



Kimani & 2 others (Suing as the administrators of the Estate of Stephen Kimani Mihu - Deceased) v Director Physical Planning County Government of Kiambu (Environment & Land Case 3 of 2020) [2023] KEELC 21135 (KLR) (31 October 2023) (Judgment)

Neutral citation: [2023] KEELC 21135 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 3 OF 2020
JG KEMEL, J
OCTOBER 31, 2023**

BETWEEN

**EDITH NDUATA KIMANI 1ST APPLICANT
JOHN MIHIU KIMANI 2ND APPLICANT
PATRICK KANGERE KIMANI 3RD APPLICANT
SUING AS THE ADMINISTRATORS OF THE ESTATE OF STEPHEN KIMANI
MIHIU - DECEASED**

AND

**DIRECTOR PHYSICAL PLANNING COUNTY GOVERNMENT OF
KIAMBU RESPONDENT**

JUDGMENT

1. This suit was initially filed by Stephen Kimani Mihu. Upon his death he was substituted with the Applicants with leave of the Court issued on 11/11/2021. (See Grant of Letters of Administration issued on 29/9/2021).
2. Vide an amended Notice of Motion dated 16/11/2021 brought under Order 51 and 53 rule 3 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act, the Applicants sought the following orders:-
 - a. THAT the Applicant be granted orders of certiorari for quashing the decision of the Director, Physical Planning County Government of Kiambu of 22nd May 2020 that revoked the Applicant's development plans for land parcel No. Ruiru/Township/20 (suit land).
 - b. The costs of the application be provided for.



3. The application is premised on the grounds annexed thereto as follows:-
 - a. That the original Applicant is the registered proprietor of land parcel Ruiru Township/20.
 - b. That the original Applicant applied and obtained building development plans from the Respondent on 28th June 2019.
 - c. That on 22nd May 2020 the Respondent unreasonably, illegally without jurisdiction and without affording the original Applicant revoked the said approvals.
 - d. That the original Applicant has expended millions of shillings in preparing for the development of the multi-storeyed building.
4. In support of the application Stephen Kimani Mihiu averred that he is the registered proprietor of the suit land having bought the same in 2012. That in 2019 he obtained approvals for building development plans from the Respondent, paid rates, engaged professionals to design a multi storeyed building in the process spending colossal sums of money.
5. He stated that on 22nd May 2020 the Respondent illegally proceeded to revoke the development plans without affording him a hearing. That the unlawful action of the Respondent has jeopardised his plans to proceed with the construction of the building. That if the revocation is not reversed he stands to suffer substantial loss inter alia that the reasons for the revocation are not founded in law.
6. The Applicant reiterates that he is the registered proprietor of the suit land his interest having been determined by Court in ELC JR 11 of 2017 that there are no demolitions on the land and that he had obtained change of user for the property.
7. The application is opposed vide the Replying Affidavit of Jane Mwaniki sworn on 21/9/2020. She introduced herself as Director Physical and Land Use Planning in the Respondent's office.
8. In detailing the history of the dispute, she admitted that their office approved development permission and change of user sometime in 2019. However, around the month of May, 2020 they received a complaint from one of the tenants stating that unknown persons had trespassed onto her house with a view to demolish it for purposes of putting up a multi storey building on the land where she had been a tenant of the Kiambu County Government since 1970's. On receipt of the complaint the site was visited by the Respondent's officers who established that the allegations were true. Soon thereafter the Applicant filed the suit against the tenant SPMCC No. 49 of 2020 alleging a claim of trespass against the suit land. That it was further established that the planning brief given by the Applicants was not for the suit land that the change of user and approved development plans were based on erroneous Part Development Plan (PDP). It was also established that the Applicants did not disclose the existing structure (house) on the land as is required for development applications.
9. The deponent also averred that the approvals were issued by some officers of the County Government without following the laid down mechanisms or due diligence. That the officers have been suspended from service and disciplinary action taken against them. She also stated that according to the survey plan FR 73/197 the suit land is indicated as No. 125/120 and not Ruiru Township/20. That the suit land according to the survey report dated 1/9/2020 shows that it sits on a public utility land with Government Housing built as early as 1970s by the then Kiambu County Council. It was further stated that the suit land is part of Kangani Estate that was handed over to Ruiru Municipal with Government Housing by the then Kiambu County Council. Moreover, it was stated that due process was not followed in converting public land to private use. That there are no minutes or approval by the full Council approving the issuance of allotment letters from the then Ruiru Municipal Council



for the suit land. In any event, she avowed that the PDP is yet to be approved by the Ministry of Lands and Physical Planning.

10. The deponent further stated that the County Government was not a party to ELC JR No. 11 of 2017. The Court was urged to find that the suit land is public property which ought to be protected for public common use.
11. The parties elected by way of written submissions. The Court then directed the parties to file written submissions by 13/9/2023 and proceeded to reserve the date for Judgment.
12. By the time of writing this Judgment none of the parties have filed the said submissions. The Court therefore determined the matter on the basis of what was placed before it.

Analysis and determination

13. The key issue for determination is whether the Applicants are entitled to the orders of certiorari. Secondly who meets the cost of the application.
14. For the purpose of this application the Court notes that the Applicants became registered owner of the suit land on 14/1/2016. It is commonly acknowledged that the Respondent granted development approvals to the Applicants for the construction of the multi storey building in 2019. It is also commonly acknowledged that the said approvals were revoked in 2020 by the Respondent through a letter dated 22/5/2020 addressed to the Applicant. It was averred by the Respondent that the said revocation of the development permission was triggered by a complaint by a tenant of the Respondent. Inter alia the Applicants were accused of non disclosure of the existing structures on the land and further that the land was public land. It was also argued that there were discrepancies on the description of the land and the absence of a PDP further compounded the issue, noting that a PDP is critical in land allocation without which a letter of allotment would be illegal/incomplete.
15. According to the record, the Applicants were served with a Notice dated 24/5/2020 requiring them to stop any further development works on the ground that the development approval had been suspended.
16. It is on record that following the suspension / revocation of development approvals the Applicants filed an appeal before the County Physical & Land Use Planning Liaison Committee dated 29/5/2020. It has not been explained by the Applicants what became of this Appeal.
17. That said under the Physical Land Use Planning Act No. 13 of 2019 the County Physical and Land Use Liaison Committee has been established for the purpose of hearing and determining of appeals against decisions made by the Planning authority with respect to physical land use and development plans in the county as well as hear appeals with respect to enforcement notices.
18. The Court has taken judicial notice of the existence and operationalisation of the Liaison Committee in Kiambu County. It is the view of the Court that the Applicants having elected to submit themselves before the County Physical and Land Use Liaison Committee, the Applicants have therefore shown interest in asking the adjudicative forum to look into the merits of the dispute.
19. It is now a constitutional tenet under Article 47 of *the Constitution* of Kenya that every person has the right to administrative action that is expeditious efficient lawful; reasonable and procedurally fair.



20. Under Section 9(2) of the *Fair Administrative Actions Act* no administrative relief shall be granted unless the internal mechanisms have first been exhausted. It reads as follows;
- “The High Court or a Subordinate Court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.”
21. This above position of the law was espoused by the Supreme Court in the case of *Kibos Distillers Limited & 4 Others Vs. Benson Ambuti Adega & 3 Others* [2020] eKLR the Court emphasized that, where appropriate, the superior Courts should remit the dispute to the relevant bodies for adjudication.
22. The issues raised to the Respondents as to whether the suit land is public land are issues that cannot be adjudicated in a Miscellaneous Application for Judicial Review and in the view of the Court these are matters reserved ordinarily for Civil Suits in line with jurisdiction of the Environment & Land Court.
23. For the above reasons the Court finds that orders of mandamus are not available to the Applicants.
24. In the end the Applicants application is found unmeritorious and the same is dismissed.
25. Each party to bear their costs.
26. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 31ST DAY OF OCTOBER, 2023 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Dida for Plaintiff/Respondent

Mararo for Defendant/Applicant

Court Assistants – Phyllis & Lilian

