



Ndope v The Executive Committee Member in Charge of Land & Urban Planning, Nairobi City County & 5 others (Environment & Land Petition E015 of 2025) [2025] KEELC 4959 (KLR) (2 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4959 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E015 OF 2025**

**CG MBOGO, J
JULY 2, 2025**

BETWEEN

SAIDI AHMED NDOPE APPLICANT

AND

EXECUTIVE COMMITTEE MEMBER IN CHARGE OF LAND & URBAN PLANNING, NAIROBI CITY COUNTY 1ST RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT 2ND RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD RESPONDENT

NATIONAL CONSTRUCTION AUTHORITY 4TH RESPONDENT

GIRINI COMPANY LIMITED 5TH RESPONDENT

GRAPESTONE LIMITED 6TH RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated 10th March, 2025, the notice of motion dated 28th March, 2025 and the notice of preliminary objection dated 25th March, 2025 respectively. The notice of motion dated 10th March, 2025 is filed by the petitioner/applicant, and it is expressed to be brought pursuant to Articles 10, 31, 42, 47, 48, 68 and 70 of the Constitution of Kenya, Order 40 Rules 1,2 and 3, Order 51 Rules 1 and 4 of the Civil Procedure Rules and Sections 1A, 1B, 3A and 63 (c) and (e) of the Civil Procedure Act seeking the following orders: -

1. Spent.
2. Spent.



3. An order of temporary injunction be and is hereby issued restraining and/ or stopping all development activities pursuant to the complain of the application for development permission and/ or any other covert permission or approval issued in respect to the property registered as Nairobi/ Block 16/ 696 pending the hearing and determination of the petition filed herewith.
 4. The costs of this application be provided for.
 5. Any other or further relief which this honourable court deems fit and just to grant.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of the petitioner/applicant sworn on even date. The petitioner/applicant deposed that he is the son of the registered owner of the property known as LR. No. 1026 which adjoins the parcel of land owned by the 5th respondent registered as Nairobi/Block 16/696 which properties are situated in a gated community consisting of single storey dwelling houses and maisonettes. He deposes that the 5th respondent is well aware of the plan and existing conditions which all other owners of the property within the region have complied with, and that despite the same, the 5th respondent exceeded the standard height and change of user to plan to erect a 28-floor building against the required standards and regulations.
 3. The petitioner/applicant deposed that the 5th respondent's act is a clear infringement of his privacy and right to a clean and healthy environment. Further, that several requests have been made to the respondents to supply copies of minutes and all the approvals but the same have not been supplied to date. Further, that the 3rd respondent did not avail to him the sketches of the proposed development, and that the 5th respondent did not serve him with the forms for social assessment and public participation to consider his comments.
 4. The petitioner/applicant deposed that his complaints and dissatisfaction did not elicit any response, and that due to the ongoing works at the site, he believes that the approvals have been issued in an unlawful, illegal, opaque and underhand manner. Further, that while the property is situated in a gated community, the petitioner/ applicant and the neighbourhood have a legitimate expectation arising from the representation and preconditional building approvals. That unless the actions by the 2nd respondent objected to happen to be acts abated, there can never be any justification how the 5th respondent can be granted better rights to override the prior rights accrued to more than 30 owners in the gated community.
 5. The petitioner/applicant deposed that the proposed development is out of character, and it will adversely affect him and the neighbours by creating disturbance, nuisance from smell and fumes and hinder the right to view existing dwellings. He deposed that the acts complained of are in violation, threat, denial or infringement of Articles 10, 32, 42, 47, 48, 69 and 70 of the *Constitution* of Kenya. He deposed that due to the exceptional circumstances in this case, it is in the interest of justice to exempt him from the provisions of the internal procedures pursuant to the provisions of Section 9 (4) of the Fair Administrative Actions Act.
 6. The application was opposed by the replying affidavit of Patrick Mbogo the County Executive Member for Built Environment and Urban Planning of the 2nd respondent. The affidavit is sworn on 25th March, 2025 on behalf of the 1st and 2nd respondents. The 1st respondent deposed that there is a similar suit involving the same development being Nairobi/Block 16/696, and the same parties being the 1st to 5th respondents in ELC Pet No. E037 pf 2024 that is pending before Justice A. Omollo. That for this reason, the petition and application are fatally defective as it goes against the principle of sub judice.



- The 1st respondent deposed that the application is seeking an injunction to restrain the 5th respondent's development yet the 5th respondent procured the necessary approvals, and that it did not need a change of user since the certificate of lease had special conditions.
7. Further, that on 27th June 2024, the 1st respondent granted the development approvals after confirming that all legal and procedural requirements had been satisfied. It was deposed that the 5th respondent engaged in public participation, and that the Environmental Impact Assessment (EIA) report was approved, and thus the proposed development is consistent with the 1st respondent's vision and the wide national vision for urban development and planning. The 1st respondent deposed that the 2nd respondent in applying for construction and connection of water and sewer systems confirmed that the 5th respondent had sought the authorization from the Water Resources Authority.
 8. The application was further opposed by the affidavit of Godfrey Wafula, the acting Senior Principal of Environmental Compliance of the 3rd respondent sworn on 1st April, 2025. The 3rd respondent deposed that the 5th respondent holds a lawfully obtained Environmental Impact Assessment License No. NEMA/EIA/PSL35755 issued on 31st October, 2024 upon approval of the terms of reference and submission of the EIA study report dated 13th August, 2024. The 3rd respondent deposed that the proposed development was classified as high risk project, and that the 5th respondent placed the notices which were published in the Kenya Gazette on 23rd August, 2024, two local dailies and a radio advert on Radio Classic that aired from 19th to 21st August, 2024.
 9. Further, it was deposed that the 3rd respondent received complaints, objections and concerns from the residents living in the area which were considered during the review, and that the issues were addressed in a letter dated 4th October, 2024 and 15th October, 2024. It was deposed that a site inspection was conducted by the 3rd respondent on 17th September, 2024 to assess the suitability of the development and the same was approved. The 3rd respondent found that the 5th respondent conducted meaningful public participation within the prescribed laws, provided adequate notice to the residents and other stakeholders through newspaper advertisement, public notices and direct invitations.
 10. The application was further opposed by the replying affidavit of Stephen Mwilu, the manager, compliance of the 4th respondent sworn on 2nd April, 2025. The 4th respondent deposed that upon receipt of the pleadings herein, a site inspection was conducted on 21st March, 2025 to inspect the ongoing construction works on Plot No. LR. No. Nairobi/Block 19/696 Turbo Road, Kilimani area, where it was observed that the works were at the excavation stage, that there was a project sign indicating all the project parties and that the said project is duly registered with the National Construction Authority. The 4th respondent deposed that the 5th respondent furnished its office with all the requisite documents required for the registration of the project, which then necessitated the approval and issuance of a compliance certificate registration. Further, it was deposed that the petitioner/applicant has not demonstrated that the 4th respondent has failed to fulfil its legal duty and mandate under the *National Construction Authority Act* and the National Construction Regulations, and that it does not disclose any reasonable cause of action against it.
 11. The 5th and 6th respondents opposed the application vide the replying affidavit of Wang Maoyong the director of the 5th respondent sworn on 26th March, 2025. The 5th respondent deposed that the application is an abuse of the court process, is frivolous and vexatious for the reason that it is in respect to the property registered in its name, does not relate to the 6th respondent in any way. Further, it was deposed that the application erroneously refers to the property as Nairobi/Block L.R No. 1026 making it impossible to determine the actual property to be affected by the development, ascertain the existence of the petitioner's/applicant's alleged property, and the registered owner of the of the said property.



That by failing to demonstrate the nexus of the suit property and his capacity or authorization to institute the suit, the application is fatally defective.

12. The 5th respondent further deposed that the alleged photographs marked as “SAN-2” and “SAN-3” are not accompanied by the certificate of production of electronic evidence and thus are not admissible and cannot be relied upon by this court. Further, that the petitioner/applicant has made several allegations in the application but has failed to prove them. It was deposed that failure on the part of the petitioner/applicant to prove the allegations leaves the averments as presumptions which fail altogether. The 5th respondent deposed that the permitted user of the property is for residential and office purposes, and that since purchasing the same, there was no need for change of user or extension of use. Further, that the petitioner/applicant has failed to demonstrate that he is a member of either Ithingu court residents, Dennis Pritt Road Residents Association, Kilimani Project Foundation or Turbo Road Residents. In addition, it was contended that the alleged correspondences are not instructive on its case, and being irrelevant, the court ought to disregard the same. Further, that the respondents could not provide any material to the petitioner/applicant since he never directly sought the indulgence either of the 5th respondent or any other respondents in the matter.
13. The 5th respondent deposed that the 6th respondent undertook the environment impact study, assessment, and a report was made in August, 2024. Further, that it obtained all the approvals for the project including NEMA license, and the certificate of compliance issued by the 3rd and 4th respondents. It was also deposed that the petitioner/applicant has misrepresented the character of the proposed development, and neglected to challenge other high-rise residential blocks which continue to be erected within the area. Further, that reliance on the principle of legitimate expectation is misplaced since among other issues, the consideration and grant of the development approvals is guided by Nairobi Integrated Urban Development Master Plan as well as Nairobi City County Development Control Plan.
14. The 5th respondent deposed that no assessment has been done by the petitioner/applicant, and that neither has he provided particulars of the alleged adverse effects of the structural development plans of the project. That while this court has the authority to grant the reliefs sought, this court is impeded from doing so by virtue of ELCEPPET No. E037 of 2024, Dennis Pritt Road Residents Association & Four (4) Others v Nairobi City County Government & 6 others where a similar application to the one before court dated 16th October, 2024 was heard and, in a ruling delivered on 27th February, 2025, the same was dismissed. The 5th respondent urged the court to set aside the interim orders granted on 20th March, 2025 until the completion of ELCEPPET No. E037 of 2024. Further, that in challenging the process leading up to the issuance of the approvals, the 5th respondent deposed that the petitioner/applicant should have approached the Nairobi County Physical and Land Use Planning Liaison Committee, the National Environment Tribunal and the National Construction Authority.
15. The 1st and 2nd respondents filed the notice of preliminary objection dated 25th March, 2025 challenging the application on the following grounds: -
 1. That the applicant’s application dated 10th March 2025, offends the doctrine of sub judice under Section 6 of the Civil Procedure Act for reasons that there is a matter in the Environment and Land Court touching on the suit property and parties i.e. ELCEPPET Case No. E037 of 2024; Dennis Pritt Residents Association, Lavender Namdiero, Irungu Houghton, Moses Waiharo & Yussuf Mohamed v Nairobi City County Government, Godfrey Akumali & 5 Others.
 2. That this honourable court lacks jurisdiction to hear and determine this application as it offends the doctrine of sub judice.



3. That annexures “SAN-2” and “SAN-3” in the applicant’s supporting affidavit dated 10th December 2025 offend the provisions of Sections 78A and 106B of the Evidence Act as the same attempts to produce electronic evidence without Electronic Certificate.
 4. That the petitioner’s/ applicant’s application is therefore incompetent, defective, misconceived, misplaced, frivolous, vexatious, contemptuous and a clear abuse of this honourable court hence ought to be dismissed with costs.
16. The 5th respondent filed the notice of motion dated 28th March, 2025 which is expressed to be brought under Order 40 Rule 7 of the Civil Procedure Rules, and Sections 1A,1B,3A, 6 and 7 of the Civil Procedure Act seeking the following orders: -
1. Spent.
 2. That this honourable court varies and/ or sets aside the orders of the honourable court of 20th March, 2025 restraining and/ or stopping all development activities pursuant to the complained of application for development permission and/or any other covert permission/ approval issued in respect of the property registered as Nairobi/ Block 16/ 696 effectively halting all developments thereon pending hearing and determination of this instant application as well as the application of 10th March, 2025.
 3. That this honourable court varies and/ or sets aside the orders of the honourable court of 20th March, 2025 restraining and/ or stopping all development activities pursuant to the complained of application for development permission and/or any other covert permission/ approval issued in respect of the property registered as Nairobi/ Block 16/ 696 effectively halting all developments thereon pending hearing and determination of the petition of 10th March, 2025.
 4. That this honourable court stays the proceedings in respect of the application of 10th March, 2025 and all the petition of even date pending the hearing and determination of Nairobi-ELCEPET No. E037 of 2024, Dennis Pritt Road Residents Association & Four (4) others v Nairobi City County Government & 6 Others.
 5. That this honourable court do issue any and further orders necessary and incidental to the expedient determination and conclusion of the application and of the petition; and
 6. That costs of this application be awarded to the applicant.
17. The application is premised on the grounds on its face. The application is further supported by the affidavit of Wang Maoyong sworn on even date. The 5th respondent deposed that the petitioner filed the notice of motion dated 10th March, 2025 seeking injunction orders against the respondents. That on 20th March 2025, this court granted a temporary order of injunction on an interim basis restraining all development activities on the suit property. However, other residents who also claim to reside next to the suit property lodged a petition similar to this petition in ELCEPET No. E037 of 2024, and a ruling was delivered on 27th February, 2025 dismissing the application.
18. Further, the interim orders issued on 20th March, 2025 are in contrast to the orders issued on 27th February, 2025 thus creating conflicting and contradictory positions. The 5th respondent deposed that it is only trite that the orders are set aside, and the petition stayed pending the hearing and determination of the original petition which is drawing to its conclusion. The 5th respondent deposed that costs have been incurred in the project and the orders issued on 20th March, 2025 continue to cause immense prejudice and financial loss which cannot be remedied by way of costs.



19. In support of the application, the 4th respondent filed its response to the application through the replying affidavit of Stephen Mwilu, the Manager Compliance sworn on 25th April, 2025. The 4th respondent deposed that on 30th October, 2024 it was served with a suit filed in ELCEPPET No. E037 of 2027 wherein the respondents in that suit are similar to this suit, and the petitioners in both matters are residents/neighbours along the subject property. While supporting this application, the 4th respondent contended that the issues in both suits are similar and in light of that, the application should be allowed.
20. The application was opposed by the replying affidavit of the petitioner sworn on 6th April, 2025. The petitioner deposed that the application lacks merit, is strange in law, premised and brought under the wrong provision of the law as it does not in any manner invoke the court's discretion to be exercised in the way in which it has been designed. Further, the petitioner deposed that he was not a party to the proceedings in ELCEPPET No. E037 of 2024, and that the circumstances as presented in the application and petition dated 10th March, 2025 are peculiar and have no connection at all with the proceedings in the former suit. That as a matter of fact, he is not a member of any association, and that the 2nd and 6th respondents are not parties in that suit. He deposed that the interim orders dated 24th March, 2025 were procedurally obtained, and that this application has not demonstrated the grounds enumerated under Section 80 of the *Civil Procedure Act*, and they ought to have moved the court under Order 45 Rule 1 of the Civil Procedure Rules.
21. Further, the petitioner deposed that it is a cardinal rule of natural justice that no one should be condemned unheard, and that admitting the application can only result in the delay of the cause of justice.
22. The 5th respondent filed its further affidavit in response thereto which was sworn on 6th May, 2025. While reiterating the contents of its supporting affidavit, the 5th respondent deposed that the petitioner/applicant fails to appreciate that the import of the application is not for review under Section 80 of the *Civil Procedure Act*, but an application for stay of proceedings under Sections 6 and 7 of the *Civil Procedure Act*. It was deposed that this application was filed to cure numerous discrepancies which the petitioner/applicant was fraudulently relying on with a view to unfairly take advantage of this court to the detriment of the 5th respondent.
23. The application was canvassed by way of written submissions. The 5th and 6th respondents filed their written submissions dated 11th June, 2025 with respect to the two notice of motions. In regard to the petitioner's/applicant's notice of motion dated 10th March, 2025, the 5th and 6th respondents raised the following issues for determination:-
 1. Whether the petitioner has presented a prima facie case with a probability of success.
 2. Whether the petitioner shall suffer irreparable injury, which would not be adequately compensated by an award of damages, if the petitioner's application is dismissed.
 3. Whether the honourable court is still in doubt regarding the foregoing and on which side the balance of convenience tilts.
24. With regard to their notice of motion, the 5th and 6th respondents raised the following issues for determination: -
 1. Whether there is a former judgment or order which was final.
 2. Whether the judgment or order was on merit.



3. Whether the judgment or order was rendered by a court having jurisdiction over the same subject matter and the parties.
 4. Whether there is, between the first and the second action, identical parties, subject matter and cause of action.
25. Cumulatively on both applications, the 5th and 6th respondents summarized the issues for determination as follows: -
1. Whether the injunctive orders pending the hearing and determination of the petition are warranted.
 2. Whether the proceedings in this instant petition should be stayed pending the hearing and determination of the former matter as described above.
26. On whether this court should stay proceedings in the instant petition pending the hearing and determination of the former matter, the 5th and 6th respondents submitted that the petitioner/applicant has not demonstrated proof of infringement of the constitutional rights alleged and that the evidentiary material on record does not speak, and is not constructive on the allegations made. That due to the ineptitude of the petitioner's/applicant's evidentiary material, his application has no probability or likelihood of success in the circumstances. The 5th and 6th respondents submitted that the petitioner/applicant's application presents unfounded fear and/or apprehension and that it does not demonstrate the damages or loss to be suffered. To buttress on this issue, reliance was placed in the cases of *Nguruman Limited v Jan Bonde Nielsen and 2 Others* [2014] eKLR, *Empeut Resort Limited & another v Tourism Finance Corporation & another* [2018] eKLR, *Evans Otieno Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR, and *Martin Nyaga Wambora v Speaker of The County Assembly of Embu & 3 Others* [2014] eKLR.
27. On whether this court should stay proceedings in this petition pending the hearing and determination of the former matter, the 5th and 6th respondents submitted that the ruling delivered on 27th February, 2025 was a final determination on the question of injunctive and or conservative action on the suit property pending the determination of the petition. That while the former matter is pending before another court, this court is barred from trying the same issues as long as the former subsists, and ought to stay the present suit pending the conclusion of the former matter. To buttress on this issue, the 5th and 6th respondents relied on the cases of *George Macheho Mungai (Suing as the personal representatives of the Estate of Stephen Mungai Kamau) v National Land Commission & 6 Others* [2024] KEELC 873 (KLR), *John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others* [2021] eKLR, *Satya Bhama Gandhi v Director of Public Prosecutions & 3 Others* [2018] eKLR, and *Joseph Muturi Wainaina v Clement Kung'u Waibara & Winnie Wairimu Mburu* [2024] KEHC 9501 (KLR).
28. On the issue of costs, the 5th and 6th respondents prayed for costs in respect of their application, and a dismissal of the petitioner's/applicant's application with costs. Reliance was placed in the case of *Cecilia Karuru Ngayu v Barclays Bank of Kenya & Credit Reference Bureau Africa Limited* [2016] eKLR.
29. With regard to the notice of motion dated 10th March 2025, the 1st and 2nd respondents filed their written submissions dated 16th June, 2025 where they raised three issues for determination as follows: -
- i. Whether the application dated 10th March, 2025 offends the doctrine of sub judice.



- ii. Whether the applicant has met the threshold to be granted injunction orders sought in the application dated 10th March, 2025.
 - iii. Who should bear the costs of the application.
30. On the first issue, the 1st and 2nd respondents submitted that the petitioner/applicant was aware of the suit in ELCEPPET No. E037 of 2024 but maliciously failed to inform this court so as to circumvent the course of justice, and that bearing the similarity in this application and in the former suit, this application and petition is sub judice. To buttress on this issue, the 1st and 2nd respondents relied on the cases of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] KESC 54 (KLR), and Republic v Paul Kihara Kariuki, Attorney General & 2 Others ex parte Law Society of Kenya [2020] eKLR.
31. On the second issue, the 1st and 2nd respondents submitted that the petitioner/applicant has failed to prove a prima facie case with a probability of success for failing to furnish sufficient evidence to ascertain the claims and hence the averments are unfounded. Further, that he has failed to establish how he is suffering any irreparable harm, in any case, the 5th respondent is the one suffering having procured all the approvals for the development which has stalled. The 1st and 2nd respondents submitted that the balance of convenience tilts in favour of the 5th respondent as it is the legal proprietor of the subject property, and hence has protection enshrined under Article 40 (1) of the *Constitution*. They relied on the cases of Giella v Cassman Brown [1973] EA 358, Gladys Mumbi Irungu v David Gikaria & 2 Others [2017] eKLR, Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR, Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR, and Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 others [2016] eKLR.
32. On the third issue, the 1st and 2nd respondents submitted that the application by the petitioner/applicant has failed to satisfy all the principles for granting an injunction and hence he is not deserving of the orders sought. They urged the court to dismiss the application with costs.
33. The 1st and 2nd respondents filed their written submissions dated 20th June, 2025 with regard to their notice of preliminary objection where they raised three issues for determination as listed below: -
- i. Whether the 1st and 2nd respondents’ notice of preliminary objection dated 25th April 2025 is merited.
 - ii. Whether annexures “SAN-2” and “SAN-3” in the applicant’s supporting affidavit dated 10th March 2025 offend the provisions of Sections 78(a) and 106(b) of the *Evidence Act* as the same attempts to produce electronic evidence without electronic certificate.
 - iii. Who should bear the costs of the application.
34. On the first issue, the 1st and 2nd respondents submitted that the preliminary objection raises pure points of law, touching on Section 6 of the *Civil Procedure Act*. It was submitted that the materials in both proceedings cannot be distinguished and the reliefs sought or orders pronounced will have equal force and applicability before the court. To buttress on this issue, reliance was placed on the cases of *Wainaina v Waibara & another (Civil Appeal 252 of 2023)* [2024] KEHC 9501 (KLR) (25 July 2024), Republic v Paul Kihara Kariuki, Attorney General & 2 Others ex parte Law Society of Kenya [2020] eKLR, and Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] KESC 54 (KLR).
35. On the second issue, and while relying on the cases of Ogembo v Yongo [2024] KEHC 15763 (KLR), and County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others



- [2015] eKLR, the 1st and 2nd respondents further submitted that the annexures are not accompanied by a certificate of electronic evidence, and thus cannot be relied upon by the court.
36. On the third issue, the 1st and 2nd respondents submitted that the present suit offends the principle of sub judice and the appropriate course is for the court to strike out the proceedings with costs.
37. I have considered the two notice of motions and the notice of preliminary objection, the responses, and the written submissions filed by the 1st, 2nd, 5th and 6th respondents. The petitioner/applicant moved the court seeking orders of injunction against the development project on the property known as Nairobi/Block 19/696 which is adjacent to his property registered as Nairobi/Block L.R. No. 1026. He argued that this project is ongoing without compliance with the requirements for approvals which he has sought but has not received the same, and that further he has raised valid concerns on clear infringement of his constitutional right to a clean and healthy environment. The petitioner/applicant contended that the approved plan in the gated community is for a one storey building which the neighbourhood has complied with over the years and this project by the 5th respondent is out of character.
38. The application was vehemently opposed by all the respondents. They argued that all the relevant approvals were obtained in compliance with the prescribed laws and regulations, and hence, the development project has not violated, infringed or threatened the constitutional rights of the petitioner/applicant. More importantly and a common issue that arose in all these responses was the existence of a pending suit before a similar court in ELCEPPET No. E037 of 2024 which the respondents deposed is almost at its final stages. The respondents argued that the present suit is sub judice, and this court is barred from hearing and determining the present application and petition.
39. The instant application and petition must have precipitated the filing of the notice of preliminary objection filed by the 1st and 2nd respondents since they challenged the same on grounds of Section 6 and 7 of the *Civil Procedure Act* and the admissibility of electronic evidence by the petitioner/applicant.
40. In the course of proceedings, and on 20th March, 2025 this court granted an order of injunction on temporary basis stopping all activities on the suit property, which prompted the filing of the notice of motion dated 28th March, 2025 as it seeks the setting aside of the orders issued on the said date. In opposition to this application, the petitioner/applicant argued that it was not a party to the former suit as well as the 2nd and 6th respondents. Further, that the application is brought under the wrong provisions of law and the circumstance of this application and petition are peculiar to the issues in the former suit.
41. While the jurisdiction of this court is central to the determination of this matter, it is my view that the issues for determination are as follows: -
1. Whether the instant application and the petition is sub judice.
 2. What orders should issue in the circumstance.
42. Section 6 of the *Civil Procedure Act* provides that: -
- “No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”
43. I have looked at the documents relied on by the parties herein. The matter in ELC Petition No. E037 of 2024 involves the development activities on the property known as Nairobi/Block 19/696 owned by



the 5th respondent. The petitioners in that case are challenging the non-compliance of the relevant laws and regulations by the 5th respondent in the development project. The respondents in that case are similar save for 1st and 6th respondents. It is also clear that the petitioner/applicant in the present suit is not a party in that suit. However, the petitioner/applicant has not shown the peculiar circumstances that distinguish this application from that suit. It would be embarrassing for this court to attempt to pronounce itself in the present application when in the former suit, a similar application albeit seeking conservative orders was dismissed. In the circumstance, I am satisfied that the present application and petition offends the principle of sub judice, and in that case, the order commending itself at this stage is for stay of proceedings in this matter pending the outcome of the ELC Petition E037 of 2024.

44. In the case of Quick Enterprises Ltd versus Kenya Railways Corporation, Kisumu HCCC No.22 of 1999, the court held that:-

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”

45. I have cited the above authority to show the inconsistency with the notice of preliminary objection filed by the 1st and 2nd respondents. Where a preliminary objection raises issues that would invite the court to look at evidence i.e. the photographic evidence attached to the petitioner’s/applicant’s application, then it becomes defeated. Equally, where issues have been disputed by the parties, and where the suit cannot end without a trial such as this, then a preliminary objection cannot suffice. In other words, a notice of preliminary objection is not the best outfit to determine sub judice, and instead an application would be applicable in the circumstances. Thus, the notice of preliminary objection filed by the 1st and 2nd respondents fails.

46. Arising from the above, this court finds merit in the notice of motion dated 28th March 2025, and I grant the following orders: -

- i. The orders issued on 20th March, 2025 are hereby set aside.
- ii. This court hereby stays all the proceedings in the notice of motion dated 10th March, 2025 and the petition pending the hearing and determination of Nairobi- ELCEPPET No. E037 of 2024, Dennis Pritt Road Residents Association & Four (4) Others v Nairobi City County Government & 6 Others.
- iii. The notice of preliminary objection dated 25th March, 2025 is dismissed.
- iv. Each party to bear their own costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 2ND DAY OF JULY, 2025.

HON. MBOGO C.G.

JUDGE

2/07/2025.

In the presence of:

Mr. Benson Agungo - Court assistant

Mr. Oriwa for the Petitioner



Ms. Mwangi holding brief for Mr. Bake for the 1st and 2nd Respondent

Mr. Karimu for the 3rd Respondent

Mr. Kagiri for the 5th and 6th Respondents

Ms. Kerubo present (but muted & therefore not able to tell the court the party she represents)

