bad in law and therefore does not meet the threshold for granting injunctions.
7. I have considered the applications, grounds of opposition filed and the respective submissions of the parties. In my view, the issues that arise for determination are:
 - a. Whether the court has jurisdiction to determine the suit?
 - b. Whether the plaintiffs have met the threshold to be granted the interim injunction orders?
 - c. Who should bear cost of the applications?
8. With regards to the issue of jurisdiction, it is a well- established principle that jurisdiction is the anchor of any suit. This is outlined in the land mark case of *Owners of Motor Vessel “Lillians” v Caltex Oil Kenya Ltd* (1989) KLR where it was held;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it, the moment it held the opinion that it is without jurisdiction.”
9. My perusal of the substantive application confirms that the bone of contention of the suit is hinged on the ownership of the suit premises and the consequent rights accruing from the ownership of the land. This court is guided by the provisions of article 162 (2) (b), as read with articles 165 (5) (b) of the *Constitution*, 2010, and section 13 of *Environment and Land Court Act* No 19 of 2011 which confers



unlimited original and appellate jurisdiction in disputes relating to “the environment and the use and occupation of, and title to land.”

10. Needless to say, the prayers sought in the applications call for the court to determine whether principle of exhaustion of remedies has been upheld. Section 61(3) and (4) of the *Physical and Land Use Planning Act* (No 13 of 2019) establish an appeal mechanism for aggrieved:

“(3) An applicant or an interested party that is aggrieved by the decision of a county executive committee member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee within fourteen days of the decision by the county executive committee member and that committee shall hear and determine the appeal within fourteen days of the appeal being filed.

(4) An applicant or an interested party who files an appeal under sub-section (3) and who is aggrieved by the decision of the committee may appeal against that decision to the Environment and Land Court.”

11. Section 129 (1) of the *Environmental Management and Co-ordination Act* provides that: -

1. Any person who is aggrieved by—

(a) a refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;

(b) the imposition of any condition, limitation or restriction on his licence under this Act or regulations made thereunder

(c) the revocation, suspension or variation of his licence under this Act or regulations made thereunder;

(d) the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;

(e) the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder, may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the tribunal in such manner as may be prescribed by the tribunal”.

12. The aforementioned provisions set out the jurisdiction of both the County Physical Liaison Committee and the National Environment Tribunal. It is apparent that the two bodies exercise a limited jurisdiction as set out in their respective statutes.

13. While I may agree with the defendants that the plaintiffs ought to have pursued their cause of action at the National Environment Tribunal and the County Physical Liaison Committee, the prayers sought in the plaint speaks otherwise. In the plaint filed herein, the plaintiffs have sought for cancellation of the 1st defendants certificate of title among other reliefs. In my view, the National Environment Tribunal and the Physically Liaison Committee have no jurisdiction to grant such a relief. The same is a preserve of this court.

14. From the evidence presented, it is clear that all approvals and licences in respect to the 1st defendants project were obtained and granted and to date have not been challenged by the plaintiffs via the available mechanisms and as such no prima facie case has been established to warrant the grant of the injunctive orders sought. In view of the foregoing I find that both applications filed by the plaintiffs are unmerited, I will however decline to struck out the suit for want of jurisdiction.



15. Consequently, the applications dated July 6, 2022 and March 24, 2023 are unmerited and the same are dismissed with no orders as to costs.

16. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

N/A for the Plaintiffs/Applicants.

Mr. Tugee for the 1st Defendant/Respondent and also h/b for Ms. Miyai for the 2nd Defendant/Respondent.

Ms. Chepkoech for the 3rd Defendant/Respondent.

N/A for the 4th, 5th, 6th, 7th and 8th Defendants/Respondents.

