



Wambugu & another v Kahawa Sukari Residents & Plot Owners Welfare Association & 3 others; County Executive Committee Member (CECM) Lands, Housing Physical Planning, Municipal & Urban Development, Kiambu County Government & 3 others (Interested Parties) (Judicial Review Application E002 of 2023) [2023] KEELC 22183 (KLR) (13 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22183 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
JUDICIAL REVIEW APPLICATION E002 OF 2023**

**BM EBOSO, J
DECEMBER 13, 2023**

BETWEEN

**JOHN K WAMBUGU 1ST APPLICANT
EUNICE W KIUMI 2ND APPLICANT**

AND

**KAHAWA SUKARI RESIDENTS & PLOT OWNERS WELFARE
ASSOCIATION 1ST RESPONDENT
SAMUEL MWANIKI WAIHAKA 2ND RESPONDENT
EDWARD KIGANJO 3RD RESPONDENT
COUNTY PHYSICAL AND LAND USE PLANNING LIAISON
COMMITTEE 4TH RESPONDENT**

AND

**COUNTY EXECUTIVE COMMITTEE MEMBER (CECM) LANDS, HOUSING
PHYSICAL PLANNING, MUNICIPAL & URBAN DEVELOPMENT, KIAMBU
COUNTY GOVERNMENT INTERESTED PARTY
DIRECTOR PHYSICAL PLANNING & URBAN DEVELOPMENT, KIAMBU
COUNTY GOVERNMENT INTERESTED PARTY
COUNTY GOVERNMENT OF KIAMBU INTERESTED PARTY
KAHAWA SUKARI LTD INTERESTED PARTY**



RULING

1. What falls for determination in this ruling is the chamber summons application dated 31/7/2023 through which the applicants seek leave to initiate judicial review proceedings for orders of *certiorari* quashing the determination and orders of the Kiambu County Physical and Land Use Planning Liaison Committee [referred to in this ruling as “the Liaison Committee”] made in Appeal No CGK/KCLC/010 of 2023. In addition, the applicants pray for an order of prohibition barring the Liaison Committee against conducting proceedings relating to the development permission and occupation certificate issued in relation to Ruiru/Kiu Block 3/3172.
2. The 1st to 3rd respondents filed a notice of preliminary objection dated 24/8/2023 inviting this court to dismiss the application dated 31/7/2023 in *limine* on the ground that it violated the mandatory provisions of sections 55, 56, 57, 61(4), 67 and 72(4) of the *Physical and Land Use Planning Act* [referred to in this ruling as “the PLUPA”]. On 19/9/2023, this court directed that the grounds raised in the notice of preliminary objection would be canvassed as grounds of opposition to the plea for leave.
3. The application was canvassed through written submissions dated 11/10/2023. The 1st to 3rd respondents opposed the application through written submissions dated 9/10/2023.
4. I have considered the application together with the affidavits and submissions filed in support of the application. I have also considered the response, grounds of opposition and the submissions filed in opposition to the application. The single issue to be determined in this ruling is whether the application satisfies the criteria for leave to initiate judicial review proceedings under order 53 of the *Civil Procedure Rules*.
5. The applicants moved the court for leave under order 53 rule 1 of the *Civil Procedure Rules*. The gist of the applicants’ case is that the 4th respondent heard and determined an appeal by the 1st to 3rd respondents despite the fact that the said appeal was statute-barred. They contend that the time for lodging an appeal to the Liaison Committee having lapsed, the Liaison Committee lacked jurisdiction to entertain the appeal by the 1st to 3rd respondents.
6. The case of the 1st to 3rd respondents is that the application for leave offends the provisions of section 55, 56, 57, 61(1), 67 and 72(4) of the *PLUPA*. They contend that the statutory redress mechanism available to the applicants is an appeal to this Court and not judicial review proceedings. On its part, the 4th respondent contends that due to budgetary constraints, it was not operationalized immediately, adding that the appeal presented before it were disposed within the statutory period.
7. The purpose of leave under order 53(1) of the *Civil Procedure Rules* was explained in *Republic v County Council of Kwale & another exparte Kondo & 57 others* Mombasa HC MCA No 384 of 1996 as follows:

“The purpose of an application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even



though misconceived... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant, the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised judiciously.”

8. In *Uwe Meixner & another v Attorney General* [2005] eKLR, it was held that leave of court is a prerequisite to making a substantive application for judicial review because it serves the purpose of filtering out frivolous applications and that the grant or refusal involves an exercise of judicial discretion and the test to be applied is whether the applicant has an arguable case.
9. It is also a settled principle of law that in an application for leave, the court should not delve deeply into the arguments of the parties, but should peruse the evidence before it and make a decision as to whether the case is sufficiently meritorious to justify grant of leave.
10. In the present application, the applicants seek leave to challenge and quash orders that were issued by the 4th respondent in Kiambu Physical and Land Use Planning Liaison Committee Appeal No CGK/KCLC/010 of 2023. Section 61(3) and (4) of the *PLUPA* provides the following redress mechanism in relation to development and land use decisions made by the County Executive Committee within the framework of the *PLUPA*:
 - “(3) 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. Similarly, section 72(3) and (4) of the *PLUPA* contains the following framework on redress in relation to enforcement notice by the County Executive Committee:
 - “(3) Where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant County Physical and Land Use Planning Liaison Committee within fourteen days of being served with the notice and the committee shall hear and determine the appeal within thirty days of the appeal being filed.
 - (4) Any party aggrieved with the determination of the county physical and land use planning liaison committee may appeal to the court only on a matter of law and the court shall hear and determine the appeal within thirty days.”
12. It is clear from the above legal frameworks that Parliament has provided a statutory mechanism for invalidating orders made by the Physical and Land Use Planning Liaison Committees. The statutory mechanism is through appeals to the Environment and Land Court.



13. Our superior courts have been unequivocal that the judicial review mechanism contemplated under order 53 should not be invoked in a scenario where Parliament has provided a clear redress mechanism. Indeed, the Court of Appeal echoed this principle in *Speaker of the National Assembly v Karume* (Civil Application 92 of 1992) [1992] KECA 42 (KLR) in the following words:

“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed. We observe without expressing a concluded view that order 53 of the *Civil Procedure Rules* cannot oust clear constitutional and statutory provisions.”

14. It therefore emerges that the redress mechanism available to the applicants is an appeal to this court. For the above reasons, the plea for leave to initiate judicial review proceedings is declined. The chamber summons application dated 31/7/2023 is accordingly rejected.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 13TH DAY OF DECEMBER 2023

B M EBOSO

JUDGE

In the presence of:

Ms Pepela for the Applicant

Mr Nyakundi for the 1st to 3rd respondents

Court Assistant: Hinga

