



Saylesh Court Limited v County Government of Nairobi & 4 others (Environment & Land Case E006 of 2022) [2022] KEELC 3643 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3643 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E006 OF 2022**

**LN MBUGUA, J
MAY 26, 2022**

IN THE MATTER OF THE CONSTITUTION OF KENYA ART. 10, ART.42, ART.47, ART.66, ART.68, ART.70 AND ART.73 AND IN THE MATTER OF THE PHYSICAL PLANNING AND LAND USE ACT, 2019 (AS READ WITH THE PHYSICAL PLANNING ACT, CAP 286-REPEALED AND IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, 1999

BETWEEN

SAYLESH COURT LIMITED PETITIONER

AND

COUNTY GOVERNMENT OF NAIROBI 1ST RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 2ND RESPONDENT

ANIL SHANTKAL MULJI THAKKAR 3RD RESPONDENT

SANJAY S THAKKAR 4TH RESPONDENT

DIPAN SHANTILAL MULJI THAKKAR 5TH RESPONDENT

RULING

1. This suit was filed by way of a petition contemporaneously with an application for conservatory orders dated March 3, 2022. The said application came up for hearing on 18.5.22 when it emerged that the 2nd defendant and 3rd – 5th defendants had filed preliminary objections dated April 25, 2022 and May 17, 2022 respectively. The court has given directions that the said preliminary objections be heard by way of written submissions.



2. Meanwhile the petitioner has urged the court to grant prayer 2 in their application to safeguard the property of the said party noting that service of the said application was effected in good time but no replying affidavits were lodged.
3. Counsel for 2nd defendant contends that prayer No 2 is not directed against them hence they did not respond to the issue raised in prayer No 2.
4. Counsel for 3rd -5th defendnats has objected to the issuance of prayer No 2 averring that construction is complete.
5. This ruling therefore relates to the issue as to whether prayer No 2 in the application dated March 3, 2022 should be allowed.
6. I have perused the record and I find that construction commenced well way before June 2021 going by the documents availed by the petitioner. It is not clear from the petitioner as to the current state of the offending structure, while 3rd-5th defendants aver that construction is complete. The court cannot give orders in vain and in view of uncertainty as to the stage of construction, I decline to grant the orders sought in prayer No 2 at this stage.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kimathi for the Petitioners

Akang'a for the 3rd and 5th Respondents

Court Assistant: Eddel

