



REPUBLIC OF KENYA



**Kamatei v Siror (Environment and Land Appeal E037 of 2022)
[2022] KEELC 14812 (KLR) (16 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14812 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E037 OF 2022
JM ONYANGO, J
NOVEMBER 16, 2022**

BETWEEN

JULIUS KAMATEI APPELLANT

AND

HAZEL JEMUTAI SIROR RESPONDENT

RULING

1. By a notice of motion dated November 3, 2022 the appellant filed an application seeking an injunction to restrain the respondent from further constructing and/or developing the land parcel known as LR Eldoret Municipality/ Block 9 /1811 pending the hearing and determination of the appeal herein.
2. The application is anchored on the grounds set out on the face of application and the applicant's supporting affidavit sworn on the November 3, 2022.
3. In the said affidavit he depones that he filed an appeal against the decision of the Uasin Gishu Physical Planning and Land Use Liaison Committee delivered on October 19, 2022 in which the said committee held that it lacked the jurisdiction to stop the construction project on the suit property and cancel the licences and permits issued by the Director of Physical Planning and Urban Development, Uasin Gishu County.
4. He further depones that following the decision of the committee, the respondent has continued with the construction of a storey building without proper approvals from the relevant authorities. He contends that the respondent is creating a nuisance by constructing a 4 storey commercial building on the suit property which is designated as a residential plot.
5. He is of the opinion that the appeal raises substantial issues and if the injunction is not granted, the same shall be rendered nugatory. He further states that he is willing to furnish security pending the hearing and determination of the appeal.



6. The application is opposed by the respondent through his replying affidavit sworn on the November 7, 2022.
7. The respondent has taken the position that the appeal before the liaison committee was incompetent and untenable and that an appeal arising therefrom is not arguable. He argues that the appeal cannot be rendered nugatory if it is incompetent. He further contends that the applicant will not suffer any loss and that the application is an abuse of the court process.
8. He denies that the on-going construction is illegal as he maintains that the necessary approvals were obtained. He further denies that it is a nuisance or that it is being constructed at an unusually high speed.
9. The respondent depones that he is likely to suffer prejudice if the construction stops as the building materials will go to waste and the construction costs will escalate.
10. The respondent further contends that the applicant has not provided any evidence to demonstrate that he resides on the suit property to warrant the orders he is seeking.
11. The application was canvassed by way of oral submissions after which the applicant filed his List of Authorities basically consisting of one authority, the case of [*Erinford Properties Ltd v Cheshire County Council \(1974\) 2 All ER 448*](#).

Issues For Determination

12. The main issue for determination is whether the applicant is entitled to an order of injunction pending appeal.

Analysis And Determination

13. It has been submitted by learned counsel for the applicant that the liaison committee held that it had no jurisdiction without considering the various issues placed before it. He opined that if the injunction was not granted, the appeal would be rendered nugatory. He relied on the decision in [*Erinford Properties Ltd v Cheshire County Council \(1974\) 2 All ER 448*](#) for the proposition that a court that has dismissed an application for injunction has jurisdiction to grant an injunction pending appeal so as not to render the appeal an academic exercise.
14. He argued that the appeal arose out of the decision of the liaison committee delivered on October 19, 2022. In the said decision, the court held that it had no jurisdiction as this court had issued an order in JR No 3 of 2022 permitting the respondent to develop the suit property.
15. On the other hand, learned counsel for the respondent submitted that there was no competent appeal before the liaison committee as section 61(3) of the [*Physical Planning and Land Use Act*](#) provides that an appeal ought to be filed to the liaison committee within 14 days from the date of the decision of the County Executive members. In the instant case the decision was made in 2013 and the appeal was filed 9 years later without applying for an extension of time. He further submitted that the decision of the liaison committee was made in December 2021 and it was communicated to the parties on January 5, 2022. The appeal to this court therefore ought to have been filed on January 19, 2022 but it was filed on November 2, 2022. The appeal was therefore clearly out of time thus rendering it incompetent.
16. He contended that when the applicant became aware of JR No 3 of 2022 he filed suits in the lower court being CME&L No 419 of 2022 and 461 of 2022 and obtained injunctive orders instead of applying to be included in JR No 3 of 2022. CME&L No 461 was eventually struck out by which time the time



for filing an appeal had lapsed. He argued that the applicant was trying to obtain an order which was at variance with the order issued by this court in JR No 3 of 2022 which was still in force.

17. It was counsel's further contention that the applicant had not established a *prima facie* case with a probability of success as he had not demonstrated that he had an interest in the suit property. He maintained that the respondent had obtained all the necessary approvals and licenses from the relevant authorities.
18. Having considered the application, supporting and replying affidavits as well as the rival submissions, I am inclined to agree with counsel for the respondent that granting an injunction would conflict with the orders of this court issued in JR No 3 of 2022 which are still in force and it would create a situation which is legally untenable. The applicant squandered his opportunity to avert the predicament he now finds himself in and he has only himself to blame.
19. Without going into the merits of the application, I am persuaded that this court cannot in one breath allow a construction to go on and in another breath issue an injunction to stop it as that would be ridiculous and untenable. In the circumstances, I find no merit in the application and I dismiss it with costs to the respondent.

DATED AT ELDORET THIS 16TH DAY OF NOVEMBER, 2022.

J M ONYANGO

JUDGE

