



**Sikalie (Chairman) Suing on behalf of Karen Lang’ata District Association v
Nairobi City County Government; Director General Nairobi Metropolitan
Services & 3 others (Interested Parties) (Environment & Land Petition
E027 of 2022) [2023] KEELC 21882 (KLR) (21 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21882 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E027 OF 2022
LN MBUGUA, J
NOVEMBER 21, 2023**

BETWEEN

**SAMORA SIKALIE (CHAIRMAN) SUING ON BEHALF OF KAREN LANG’ATA
DISTRICT ASSOCIATION PETITIONER**

AND

NAIROBI CITY COUNTY GOVERNMENT RESPONDENT

AND

**THE DIRECTOR GENERAL NAIROBI METROPOLITAN
SERVICES INTERESTED PARTY**

**THE DIRECTOR GENERAL NATIONAL ENVIRONMENTAL MANAGEMENT
AUTHORITY INTERESTED PARTY**

THE PARLIAMENTARY SERVICE COMMISSION INTERESTED PARTY

APRIM CONSULTANTS INTERESTED PARTY

JUDGMENT

1. Vide the petition dated 7.7.2022, the Petitioner seeks the following orders;
 - a. A declaration to issue that the Respondent’s decision to approve the planning application for the Parliamentary Studies and Training Centre (PTSC) on LR No. 28712 is illegal, null and void ab initio for having been made without giving effect to the Recognition Agreement entered into by the Petitioner and the Respondent on 3.3.2017, and in particular the court orders in Nairobi ELC Petition No. 40 of 2018.



- b. A declaration that the Respondent's decision to approve the planning application for the Parliamentary Studies and Training Center (PSTC) on LR No. 28172 is a violation of the Petitioner's fundamental rights and freedoms provided by *the Constitution* of Kenya 2010, specifically violates the provisions of Articles 2, 10, 20 (3) (4), 21, 23, 24, 27, 35, 42, 47, 50 (1), 62 (10) (2) (3) (4), 129 (1) & (2), 159, 160, 165, 258 and 259 (1) of *the Constitution* of Kenya, 2010.
 - c. A declaration to issue that pursuant to Chapter 6 of *the Constitution*, the 1st - 3rd Interested Parties cannot use, rely on and or give effect to the Respondent's approval of development application on LR No. 28712 for the Parliamentary Studies and Training Centre (PSTC) unless and until they confirm and ascertain that the said approval is compliant with the court orders in Nairobi ELC Petition No. 40 of 2018.
 - d. A permanent injunction to issue restraining the 3rd Interested Party, its agents/and/or servants from commencing and/or continuing with any development on LR No. 28712, being the development of a training facility known as Parliamentary Studies and Training Center (PSTC) consisting of 2 basements and 13 floors in reliance on the approvals irregularly and erroneously given by the Respondent unless and until the Respondent complies with the court order in Nairobi ELC Petition No. 40 of 2018.
 - e. Costs of this petition.
 - f. Such further or other orders as this Honourable Court may deem just and expedient for the ends of justice.
2. The Petition is supported by the Affidavit of one, SAMORA MECHEL SIKALIEH, the Chairman of the Petitioner.
 3. The petitioner avers that it is a duly recognized neighborhood/Resident's association pursuant to a recognition agreement signed on 3.3.2017 between it and the Respondent under Section 6 of the Nairobi Community and Neighborhood Association Agreement Act 2016. That the said recognition agreement empowers it to complement the Respondent in its mandate of service delivery and physical development control as affirmed by the court in the case Nairobi ELC Case No. 40 of 2018, Professor Albert Mumma suing as Chairman on behalf of Karen Lang'ata Association (K LDA) v County Government of Nairobi.
 4. The Petitioner further contends that the Respondent and the 2nd Interested Party approved the 3rd Interested Party's development consisting of 2 basements and 8 floors on parcel LR No. 28712 which lies in an area zoned as residential under the local physical Development plan of Karen/Lang'ata District. It contends that the said approvals were issued without its participation and in violation of its fundamental rights and legitimate expectation to participate in the decision making process, thus the approvals are unconstitutional and unlawful.
 5. It is the case of the petitioner that they duly raised their objection relating to the change of user and the development of the project through their advocates M/s Mereca & Co. However, the response they got from the interested parties is that the project in question had been given the necessary approvals.
 6. The petitioners contend that if the 3rd Interested Party's development is allowed to continue, it will seriously affect provision of water, sewer, electricity, cause destruction of flora and fauna and bring insecurity, soil erosion and increased vehicular and human traffic, noise pollution and other environmental vices without corresponding or adequate mitigation measures.



Case for the Respondent

7. The petition is opposed by the Respondent by way of the Replying Affidavit sworn on 16.12.2022 by Wilfred Wanyonyi, the Respondent's Deputy Director, Planning Compliance & Enforcement. He avers that the 3rd Interested Party submitted a copy of the title of ownership to the suit premises and applied for change of user from commercial (offices) to Educational (College and Auxiliary facilities) and a public notice was generated and placed on site.
8. That the neighborhood development character where the proposed development is situated is of mixed development and the neighboring institutions include; Tangaza University, Jomo Kenyatta University of Agriculture and technology, Kenya School of Law, Qwetu Hostels, Catholic university among others.
9. He contends that in granting approvals and permissions, the Respondent ensured that the recognition agreement and the Environmental Management and Coordination Act 1999 (as amended in 2015), the Environment Impact Assessment Audit/Regulations 2003 as well as the [Physical and Land Use Planning Act](#) of 2019 (PLUPA) were complied with, and that no objection was raised before the granting of the permission to develop the project.
10. In another affidavit sworn by Patrick Analo Akivaga (Acting Chief Officer Urban Planning of the Respondent) on 13.12.2022, the Respondent argues that the neighborhood /Resident Association agreement signed on 3.3.2017 was a stop gap measure to cure the lacuna that existed in the Physical Planning Act but the said Act was amended by introduction of Section 58 of the [Physical and Land Use Planning Act](#), 2019 which provides for public participation, thus the Neighborhood recognition agreement is now obsolete.

The case for the 1st Interested

11. The case against the 1st Interested Party (now defunct) was withdrawn on 20.2.2023.

The case for the 2nd Interested party

12. The 2nd Interested Party filed a notice of appointment on 22.8.2022, but nothing else was ever filed.

The case for the 3rd Interested Party

13. In opposition to the petition, the 3rd Interested Party filed a Replying Affidavit sworn on 14.10.2022 and a Further Affidavit sworn on 18.10.2022 by one Eng. Kamau Nguru, the Principle Engineer of the 3rd Interested party. He avers that upon the instructions of the 3rd Interested Party, the 4th Interested Party facilitated and assisted in the application for change of user of the suit premises from commercial use to educational (tertiary college) from the Nairobi Metropolitan Services in line with the [County Governments Act](#) as well as the [Physical and Land Use Planning Act](#), 2019.
14. He avers that the 3rd Interested Party conducted public participation in line with the provisions of Section 61 (1) (d) of PLUPA and that a traffic impact assessment was approved by KURA. That the general public and stakeholders were invited to give their views vide notices in the daily newspapers as well as a notice on the fence of the suit property regarding the change of user but the Petitioner chose not to participate.
15. He also avers that the 3rd Interested Party also obtained approval from the 2nd Interested Party and was issued with Licence Ref. No. NEMA/EIA/PSL/17887 dated 22.3.2022 which set the stage for commencement of the development.



16. He avers that the Petitioner has not stated with specificity how their right to a clean and healthy environment is likely to be breached and that the development is in accord with existing facilities within the surrounding area including; Catholic University, Kenya School of law, Comboni college among others.

The Case of the 4th Interested Party

17. The 4th Interested Party opposed the suit by way of the Replying Affidavit sworn on 16.12.2022 by Jared Momanyi, its director. His averments are more or less similar to those of the 3rd Interested Party.
18. The suit was heard by way of written submissions pursuant to the court's directions given on 4.7.2023.

Submissions

19. The Petitioner filed written submissions dated 21.7.2023. They argue that in Nairobi ELC Petition No. 40 of 2018, the court granted orders to the effect that by failing to give effect to the Recognition agreement entered on 3.3.2017, the Respondent was in breach of the Petitioners' Constitutional and statutory duties and the Petitioner's legitimate expectation. That the Respondent failed to facilitate public participation in the mode and manner as envisaged in the recognition agreement and contrary to Article 10 of *the Constitution*, thus the approvals granted to the 3rd Interested Party by the Respondent should be declared null. To this end, the case of Robert Gakuru & Others v Governor of Kiambu County Government and 3 others [2014] eKLR was cited. They added that the recognition agreement signed on 3.3.2017 has not been invalidated and is not in conflict with other laws.
20. It is submitted that the 3rd parties herein cannot introduce new issues for determination by the court as the overriding issues in this suit are between the primary parties.
21. The Petitioner also relies on the cases of Francis Karoki Murutetu & another v Republic & 5 others [2016] eKLR and Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others [2014] eKLR.
22. The Respondent filed written submissions dated 5.9.2023 where they argue that this court has no jurisdiction to determine the matter as PLUPA has elaborate and clear dispute resolution mechanisms which have to be exhausted before a matter touching on approvals of change of user, approvals of building, developments and plans is filed before this court. The Respondent relies on the case of KO Holdings Limited v County Government of Kiambu, RedHill Kentmere Residents Association (Interested Party) [2019] eKLR as well as the case of Speaker of the National Assembly v Karume [1992] KLR.
23. It was submitted that that Section 56 of the *Physical and Land use Planning Act* 2019 mandates County Governments to undertake development control, of which the Respondent complied with the relevant laws, thus the petition has no merit.
24. It was further submitted that the 3rd and 4th Interested parties had complied with all the requirements on notification and public participation as contemplated under the laws before commencement of the subject construction.
25. The submissions of the 3rd Interested Party are dated 10.8.2023 where they aver that the Nairobi County and Neighbourhood Association Engagement Act of 2016 in which the Recognition agreement is anchored upon is in conflict with PLUPA to the extent that it purports to interfere with the provisions of Section 56 of PLUPA 2019 and the aspect of public participation set out in the aforementioned statute.



26. It was argued that Section 58 of PLUPA has put in place elaborate mechanisms of public participation.
27. Citing the provisions of Article 191 of *the constitution*, the 3rd Interested Party avers that the recognition agreement became obsolete by operation of the law with the coming into force of the PLUPA in year 2019.
28. It was further submitted that the petitioner has failed to establish a prima facie case to warrant the issuance of the orders sought, adding that the financial magnitude of the project is colossal, standing at ksh.4.257 billion.
29. Finally it was submitted that the petition is pegged on issues relating to approvals of the project of which there are Dispute Resolution Mechanisms provided for under PLUPA 2019. The 3rd Interested Party relied on the case of *The Speaker of the National Assembly v. James Njenga Karume* [1992] eKLR and *Kenya Commercial Finance Co. Ltd v Afraha Education Society* [2001] vol. 1 EA amongst other decisions.
30. The 4th Interested Party filed submissions dated 20.9.2023 which mirror the submissions of the 3rd Interested Party. They added that the Recognition agreement was meant to assist the Nairobi City County Government in matters regarding the developments in the Karen Lang'ata District, but it was not meant to take over the functions of the Respondent.
31. It further submits that the proposed development is estimated to cost over ksh.3 billion which amount is raised from taxpayers' money and it would save taxpayers money rather than having government officials attend conferences at hotels which would be costlier. Thus in this case, public interest supersedes the private interests of the petitioner.

Determination

32. In rendering a decision herein, this court has taken into consideration the pleadings proffered the rival submissions as well as the pronouncement made by this court in a ruling delivered on 11.5.2023. To this end, I frame the issues falling for determination as follows; Whether the doctrine of exhaustion of remedies is applicable, whether there was public participation and whether this court has jurisdiction to enquire into the decision of the court in Nairobi Petition No. 40 of 2018.
33. In its ruling delivered on 11.5.2023 at paragraph 36, this court stated that the crux of the dispute related to the approvals given to the 3rd Interested Party for its development, of which the court gave a lengthy account of the applicable legal frame work which I need not rehash. The court pronounced itself to the effect that the doctrine of exhaustion of remedies was applicable such that matters relating to planning and development ought to be brought to this court as Appeals from the relevant Planning Liaison Committee. I have no reason to digress from the aforementioned decision.
34. There's evidence that the Petitioner's association made a resolution to challenge approvals issued to the 3rd Interested party on 11.5.2022, but this was long after they were caught up by time. At paragraph 9 of the supporting affidavit to the petition, the deponent avers that:

“By a resolution of 11.5.2022, the Management Committee of the Petitioner resolved to challenge the approvals of the development by the Respondent.....”.
35. On the approvals by the 2nd Interested Party (NEMA) this court takes the view that if the Petitioner's association was aggrieved by the decision to license the 3rd Interested party's development, recourse was to appeal to the National Environmental Tribunal (NET) as provided for under section 129 of the



Environmental Management and Coordination Act. See - Speaker of National Assembly v Karume (1992) KLR 22.

36. On public participation, I find that the provisions of Section 58 of the PLUPA (2019) outlines an elaborate procedure for applying for development permission. The nature and extent of the public participation undertaken in respect of the project in question is analyzed at paragraph 47 in the ruling of this court dated 11.5.2023.
37. There is also evidence that the 3rd Interested Party placed an advertisement for change of user in the Daily Nation Newspaper of May 2021 thus inviting members of the public to present any objections. There was a signage on the site in May 2021 calling for individuals, organizations and institutions with recommendations or concerns on the project to raise them. There are public consultation questionnaires running from page 127-159 of the 4th Interested Party's replying affidavit sworn on 16.12.2022 demonstrating that public participation was conducted. The Petitioner does not demonstrate that the said public participation was insufficient, nor does it say that it did not meet the standards anticipated by PLUPA.
38. If the petitioner had attempted to seek audience with the County Physical and Land Use Planning Liaison Committee and the Committee was non-responsive, a remedy would have been available as this court has capacity to direct the said committee to hear the Petitioner's grievances. See Susan Wanjiku Maina v Director, Physical and Land Use Planning Kiambu County Government & another [2022] eKLR.
39. On the status of the recognition agreement which was given effect in the case Nairobi Petition No. 40 of 2018, this court shall desist from delving into an analysis of the said decision, seeing that the same emanates from a court of equal jurisdiction. See-Bellevue Development Company Ltd v Francis Gikonyo & 7 others [2018] eKLR. Nevertheless, I make one observation; that the recognition agreement was made in year 2017, before the commencement of The [Physical and Land Use Planning Act](#) of 2019 and the Physical and Land Use Planning (Liaison Committees) Regulations of 2021 which set out the statutory framework relating to approval of developments.
40. In the end, I find that the petition is not merited. The same is hereby dismissed and each party shall bear their own cost of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Lichuma holding brief for Wilfred for Petitioner

Mwanzia for Respondent

Kamar holding brief for Angaya for 3rd Interested Party

Abwao holding brief for Amadi for the 4th Interested Party

Mismajune for the 2nd Interested Party

