



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CIVIL CASE NO. 57 OF 2014**

**SAMSON CHEMBE VUKO.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**NELSON KILUMO**

**MATILDA KASHINDO**

**KENNETH KAZUNGU (*the Registered officials Prisons*)**

***Kiwandani Residential Upgrading CBO.....1<sup>ST</sup> DEFENDANT/RESPONDENT***

**THE COUNTY GOVERNMENT OF KILIFI.....2<sup>ND</sup> DEFENDANT/ RESPONDENT**

**R U L I N G**

1. This Ruling is in respect to the Defendant's Notice of Preliminary objection dated 2<sup>nd</sup> May, 2014. According to the said Preliminary Objection, this court does not jurisdiction to hear and determine this matter by virtue of the provisions of section 19 (5) and 38 (5) of the Physical Planning Act.

**Background**

2. According to the averment by the Plaintiff, he purchased the suit property in May, 2010 and put up various structures including his residential house and a stone perimeter wall after paying for the full purchase price.
3. It is the Plaintiff's case that he is a member of Prisons/Kiwandani Residential upgrading CBO, Kilifi and the construction of buildings on the suit property was done with the connivance and approval of the 1<sup>st</sup> Defendant.
4. It is the Plaintiff's case that during the expansion of the roads, the 1<sup>st</sup> Defendant has proceeded to demolish the Plaintiff's buildings and that he has earmarked more buildings for demolition; that the 2<sup>nd</sup> Defendant has issued to him an illegal notice threatening him with demolition of his structures and that he will suffer irreparable damage and loss of Defendant's activities are not halted.
5. In his Replying Affidavit, the 1<sup>st</sup> Defendant deponed that he was the secretary of

- Prisons/Kiwandani area, which area still subject to physical planning and realignment of boundaries and that the Applicant has no demarcated parcel of land to claim quiet enjoyment.
6. According to the Defendant, all the squatters including the Plaintiff who had built on areas reserved for roads in the PDP were served with valid notices and the structures earmarked for demolition have encroached on the proposed roads and that Plaintiff house has not been earmarked for demolition.

### **Submissions**

7. The Plaintiff's advocate submitted that the Plaintiff is the owner of plot numbers 0665 and 595; that the Plaintiff and the other members agreed to the upgrading of the area in 2013 and that the Plaintiff being aggrieved by the proposed PDP objected to the proposed development plan vide a letter dated 25<sup>th</sup> January, 2014.
8. The Plaintiff's counsel submitted that the Defendants did not respond to his objection and that the jurisdiction of this court is conferred by the Constitution by dint of Article 162(2) of the Constitution and the Environment and Land Court Act

### **Analysis and findings:**

9. The parties agreed to argue the Defendant's Preliminary objection first as to whether this court has the jurisdiction to determine this suit.
10. It is not in dispute that the present suit and the Application is in relation to the planning of an area known as Prison/Kiwandani. It is also not in dispute that the said area is subject to physical planning in view of the fact that the suit property, amongst others have never been surveyed and demarcated.
11. According to the provisions of section 16(1) of the Physical Planning Act, Cap 286, a regional physical development plan may be prepared by the Director of Physical Planning with reference to private land for the purpose of improving the land and providing for the proper physical development of such land.
12. According to section 19(1) of the Act, the Director is required within 30 days after the preparation of a PDP to publish a notice in the gazette to the effect that the plan is open for inspection. Any objection to the PDP is supposed to be forwarded to the Director within 60 days from the date of the first publication of the notice. If the Petitioner is aggrieved by the decision of the Director, he may appeal to the relevant liaison committee, in this case, the District Physical Planning Liaison Committee established pursuant to the provisions of section 8(3) of the Act.
13. If aggrieved with the decision of the District or Municipal liaison committee, the Petitioner may file an appeal with the National Liaison Committee as established under the Act.
14. Section 15(4) of the Act provides that a person aggrieved by a decision of the National Liaison Committee may appeal to the High Court (ELC) against such a decision.
15. The 1<sup>st</sup> Defendant has annexed on the Replying Affidavit the Part Development Plan of the area in question together with the notifications that were published in the Taifa leo and the Nation Newspaper. A copy of the notice that was published in the gazette notice number 15504 of 20<sup>th</sup> December, 2013 has also been annexed.
16. Indeed, the Applicant has admitted that he was aware of the ongoing planning process and the publication of the PDP.
17. Pursuant to the provisions of Article 162(2) (b) of the Constitution, this court was established to determine disputes relating to the environment and the use and occupation of and title to land. The jurisdiction and functions of the court was to be determined by Parliament, thus the enactment of the Environment and Land Court Act, 2011.
18. According to section 13(1) of the Environment and Land Court Act, 2011, this court has the original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution. Section 13(5) of the Act provides that the court shall have supervisory jurisdiction over the subordinate courts, local tribunals, persons or authorities in accordance with Article 165(6) of the Constitution.
19. It therefore follows that although this court has unlimited jurisdiction to deal with disputes relating to the environment and land in accordance with Article 162(2)(b) of the Constitution, the court is

- required to look at other governing statutes to determine whether it has the original or appellate jurisdiction in a given case.
20. Where a statute provides the mode of resolving disputes relating to the environment and the use and occupation of and title to land, then that mode must be resorted to first.
  21. The provisions of the Physical Planning Act are clear that the High Court, in this case the Environment and Land Court, can only hear appeals from the National Liaison Committee on matters pertaining to a regional physical development plan, unless it is shown that that body do not exist.
  22. Consequently, this court does not have jurisdiction to deal with the issues arising from a regional physical development plan at the first instance unless it is shown that the District Physical Planning Liaison Committees and the National Liaison Committee have since ceased to exist. I have not been told that those bodies do not exist.
  23. For those reasons, I uphold the Defendant's Notice of Preliminary objection dated 2<sup>nd</sup> May, 2014.

Dated and delivered in Malindi this 5<sup>th</sup> day of **September**, 2014.

**O. A. Angote**

**Judge**