



**Kinuthia v County Government of Kiambu (Environment & Land Case  
E067 of 2024) [2025] KEELC 3261 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3261 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E067 OF 2024**

**JM ONYANGO, J**

**APRIL 2, 2025**

**BETWEEN**

**RUMBA KINUTHIA ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... DEFENDANT**

**RULING**

1. The Plaintiff initiated this suit through a Complaint dated 3rd May 2024. His case is that he is the registered proprietor of L.R No. Kiambu/Municipality/Block 5(Kiamumbi) 1489, L.R No. Kiambu/Municipality/Block 5 (Kiamumbi) 1488 and L.R No. Kiambu/Municipality/Block 5 (Kiamumbi) 1490.
2. He contends that he commenced the development of Plot No. 1489 (hereinafter referred to as the suit property) in the early 2010s by putting up commercial and residential units. He further contends that in March 2013, he applied and obtained a Change of User from the Defendant and in September 2013, he was issued with a Certificate of Occupation, when construction was completed. He adds that he had been in quiet possession of the suit property until 2nd May 2024, when the Defendant's officials, accompanied by fourteen heavily armed policemen and county 'askaris', invaded the premises, ordered all the tenants out and forcefully removed furniture and shop stocks. The forceful eviction without prior notice prompted him to file this suit.
3. Together with the Complaint the Plaintiff filed a Notice of Motion application dated 3rd May 2024 seeking a temporary injunction to restrain the Defendant from evicting or in any way interfering with his or his tenants' quiet possession of the suit property also referred to as Jacaranda Business Center (J.B.C) and Maziwa flats and shops pending the hearing and determination of the main suit. He also sought an order that the OCS Kiamumbi Police Station be compelled to ensure compliance of the injunctive order.



4. In response to the said application, the Defendant filed a Preliminary Objection (P.O) dated 21st May 2024. This ruling is in respect of the Defendant's P.O in which he raises the following grounds:
  - i. This honourable court lacks jurisdiction to entertain the present suit as it is a challenge to an enforcement notice issued to the applicant/plaintiff in accordance with Section 72 of the *Physical and Land Use Planning Act*, 2019.
  - ii. That under Section 72 (3) of the *Physical and Land Use Planning Act* 2019, a person on whom an Enforcement Notice is served may appeal to the County Physical and Land Use Planning Committee.
  - iii. That under Section 72 (4) of the *Physical and Land Use Planning Act* 2019, any party aggrieved with the decision of the County Physical and Land Use Planning Committee may appeal against that decision to the Environment and Land Court.
  - iv. That the Plaintiff herein has failed and/or neglected to exhaust the alternative means of dispute resolution as provided by statute.
  - v. The instant suit is therefore premature, frivolous and an abuse of the court process as this honourable court's jurisdiction has been limited by statute.
5. The Plaintiff opposes the P.O through a Replying Affidavit sworn by him on 30th May 2024 in which he deposes that Section 72 (2) of the *Physical and Land Use Planning Act* 2019 provides that an enforcement notice shall specify measures the developer shall take, the date on which the notice shall take effect (and) the period within which the measures shall be complied with. He argues that the framers of this law specifically provided for a "notice period" in a clear and deliberate effort to avoid mischief in the following three scenarios: (i) owners of residential and/or commercial properties being at the mercy of the whims of arrogant county officials who perceive themselves as being above the law; (ii) protecting hard-working Kenyans from the wrath of capricious bribe seeking government officials driven by envy, petty grudges, business rivalry, spite and ill will; and (iii) protecting Kenyans (and even resident non-Kenyans) from excessive, draconian, overzealous, hostile and inordinate actions of government officials.
6. He relies on the definition of "notice" found in the Oxford Advanced Learners dictionary to state that a notice cannot be immediate like the notice dated 2nd May 2024 served upon his employee purported to do. He further states that the said notice is fatally defective given it was expressed to have been served on a future date that is, 2nd August 2024.
7. The Plaintiff contends that on 30th January 2015 the Defendant's officials invaded the suit premises and issued a "Planning Enforcement Notice" claiming that he did not have a Certificate of Occupation, even though he was in possession of one issued by the Defendant on 25th September 2013. As a result, he filed High Court Civil Case Number 109 of 2015 against the Defendant. He further contends that the Defendant filed a similar P.O in the said suit, and the court (Sergon J), after hearing the same, issued an order restraining the Defendant from interfering with his tenants on plot numbers 1489 and 1490 pending the hearing and determination of the suit. He adds that the said order has never been vacated; hence, the actions by the Defendant on 2nd May 2024 were in contempt of court.
8. He deposes that he was unable to challenge the enforcement notice as provided by statute, given that the impugned enforcement was executed immediately. He further deposes that the tribunal lacks jurisdiction to deal with an enforcement notice that has already been executed and that the issue for



determination in this suit is the aftermath of the destruction and the financial loss he incurred in terms of rent which is the purview of the Environment and Land Court.

9. The Preliminary objection was canvassed by way of written submissions. The Defendant filed written submissions dated 8th October 2024, while the Plaintiff filed written submissions dated 11th September 2024.

### **Defendant's Submissions**

10. Counsel for the Defendant identified two issues for determination: (i) whether this honourable court has jurisdiction to entertain this suit; and (ii) who should bear the costs of the application.
11. On the first issue, counsel submitted that this court lacks jurisdiction to entertain the suit pursuant to Section 72 (3) of the *Physical and Land Use Planning Act* 2019 which provides that a person to whom an enforcement notice is served upon may appeal to the County Physical and Land Use Planning Liaison Committee.
12. Counsel further submitted that the enforcement notice was properly issued upon Stephen Kimani, the Plaintiff's agent on 2nd May 2024 devoid of any mischief or illegality. She added that the Defendant's development officer and the authorized issuing officer appended their signatures on the notice on the same day however they erroneously indicated the date as 2nd August 2024. Counsel argued that the objection on the enforcement notice issued by the Defendant fails given that the agent has not sworn any affidavit stating that he was served on any other day other than 2nd May 2024. Counsel relied on the decision in the case of *Graham Oates vs Secretary of State for Communities and Local Government and Canterbury City Council EWHC 2716 (Admin) [2017]*.
13. Counsel contended that the Plaintiff's argument that the enforcement notice issued did not provide for a notice period was misconceived. Counsel further contended that the Plaintiff endangered the lives of the residents of Kiambu occupying his building as an inspection carried out by the Defendant officials on 2nd May 2024 revealed that the building had structural failures, cracks and was leaning. He added that the massive cracks witnessed on the sinking apartment could not afford the tenants any more time to occupy the premises.
14. In conclusion, counsel urged this court to uphold the Defendant's P.O dated 21st May 2024.

### **Plaintiff's Submissions**

15. On the other hand, learned counsel for the Plaintiff identified similar issues for determination. On whether this court has jurisdiction to entertain the suit, counsel relied on Article 162 (2) and 162 (2) (b) of the *Constitution* of Kenya 2010 to submit that this court has original jurisdiction in all matters relating to land. Counsel further submitted that the County Physical and Land Use Planning Liaison Committee is established by the *Physical and Land Use Planning Act*, 2019. Counsel further relied on Section 72 and 78 of the Act in stating that for a dispute to be referred to the Liaison Committee, there has to be a valid notice capable of challenge. He added that for a notice to be valid: (i) the developer must be notified of a violation of development code; (ii) the developer must be given time to correct the violation or demolish; and (iii) the developer must be given time period of 14 days to make an appeal to the liaison committee before any enforcement is carried out.
16. Counsel faulted the Defendant for serving a notice upon the Plaintiff with an immediate timeline in violation of the *Physical and Land Use Planning Act*. Counsel contended that the remedies sought by the Plaintiff do not seek to challenge the enforcement notice given that it was overtaken by events but seek redress for damages for the destruction caused and injunctions for any future demolition that



may occur in an arbitrary way. Counsel further contended that Liaison Committee lacks jurisdiction to grant the reliefs sought in the plaint which are: (i) an injunction from future harassment; (ii) general damages; (iii) special damages for destruction of property; (iv) damages for trespass and loss of income; and (v) mesne profits. Counsel relied on the decisions in the cases of Owners of Motor Vessel “Lilian S” vs Caltex Oil (Kenya) Ltd [1989] eKLR and Karanja vs County Government of Kilifi [2022]eKLR in support of his submissions.

17. On costs, counsel relied on Section 27 (1) of the [Civil Procedure Act](#) in submitting that the Plaintiff is entitled to costs of defending the P.O.

### Issues for determination

18. Having considered the Preliminary Objection, the Plaintiff’s Replying Affidavit and rival submissions, the issues for determination are:
  - i. Whether the suit offends the provisions of Section 72 (3) and (4) of the [Physical and Land Use Planning Act](#) 2019.

### Analysis and Determination

19. The court in the case of Mukisa Biscuit Company Ltd v West End Distributors Limited (1969) E.A 696. held as follows:

“...A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration.

A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of Preliminary objections does nothing but unnecessarily increase the costs and occasions confusion of the issues. This improper practice should stop.

20. The Supreme Court of Kenya outlined the importance of the concept of jurisdiction in the case of Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others [2012] eKLR in the following words:

“A court’s jurisdiction flows from either the [Constitution](#) or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the [Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submissions that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings. This court dealt with the question of jurisdiction extensively in In the Matter of Interim Independent Electoral Commission (Applicant), Constitution Application Number 2 of 2011. Where the [Constitution](#) exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a court of law beyond the scope defined by the [Constitution](#). Where



the Constitution confers power upon parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

21. Section 72(3) and (4) of the Physical and Land Use Planning Act 2019 contains the following framework on the adjudication of disputes relating to enforcement notices:

“(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.”

22. The Plaintiff is aggrieved by the Defendant’s act of invading the suit premises pursuant to the enforcement notice issued on 2nd May 2024. The Plaintiff states that the enforcement notice is defective because he has a Certificate of Occupation issued by the Defendant. He adds that the said notice was purported to have been served in future, that is 2nd August 2024. However, the Plaintiff argues that the County Physical and Land Use Planning Liaison Committee lacks the jurisdiction to grant the prayers sought in the Plaintiff. The said prayers are: an injunction from future harassment; general damages; special damages for destruction of property; damages for trespass; and loss of income and mesne profits.

23. It is this court’s view that the Plaintiff ought to exhaust the primary dispute adjudication mechanism provided under the Physical and Land Use Planning Act 2019, with regard to the enforcement notice was defective or not before invoking the jurisdiction of this court.

24. Due to the foregoing, the Defendant’s P.O relating to the jurisdiction of this court to determine the suit is upheld. This suit is hereby remitted to the Kiambu County Physical and Land Use Planning Liaison Committee for adjudication as a claim/ dispute/ complaint/ grievance within the framework of the Physical and Land Use Planning Act 2019. The Plaintiff shall bear the costs of this P.O.

**DATED, SIGNED AND DELIVERED VIRTUALLY, THIS 2ND DAY OF APRIL 2025.**

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**J.M ONYANGO**

**JUDGE**

In the presence of:

Mr Kuria for the Plaintiff

Miss Muchiri for the Defendant

Court Assistant: Hinga

