



REPUBLIC OF KENYA



**Kamau v Califam Holdings Limited & another (Environment and Land Appeal E012 of 2024) [2025] KEELC 402 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 402 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E012 OF 2024  
AA OMOLLO, J  
JANUARY 30, 2025**

**BETWEEN**

**RAYMOND KAMAU ..... APPELLANT**

**AND**

**CALIFAM HOLDINGS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER BUILT ENVIRONMENT AND  
URBAN PLANNING ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal against the Determination of the Nairobi County Physical and land use planning liaison Committee delivered on 9<sup>th</sup> May 2024 in Appeal No. 011 of 2024 Raymond Kamau versus Califam Holdings Limited & County Executive Committee Member Built Environment and Urban Planning)*

**JUDGMENT**

1. The Appellant filed this appeal vide a memorandum dated 13<sup>th</sup> May 2024 seeking for the following orders:
  - a. The appeal be allowed in its entirety.
  - b. The Determination of the Nairobi County Physical and land use planning liaison Committee delivered on 9<sup>th</sup> May 2024 in Appeal No. 011 of 2024 *Raymond Kamau v Califam Holdings Limited & County Executive Committee Member Built Environment and Urban Planning* be set aside.
  - c. Cost of this appeal herein be awarded to the Appellant.
  - d. Any other relief that this Honorable Court deems fit and just to grant.



2. The Appeal is based on the grounds that the Nairobi County Physical and Land Use Planning Liaison Committee erred both in law and in fact by failing to consider the evidence provided by the Appellant in its entirety and by dismissing the Appellant's complaint summarily. The Appeal is prosecuted by way of written submissions. The Appellant and the 1<sup>st</sup> Respondent filed submissions both dated 23<sup>rd</sup> July 2024.
3. The Appellant submitted that the appeal stemmed from the determination of an appeal lodged with the County Physical and Land Use Planning Liaison Committee against the decision granting developments permission to the 1<sup>st</sup> Respondent over Le pax 58 on Lr No.214/186 (Nairobi Block 8/20) situated in Old Muthaiga Estate, Karura in Westlands Sub-County herein after referred to as "the project".
4. He outlined brief facts that he had filed an appeal on 23<sup>rd</sup> April 2024 before the Nairobi County Physical and Land use Planning Liaison Committee herein after referred to as "the Committee", by way of statement of Appeal dated 22<sup>nd</sup> April 2024 in opposition to the decision of the County Executive Committee member made on 23<sup>rd</sup> December 2023 granting the 1<sup>st</sup> Respondent development approvals for the project. That the appeal was premised on the ground that the Respondent did not follow due procedure in obtaining approvals for construction nor adhere to the City building guidelines in acquiring permissions for the development of the project.
5. The Appellant submitted that he sufficiently discharged his legal and evidentiary burden placed as required under Section 107(1)(2) of the *Evidence Act*. That the Committee took the approval at face value rather than its validity considering its sensitivity and that development approvals should be treated with the depth and gravity they deserve.
6. For their part, the Respondents contended that the present Appeal lacks merit in its entirety and as stated in the Committee's determination dated 9<sup>th</sup> May 2024, the Appellant failed to provide evidence of actual malfeasance, fraud, anomaly, breach of procedure or anything at all to shift the burden of proof. That the 1<sup>st</sup> Respondent demonstrated that they procured development permission from the 2<sup>nd</sup> Respondent which was produced before the Committee and was considered as sufficient evidence.
7. The 1<sup>st</sup> Respondent stated that the Appellant did not produce any evidence disputing the authenticity of the documents nor did he specifically state the principles and/or guidelines that the 1<sup>st</sup> Respondent failed to adhere to under the provisions of the *Physical and Land Use Planning Act* and the *Urban Areas and Cities Act*.
8. Further, the 1<sup>st</sup> Respondent stated that the Appellant failed to adhere to the timelines expressly set out in Section 61 (3) of the *Physical and Land Use Planning Act* 2019 which stipulates that 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.
9. It is their submission that the County Executive Committee Member's decision granting the 1<sup>st</sup> Respondent approval for development permissions was issued on 19th December 2023. The Appellant being dissatisfied with the said decision lodged an appeal on 23rd April 2024 with the County Physical and Land Use Planning Liaison Committee, which was over 4 months after the granting of the approval, thus beyond the stipulated 14 days.



## Analysis and Determination:

10. This is an appeal by the Appellant against the decision of the committee dismissing his appeal of the decision of County Executive Committee Member issuing approval for the project to the 1<sup>st</sup> Respondent.
11. The Appellant stated that the Committee failed to consider his evidence and erred in fact and in law by dismissing his appeal. The appeal launched with the Committee was on the grounds that the 1<sup>st</sup> Respondent did not follow due procedure to obtain the said approvals and did not adhere to the city building guidelines in acquiring permissions for the development of the project.
12. This being the first appellate court, it is required to conduct a re-evaluation and analysis of evidence adduced before the trial court as was held in *Selle & Another Vs Associated motor Boat Co.Ltd & Others* (1968 ) EA 123 where the court stated as follows:-

“...An appeal to this court from the trial court is by way of retrial and the principles upon which the court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”
13. Thus, I will delve into the evidence adduced by the Appellant in support of his appeal with the committee. The Appellant lodged the appeal before the Committee by way of a statement dated 22<sup>nd</sup> April 2024 which contained the following grounds:
  - a. The Respondent did not follow due procedure to obtain the approvals.
  - b. The Respondent is not adhering to the City building guidelines.
14. The Appellant stated that he relied on the principle of policy as contained in the applicable law and the approval license dated 19/12/2023 as well as the Daily Nation newspaper of 9/11/2023 which was a notice to the public of the proposed development. Further, the Appellant swore an affidavit on 2<sup>nd</sup> May reiterating that the 1<sup>st</sup> Respondent did not follow due procedure to obtain the approvals for construction and did not adhere to the city building guidelines.
15. In opposition, the 1<sup>st</sup> Respondent relied on public notice of the Daily Nation Newspaper of 09/11/2023, notification of approval dated 19<sup>th</sup> December 2023, NEMA license, and Architectural sketches.
16. In his submissions before this court, the Appellant has cited the provisions of section 107 of the *Evidence Act* as well as case law for the proposition that the burden of proof is on the party alleging the existence of a fact. Thus, he was aware that the burden of proof was on his shoulders to discharge. In his submissions before this court just like his statement of appeal before the Committee, he has not highlighted the procedures that were not followed by the Respondent. He urges this court to take judicial notice that the law does not operate in a vacuum and therefore where aspersions is cast on the procedure for obtaining development approval, the case should be treated with depth and gravity it deserves.
17. the Both Constitution and the Statutes gives parties who feel aggrieved by a decision to challenge the same in the relevant forum. Such grievance must be specific to allow the person being accused to defend themselves and there must be proof shown that indeed there was a breach of the process or a violation of a right. It is not incumbent upon the Tribunal or the Court to look at the development approvals



issued and start fishing on the procedure that was not followed. In the instant appeal, the Appellant did not give the particulars of the sections of the *Physical Land Use and Planning Act* and the *Urban Areas and Cities Act* which were not followed.

18. I agree with the Committee that the Appellant failed to plead and or adduce any evidence to support his claim that the 1<sup>st</sup> Respondent did not follow due procedure while obtaining the approvals and that it did not adhere to the City building guidelines. It is notable that the Appellant even produced a newspaper advertisement calling for any objections. The Appellant does not state what is irregular about that notice. It is my considered opinion and I so hold that it is difficult to read what was in the mind of the Appellant that enables this court to make any finding in his favour.
19. This court is not allowed to interfere with a finding of fact where it is not supported by evidence or it is contrary to the totality of the evidence produced at trial. Therefore, the appeal before this court is also dismissed with cost to the 1<sup>st</sup> Respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY, 2025.**

**A. OMOLLO**

**JUDGE**

