



Kinuthia v County Government of Kiambu (Environment and Land Case E067 of 2024) [2025] KEELC 6428 (KLR) (24 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6428 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E067 OF 2024
JM ONYANGO, J
SEPTEMBER 24, 2025**

BETWEEN

RUMBA KINUTHIA PLAINTIFF

AND

COUNTY GOVERNMENT OF KIAMBU DEFENDANT

RULING

1. On 2nd April 2025, this court delivered a Ruling upholding the Defendant’s Notice of Preliminary Objection dated 21st May 2024 and ordered that the matter be remitted to the Kiambu County Physical and Land Use Planning Liaison Committee for adjudication.
2. Aggrieved by the said decision, the Plaintiff (Applicant) intends to appeal against the same. The Applicant has filed a Notice of Appeal together with an application dated 25th April 2025, which is the subject of this Ruling. Through the Application, the Applicant seeks the following orders:
 - a. Spent
 - b. Spent
 - c. That this Honorable Court be pleased to and hereby issue a temporary injunction restraining the Defendant/Respondent by themselves, their servants, agents, employees or any other person or persons claiming through them or on their behalf either jointly or severally from evicting or in any way interfering with the quiet possession of the Plaintiff/Applicant and his tenants on LR. No. Kiambu/ Municipality/ Block 5 (Kiamumbi)/ 1489 also referred to as Jacaranda Business Center (J.B.C) and Maziwa Flats and shops pending the hearing and determination of the intended appeal.



- d. That the Defendant/Respondent be restrained from issuing any further Enforcement Notices to the Plaintiff/Applicant for L.R. No. Kiambu/ Municipality/ Block 5 (Kiamumbi)/ 1489 also referred to as Jacaranda Business Center (J.B.C) and Maziwa Flats and shops, pending the hearing and determination of this application.
 - e. That the Defendant/Respondent be restrained from issuing any further Enforcement Notices to the Plaintiff/Applicant for L.R. No. Kiambu/ Municipality/ Block 5 (kiamumbi)/ 1489 also referred to as Jacaranda Business Center (J.B.C) and Maziwa Flats and shops pending the hearing and determination of the intended appeal.
 - f. That this honourable court be pleased to stay remission of this suit to the Kiambu County Physical and Land Use Planning Liaison Committee for adjudication pending hearing and determination of the application.
 - g. That this honourable court be pleased to stay remission of this suit to the Kiambu County Physical Planning and Land Use Planning Liaison Committee for adjudication pending the hearing and determination of the intended appeal.
 - h. That the O.C.S Kiamumbi Police Station be compelled to ensure compliance of the above orders.
3. The Application is supported by an Affidavit sworn by Rumba Kinuthia (the Plaintiff/Applicant) on 25th April 2025. The Applicant expresses that he is aggrieved by the Ruling delivered on 2nd April 2025 and confirms an intention to appeal against the entirety of the decision to the Court of Appeal. He states that a Notice of Appeal and a Request for Certified Proceedings have already been filed.
 4. The Applicant asserts that without the interim injunction and stay of execution sought in the present application, he stands to suffer irreparable harm, citing an imminent threat of the Defendant (Respondent) entering the property and proceeding with complete destruction of the suit premises.
 5. He further states that there is a real risk that the Respondent's agents will persist in harassment and destruction of property, as previously demonstrated, actions which were carried out without a valid enforcement notice and without affording the Applicant an opportunity to challenge the legality of such acts.
 6. The Applicant maintains that the intended appeal is arguable, has high prospects of success, and would be rendered nugatory if the orders sought are not granted. The Applicant undertakes to promptly file and prosecute the appeal, including fast-tracking the Record of Appeal and setting the matter down for directions at the earliest possible opportunity once certified copies of proceedings and Judgment are availed to his counsel.
 7. The Applicant avers that the Respondent will suffer no prejudice should the Application be allowed. The Applicant explains that there was no inordinate delay in bringing this application, and that the intervening period was spent seeking the certified judgment, which was not readily available.
 8. The Applicant finally contends that it is in the interest of justice and fairness that the prayers sought in the application be granted.



9. The Respondent opposes the Application through a Notice of Preliminary Objection and Grounds of Opposition, both dated 30th April 2025. The Respondent raises the following points of law through the Preliminary Objection:
 - a. That this Honourable Court lacks jurisdiction to hear and determine the application herein as this Honourable Court already pronounced itself on the issue of jurisdiction pursuant to Section 72 (3) (4) of the *Physical and Land Use Planning Act*, 2019.
 - b. That the instant application offends the provisions of Section 7 of the *Civil Procedure Act* Cap 21, Laws of Kenya.
 - c. That the instant application is therefore frivolous, vexatious and an abuse of the court process.
10. The Defendant/Respondent raises the following grounds in the Grounds of Opposition. First, counsel for the Respondent states that the Application raises the same issues and seeks the same orders that are contained in the Plaint dated 3rd May 2024, which this court dismissed in its Ruling of 2nd April 2025 for want of jurisdiction. Counsel emphasises that jurisdiction is the lifeline of any suit, and in its absence, a suit is dead on arrival. Reliance is placed on Owners of the Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd [1989] where it is held that jurisdiction is everything.
11. Secondly, counsel argues that the present application is res judicata because the court already referred the grievance on the enforcement notice to the Kiambu County Physical and Land Use Planning Liaison Committee under sections 72 and 78(d) of the *Physical and Land Use Planning Act*, 2019. By seeking the same reliefs through this motion, counsel argues that the Applicant is essentially reopening a matter already determined. The test in Nancy Mwangi t/a Worthlin Marketers vs Airtel Networks (K) Ltd & Others [2014] is cited in support.
12. Thirdly, counsel contends that the application does not meet the threshold for the grant of an injunction under *Giella vs Cassman Brown*, since the orders sought amount to a repetition of issues already dismissed on the basis of lack of jurisdiction.
13. Counsel further states that the doctrine of res judicata is anchored in public policy, which demands finality of litigation. The enforcement notice in issue is said to have been issued in the public interest, given that the building on the suit premises already shows signs of collapse, posing danger to members of the public. The Applicant, according to counsel, does not demonstrate any prejudice he would suffer if he ventilates his grievances before the Liaison Committee, which is the forum provided by statute.
14. It is also argued that granting the injunction would have the effect of the Court contradicting itself and arrogating jurisdiction that it does not possess. Counsel maintains that the Applicant cannot be allowed to institute the same action twice by merely making cosmetic changes to the pleadings.
15. Finally, counsel asserts that the Applicant is under obligation to exhaust the dispute resolution mechanisms provided under the Physical and Land Use

Planning Act, 2019, before seeking relief from this Court.

16. The Application and the Preliminary Objection were canvassed by way of written submissions. The Applicant filed written submissions dated 20th May 2025, while the Respondent filed submissions dated 17th June 2025.



Plaintiff/Applicant's Submissions

17. Counsel for the Plaintiff/Applicant identified four issues for determination: (i) Whether this court has jurisdiction to hear this Application and whether the court is functus officio; (ii) Whether the Applicant has met the threshold to be granted an injunction; (iii) Whether the Appellant demonstrated the threshold to grant interim orders pending appeal; and (iv) Who is entitled to costs.
18. On whether the court has jurisdiction and whether it is functus officio, counsel for the Applicant submitted that this court, being of the same status as the High Court, enjoys unlimited jurisdiction except as restricted by *the Constitution*. It was contended that under Article 165(3)(e) and section 13 of the *Environment and Land Court Act*, the Court has wide powers to hear matters concerning environment and land, including the power to issue interim orders, injunctions, and supervisory directions over tribunals and subordinate courts.
19. Counsel relied on the decisions in *Republic vs Karisa Chengo & 2 Others* [2017]eKLR and subsequent Supreme Court pronouncements to argue that although the specialized courts are equal in status to the High Court, they have distinct jurisdictions, and the Environment and Land Court is empowered to determine disputes relating to land and environment. Counsel emphasized that the doctrine of functus officio does not prevent a court from dealing with post-ruling applications such as stay pending appeal, as long as the court is not re-engaging in the merits of a concluded judgment. Reference was made to *John Gilbert Ouma vs Kenya Ferry Services Ltd*[2021]eKLR to support this view.
20. Counsel for the Applicant further argued that since this court initially referred the matter to the Liaison Committee, it retains the power to direct how and when such reference should proceed, including staying execution pending appeal. Accordingly, counsel submitted that this Court is not functus officio and has the requisite jurisdiction to entertain the Application.
21. On whether the Applicant met the threshold for an injunction, counsel submitted that the Applicant had established a prima facie case with a probability of success, as required in *Giella vs Cassman Brown* [1975] E.A. 358 and further explained in *Mrao Ltd vs First American Bank*. Counsel submitted that the memorandum of appeal raised serious questions regarding the jurisdiction of the County Liaison Committee, particularly whether it could deal with matters of damages arising from destruction of property and whether it could adjudicate issues where an enforcement notice had already been executed.
22. Counsel asserted that the Applicant's property had been invaded, structures demolished, and losses occasioned without due process, despite having obtained the necessary approvals. He argued that the Liaison Committee lacked jurisdiction to remedy such violations, making the appeal arguable. Reliance was placed on *Karanja v County Government of Kilifi* where the court distinguished between disputes over notices and claims for damages following unlawful demolitions.
23. On irreparable harm, counsel argued that the Applicant had invested heavily in the suit property, which housed tenants and generated income, and that further demolitions would cause irreparable loss not compensable in damages. On balance of convenience, it was urged that preservation of the property pending appeal favoured the Applicant, as the Respondent stood to suffer no prejudice if restrained from unlawful interference.
24. On whether the appellant had demonstrated the threshold for interim orders pending appeal, counsel submitted that the test under Order 42 Rule 6 of the Civil Procedure Rules had been satisfied. First, substantial loss would result if stay was not granted, as the applicant risked losing his primary investment and source of livelihood. Secondly, there was no unreasonable delay, since the application



was filed within weeks of the Ruling. Reference was made to *Mwangi S. Kimenyi vs Attorney General* to support the argument that the delay was not inordinate.

25. On the issue of security, counsel argued that no counterclaim for damages or mesne profits had been raised by the respondent, and that the only potential liability was costs. The applicant expressed readiness and willingness to satisfy any costs awarded. Reliance was placed on *Focin Motorcycle Co. Ltd vs Ann Wambui Wangui*[2018] eKLR and *RWW vs EKW* to submit that an undertaking to pay costs suffices as security in appropriate cases.
26. On the issue of costs, the Applicant’s counsel invoked section 27 of the *Civil Procedure Act* and the principle that costs follow the event. It was submitted that the applicant, having properly moved the Court and raised arguable grounds, was entitled to the costs of the Application. Reference was made to Justice Kuloba’s Judicial Hints on Civil Procedure on the meaning of “costs following the event.”
27. In conclusion, counsel urged the Court to allow the application dated 25th April 2025, grant the orders of injunction and stay pending appeal, and award costs to the applicant.

Defendant/Respondent’s Submissions

28. Learned counsel for the Defendant/Respondent identified the following two issues for determination: (i) Whether the Court lacks jurisdiction to issue orders sought in the instant application; and (ii) Whether the application offends the provisions of section 7 of the *Civil Procedure Act*.
29. On whether the court has jurisdiction to grant the orders sought, counsel for the Respondent submitted that the orders sought by the applicant invite this Court to restrain the respondent from issuing enforcement notices and to grant a temporary injunction over the suit property pending appeal. It was argued that the underlying cause of action concerns the issuance of an enforcement notice under section 72(1)(b) of the *Physical and Land Use Planning Act* (PLUPA), 2019.
30. According to counsel, the Act clearly sets out the procedure for challenging enforcement notices, specifically requiring grievances to be referred to the County Physical and Land Use Planning Liaison Committee as provided under section 72(3). It was submitted that instead of following this statutory dispute resolution mechanism, the applicant was attempting to shield himself behind temporary orders in disregard of the earlier directions of this Court.
31. The Respondent’s counsel relied on the decision of *Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others* (2012), where the Supreme Court underscored that a court’s jurisdiction flows from *the Constitution* or statute and cannot be expanded by judicial craft. Counsel therefore, maintained that this Court has no jurisdiction to entertain the application, as the proper forum for redress remains the Liaison Committee.
32. On whether the Application is res judicata and an abuse of process counsel submitted that the applicant was seeking interim orders in a manner that effectively requires this Court to determine issues that should properly be ventilated before the County Liaison Committee. It was argued that this offends section 7 of the *Civil Procedure Act* on res judicata, as the Court had already directed that the matter be referred to the Committee. Reliance was placed on *Mburu Kinyua vs Gachini Tuti* [1978] KLR 69 and *Uhuru Highway Development Ltd vs Central Bank of Kenya & 2 Others* [1996] eKLR, which emphasized the need for finality in litigation and interlocutory applications. Counsel argued that permitting repeated applications on the same issues would overwhelm the Court and undermine the principle of finality.
33. It was further submitted that the Application was frivolous, vexatious, and an abuse of process, given that the dispute had already been referred to the County Liaison Committee. Counsel cited *Muchanga*



Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR to argue that an abuse of process arises where judicial procedures are invoked in a manner that is oppressive, vexatious, or lacking in bona fides.

34. The Respondent's counsel drew the court's attention to Section 72(4) of PLUPA, which provides that appeals from the County Liaison Committee to the Court lie only on points of law, and must be determined within thirty days. It was submitted that the Applicant had not lodged such an appeal.
35. Counsel added that Section 72(5) of the Act stipulates that a person served with an enforcement notice who refuses to comply commits an offence, punishable by fine or imprisonment. Counsel argued that the applicant must first comply with the enforcement notice and pursue the statutory dispute resolution mechanism before seeking relief from this Court. It was emphasized that the Liaison Committee is an independent statutory body, not under the control of the County Government, and is the appropriate forum for the applicant's grievance.
36. In conclusion, counsel urged the Court to dismiss the application dated 25th April 2025 with costs, and to uphold the respondent's preliminary objection dated 30th April 2025, on the basis that the Court lacks jurisdiction at this stage and that the application is res judicata and an abuse of process.

Issues for determination

37. Having considered the Application, the Preliminary Objection, the Grounds of Opposition and the rival Submissions, the issues for determination are:
 - i. Whether this Court has jurisdiction to entertain the application dated 25th April 2025, or whether it is functus officio.
 - ii. Whether the application is barred by the doctrine of res judicata.
 - iii. Whether the Applicant has met the threshold for the grant of a temporary injunction and/or stay pending appeal.
 - iv. Who should bear the costs of the Application.

Analysis and Determination

On whether this Court has jurisdiction or is functus officio

38. Jurisdiction is everything. Without it, a court has no power to make one more step, as was famously held in Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1. The Respondent's position is that this Court already determined it had no jurisdiction in its ruling of 2nd April 2025, and that by seeking injunctive orders the Applicant is attempting to re-litigate issues already settled.
39. It is not disputed that this Court, in its earlier ruling, upheld the Preliminary Objection and directed the matter to the County Physical and Land Use Planning Liaison Committee pursuant to section 72 of the *Physical and Land Use Planning Act* (PLUPA), 2019. The question now is whether this Court is functus officio and whether it retains residual jurisdiction to grant interim relief pending appeal.
40. While a court becomes functus officio on the substantive merits of the case, it retains residual jurisdiction over procedural and ancillary matters flowing from that judgment, with an application



for stay of execution being the prime example. The Supreme Court in Francis Kariuki Muruatetu & another vs Republic [2016] eKLR stated that:

“...functus officio is not to be understood to bar any engagement by a court with a case that it has already decided. What it does bar, is a merit-based re-engagement with the case once final judgment has been entered and a decree issued.”

41. Similarly, in John Gilbert Ouma vs Kenya Ferry Services Ltd [2014] eKLR, the Court of Appeal affirmed that a trial court retains jurisdiction to consider stay pending appeal.
42. Consequently, even though this Court cannot reopen or revisit its ruling of 2nd April 2025, it retains jurisdiction under Section 13(5) of the *Environment and Land Court Act* and Order 42 Rule 6 of the Civil Procedure Rules to grant interim relief to preserve the substratum of the appeal. The preliminary objection that this Court is functus officio therefore fails.

On whether the application is res judicata

43. Section 7 of the *Civil Procedure Act* codifies the doctrine of res judicata. The test, as restated in Independent Electoral and Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR, is whether the matter directly and substantially in issue in the subsequent suit or application was directly and substantially in issue in the former suit, between the same parties, and finally determined by a competent court.
44. In the present case, the substantive dispute regarding the validity of the enforcement notice was remitted to the Liaison Committee. That issue is not before this Court in the current application. Rather, the applicant seeks interim relief to preserve the property pending an intended appeal. This is a distinct and interlocutory matter.
45. I therefore find that the present motion is not res judicata. However, the Court must still guard against abuse of process by ensuring that interim relief does not amount to a disguised attempt to reopen the merits of a matter already referred to the Liaison Committee.

On whether the Applicant has met the threshold for an injunction/stay pending appeal

46. The principles for the grant of an injunction were set out in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, namely: (i) a prima facie case with a probability of success, (ii) irreparable injury which cannot be compensated by damages, and (iii) if in doubt, determination on a balance of convenience.
47. Further, under Order 42 Rule 6 of the Civil Procedure Rules, an applicant for stay pending appeal must demonstrate: (i) substantial loss may result unless the order is granted, (ii) the application has been brought without unreasonable delay, and (iii) the applicant is willing to provide security.
48. On prima facie case, the Applicant argues that the intended appeal raises serious questions on the jurisdiction of the Liaison Committee, particularly its power to grant damages after alleged unlawful demolitions. Without delving into the merits of the appeal, I am satisfied that the appeal is not frivolous. It is arguable, which suffices at this stage.
49. On irreparable harm, the Applicant has shown that tenants occupy the premises and that the structures are a source of livelihood. However, any harm that would be occasioned can be compensated by damages, if the appeal succeeds.
50. In the circumstances, the Applicant has failed to meet all the conditions for the grant of an injunction.



51. Regarding stay under Order 42 Rule 6, I am satisfied that the application was made promptly, within weeks of the ruling. The applicant has also expressed willingness to abide by any conditions on security. In the absence of a monetary decree, an undertaking on costs suffices.
52. I am therefore persuaded that the Applicant has satisfied the requirements under Order 42 Rule 6, and is entitled to interim protection pending appeal. Accordingly a stay is hereby granted in terms of prayer (7) of the Notice of Motion on condition that the Applicant deposits Kshs. 300,000/= as security for costs within 30 days failing which the order shall automatically lapse.
53. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF SEPTEMBER 2025.

.....
J. M ONYANGO
JUDGE

In the presence of:

Mr Kuria for the Plaintiff/ Applicant

No appearance for the Respondent

Court Assistant: Hinga

