

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC APPEAL NO. E001 OF 2024

**STANLEY NDUATI,
ROSEMARY NGOTHO &
DANIEL MUNA (Suing as the officials and representatives of
KAY WELFARE ASSOCIATION)
APPELLANT**

=VERSUS=

**JOHN MAINA 1ST
RESPONDENT
COUNTY GOVERNMENT OF KIAMBU
THIKA SUB COUNTY 2ND
RESPONDENT**

(Being an appeal from the Judgment delivered by Hon. V. Asiyo (Principal Magistrate) on 7th December, 2023, in Thika ELC Suit No. 43 of 2016.)

J U D G M E N T

1. Stanley Nduati, Rosemary Ngotho, Julius Njoroge and Daniel Muna, the Appellants herein, were the Plaintiffs in Ruiru ELC Suit No. 43 of 2016, where they filed their suit against John Maina and the County Government of Kiambu Juja Sub-County (the 1st and the 2nd Respondents herein), who were the 1st and 2nd Defendants in the lower court, seeking the following reliefs:-

- a) *That a permanent injunction be issued restraining the Defendants whether by themselves agents, servants,*

employees or anybody claiming through them, from constructing any commercial house or authorizing the same in Plot No. 26680/24 and 26680/27 or effecting change of user to the land without the consents of the Plaintiffs.

b) Cost and interest of the suit.

c) Any other further relief that this honourable court deems fit to grant.

2. Their case was that the 1st Respondent was in violation of the constitution governing members of the Kay Welfare Association. They stated that members of the Association had agreed, through a welfare constitution and through standardized agreements, that only residential dwelling houses were permitted on the estate. They deponed that the 1st Respondent had unlawfully commenced construction of a commercial dwelling house on plots 266680/24 and 266680/27, despite being aware of these conditions and having promised to comply.

3. They averred that the 1st Respondent had disregarded repeated objections and protests by them and other members, and hastily proceeded with the illegal construction to defeat justice. They added that despite the 2nd Respondent receiving complaints and evidence, it failed to take any action to stop or prevent the illegal construction.

4. Accordingly, the Appellants claimed that the Respondents' actions were in violation of the welfare rules and lease conditions,

amounting to illegal construction, breach of agreed terms, and fraud.

5. The 1st Respondent entered appearance and filed a Statement of Defence

and Counterclaim dated 2nd March 2020, through which he sought the following orders:

- a) *A declaration that the 1st Defendant/Counterclaimant is entitled to exclusive and unimpeded right of possession, occupation and user of all those plots known as L.R No. 26880/24 and 26880/27.*
- b) *A permanent injunction do issue restraining the Plaintiffs/Respondents by themselves, their servants/agents or otherwise from entering, trespassing, constructing, erecting any structures, encroaching or otherwise howsoever interfering with the 1st Defendants/Applicants, quiet enjoyment, possession and occupation of Plots No. LR. L.R No. 26680/24 and 26880/27 situated in Kays Estate, Juja.*
- c) *The honourable court do issue an order compelling the Plaintiffs/Respondents to allow the 1st Defendant unhindered access, quiet enjoyment, occupation and user of Plots No. LR. L.R No. 26680/24 and 26880/27 situated in Kays Estate, Juja.*
- d) *Costs of the Counterclaim/suit and interest thereon at such rate and for such period of time as this honourable court may deem fit to grant.*

6. The 1st Respondent's case was that he was the absolute registered owner of L.R No. 26680/24 and 26880/27 (the suit properties), having purchased them in 2002 from the previous registered owners in his individual capacity. He contended that his titles are subject only to the special conditions contained in the lease agreements between himself and the Ministry of Lands, and not to any alleged welfare association rules. He denied being a member of the welfare committee or being bound by its constitution, arguing further that the Appellants had not presented any legally recognized or registered list of members to demonstrate its existence.
7. The 1st Respondent further averred that every resident in the estate acquired their plots individually and that their rights flow directly from the lease agreements, which confer absolute ownership. In his view, the Appellants could not purport to override these individual rights through an amorphous group not contemplated under the law. He denied the allegation that he was constructing a commercial dwelling house, insisting instead that his development was a residential dwelling fully in compliance with the special conditions in his lease and with architectural plans duly approved by the relevant authorities. He annexed copies of the approved plans to support his position.
8. He admitted that on one occasion, he came across the Appellants holding a meeting while he was visiting his construction site, and

out of good neighbourliness, he showed them his building plans. He explained, however, that the plans were in line with the special lease conditions, not with the welfare committee's rules, which he maintained had no legal effect.

9. It was the 1st Respondent's position that the Appellants, in the guise of a

welfare committee, were unlawfully interfering with residents' rights by usurping the powers of the local and county authorities in approving building plans. He accused them of intimidating residents, engaging in acts of extortion and blackmail, and forcing residents to join what he described as an illegal entity. According to him, the Appellants' true intention, as captured in their minutes, was to control residents unlawfully under the pretext of approving building plans, which the law does not provide for.

10. He therefore maintained that his construction was lawful, compliant with all legal requirements, and that the Appellants lacked the capacity to interfere with his rights as the registered proprietor.

11. The 2nd Respondent entered appearance and filed a Statement of Defence the 1st dated 7th March 2022. Their case was that according to the draft Kiambu County Spatial Plan (CSP) and the Juja Integrated Strategic Urban Development Plan (ISUDP), the area in question was designated as a single-dwelling residential zone

only. It was emphasised that the neighbourhood character of Kays Estate was exclusively single-dwelling residential units.

12. Upon hearing the suit, the court entered Judgment in favour of the Respondents on 7th December 2023 by dismissing the Appellants' suit and allowing the 1st Respondent's counterclaim. The trial court also awarded the Respondents the costs of the suit.

13. Being dissatisfied with the Judgment of the trial court, the Appellants filed

this appeal raising 13 grounds of appeal claiming that the trial magistrate erred in law and fact by:-

i) That the trial magistrate erred in law and in fact by failing to consider that, as at 2016 when the dispute was lodged in court, the 1st Respondent did not have approved county building plans for LR 26680/27, and what was approved on LR 26680/24 was not what was being implemented on the ground thereby arriving at an erroneous decision.

ii) That the learned trial magistrate erred in law and in fact by failing to appreciate and understand the report by the 2nd respondent that the building done in LR 26680/27 had no approved plans and was almost in a complete state and that the building done in LR 26680/24 almost in a complete state deviated from the approved plans hence arriving at an erroneous decision.

- iii) *That the learned trial magistrate erred in law and in fact by holding that the appellants had no locus standi to sue yet they are residents of Kays Estate with rules and regulations governing the entire estate, hence infringing on the appellants' constitutional bestowed rights to sue in case of any infringement of their rights, thereby arriving at an erroneous decision.*
- iv) *That the trial magistrate erred in law and in fact by failing to appreciate that the 2nd Respondent had even issued two enforcement notices as against the 1st Respondent to stop further constructions on the two suit parcels as at 2015 and 2016, but the 1st Respondent refused or declined to abide or obey, thereby necessitating this suit arriving at an erroneous decision.*
- v) *The learned trial magistrate erred in law and in fact by failing to appreciate the fact that KAYS INVESTMENT LTD the seller of the suit plots had in the respective agreements of sale put in conditions to be complied with by all the purchasers of the plots within kays estate and any deviation of such conditions would attract a suit for compliance by any kays estate members and not necessary KAYS INVESTMENT LTD thereby taking away the resident's rights to institute a suit hence arriving at an erroneous decision.*
- vi) *That the learned trial erred in law and in fact in failing to analyze properly the evidence adduced by the plaintiffs/appellants, its weight and probative value, thereby arriving at an erroneous decision.*
- vii) *That the learned trial magistrate erred in law and in fact by failing to analyze that the certificate of title to*

the suit plots provided for special conditions to be fulfilled by all owners of the plots and to be precise a single dwelling unit for one family was the intended usage of the suit plots and failed to consider that the 1st Respondent was putting a multiple dwelling house comprising of 10 bedrooms in every plot hence a total sum of 20 bedrooms ensute in both adjacent floors thereby arriving at an erroneous decision.

viii) That the learned trial magistrate erred in law in fact by heavily relying on procedural technicalities rather than substantive justice in his decision, thereby arriving at an erroneous decision.

ix) That the learned trial magistrate erred in law and in fact by failing to appreciate that the approved plans produced in court or LR 26680/27 were approved in 2018, yet the construction was commenced in 2016 and failed to make a determination on the same, thereby arriving at an erroneous decision.

x) That the learned trial magistrate erred in law and in fact by framing wrong issues for determination and casually glancing through the same, thereby arriving at an erroneous decision.

xi) That the learned trial magistrate erred in law by failing to consider all the authorities relied upon by the appellants in their submissions and did not glance at the same, thereby coming up with a shallow judgment not in tandem with Order 21 of the Civil Procedure Rules 2010, thereby arriving at an erroneous decision.

xii) That the learned trial magistrate erred in law by failing to consider that the same dispute was the subject

matter in NYERI ELCA 13 OF 2016 JOHN MAINA VS STANLEY NDUATI & 4 OTHERS (suing as the officials and representative of KAYS ESTATE WELFARE ASSOCIATION) & COUNTY GOVERNMENT OF KIAMBU where Justice L Waithaka correctly held that an injunction had to be held/granted against the 1st Respondent (Appellant then) from continued construction until he complied with all the enforcement notices issued by the 2nd Respondent which he failed thereby arriving at an erroneous decisions.

xiii) That the learned trial magistrate erred in law and in fact by failing to appreciate and consider that he is bound in hierarchy by the decision of the ELC COURT IN NYERI APPEAL NO 13 OF 2016 sitting in Nyeri, thereby arriving at an erroneous decision.

Appellant's Submissions

14. The appeal was canvassed by way of written submissions. The Appellants filed written submissions dated 24th April 2025 through the firm of **M/s Kanyi Kiruchi & Company Advocates**. Counsel for the Appellants identified two issues for determination: (i) whether the Appellants' appeal is merited and (ii) who should bear the costs of the suit.
15. On whether the appeal is merited, counsel for the Appellants submitted that the learned trial magistrate failed to properly interpret, analyse, and understand the facts of the case. Counsel argued that as at 2016, when the dispute was filed, the 1st Respondent had no approved county building plans for LR

26680/27, and that the plans approved for LR 26680/24 were not the ones being implemented on the ground. Counsel contended that despite the absence of approved plans, the building on LR 26680/27 was almost complete, and the one on LR 26680/24 had substantially deviated from the approved plans, as evidenced by the photographs contained in the record of appeal.

16. It was further submitted that the trial court erred in holding that the Appellants lacked *locus standi*. Counsel emphasized that the Appellants were residents of Kays Estate, an estate governed by rules and regulations binding on all members. Counsel argued that the lower court also failed to consider that the 2nd Respondent had issued enforcement notices against the 1st Respondent in 2015 and 2016, requiring a halt to construction, which the 1st Respondent disregarded, prompting the suit before the trial court.
17. Counsel cited the authority of **Selle & Another vs Associated Motor Boat Co. Ltd & Others [1968] EA 123**, where the Court laid down the principle that an appellate court must reconsider and re-evaluate the evidence, and is not bound by the findings of fact of the trial court if it failed to consider relevant circumstances. Reliance was also placed on **Gitobu Imanyara & 2 Others vs Attorney General [2016] eKLR**, which reaffirmed that an appeal is in the nature of a retrial and requires the appellate court to draw its own conclusions from the evidence.

18. Further, it was submitted that the sale agreements for plots within Kays Estate imposed binding conditions on all purchasers, enforceable by any member of the estate and not only by Kays Investment Ltd. Counsel added that the certificate of title also contained special conditions limiting the plots to single dwelling units, which the 1st Respondent ignored.
19. Counsel relied on the case of **Mbogo & Another vs Shah [1968] EA 93**, where the court held that appellate interference is warranted where the lower court misdirected itself, considered irrelevant matters, or failed to consider material facts. It was pointed out that the 1st Respondent's approved plans for LR 26680/27 were only obtained in 2018, yet construction had commenced in 2016. This, counsel argued, amounted to a disregard of both estate regulations and contractual obligations.
20. Counsel contended that the lower court placed undue weight on the 1st Respondent's evidence while disregarding the Appellants' evidence, including letters and reports confirming the absence of approved plans. Counsel therefore argued that the decision of the lower court was erroneous and that the appeal was merited.
21. On the issue of costs, counsel for the Appellants submitted that costs follow the event and that the Appellants, having demonstrated merit in their case, were entitled to costs. Reliance was placed on **DGM vs EWG [2021] eKLR**, which cited **Party of**

Independent Candidate of Kenya & Another vs Mutula Kilonzo & Others (2013) eKLR, and the **South African case of Levben Products v Alexander Films (SA) (Pty) Ltd [1957] (4) SA 225 (SR)**. In those cases, it was emphasized that costs are a matter of judicial discretion but should ordinarily be awarded to the successful party unless there are good reasons to depart from the rule. Counsel therefore urged the court to allow the appeal with costs to the Appellants.

1st Respondent's Submissions

22. The 1st Respondent's submissions dated 29th September 2025 were filed through the firm of Mbiriche & Company Advocates. In his submissions learned counsel for the 1st Respondent identified three main issues for determination. The first one is whether the plaintiff Kays Welfare Association has the locus standi to file this suit and whether they were the entity envisioned in the sale agreement. Secondly, whether the

1st Defendant is constructing a residential or commercial house and thirdly whether the plaintiffs are entitled to the permanent injunctive orders sought.

23. Counsel submitted that the Appellant association was not envisaged in the sale agreement between Kays Investment Limited nor (seller) and 1st Respondent (purchaser) nor was it appointed by

the vendor to act on its behalf. It was his submission that Clause 2 of the sale agreement provided that:

- a. The seller would establish a limited liability company after the sale of the whole block solely for purposes of provision of common services for the scheme
- b. That upon issuance of titles in the names of individual plot owners all plot owners would automatically become shareholders of the said company.

Clause 17 a stipulated that:

- a. The purchaser would submit he plans elevations and sections of the dwelling house and other buildings proposed to be erected for approval by the seller or its agents.
- b. The purchaser would construct only one residential house intended for one family and a servant's quarter provided that houses with more than two floors including the ground floor were not allowed.

24. Counsel submitted that after obtaining his certificate of title which provided that the land shall be used for residential purposes, the 1st Respondent obtained building approvals from the County Government of Kiambu on 6th June 2015 for two identical retirement homes consisting of 8 bedrooms a library, gym, TV room and

visitors' lounge. Soon after he commenced construction in 2015, the Appellants wrote to him through their advocates indicating that he was constructing a commercial building in contravention of special condition No. 3 of the certificate of title. They also indicated that as a member of the association he was required to submit his building plans to the association for approval before proceeding with construction.

25. Counsel questioned the legitimacy of the association terming it a group of busy bodies seeking to control and extort money from residents. He submitted that although the association was registered, Appellants' witnesses did not produce a register of its members nor could they confirm their ownership within the estate. He was of the opinion that if tolerated, such entities would interfere with the rights of ownership and occupation of land and curtail construction developments. He maintained that the lacked the locus standi to institute this case.

26. On whether the 1st Respondent was constructing a commercial house, counsel submitted that the documents produced in evidence indicate that the County Government approved the 1st Respondent's plan for construction of a single dwelling house. He submitted that the 2nd Respondent's witness confirmed that the size of the house or number of rooms does not change a residential into a commercial house.

27. On whether the Appellants are entitled to the order of permanent injunction, counsel submitted that the rights of a registered owner are stipulated under section 23 of the Registration of Titles Act Cap 281 Laws of Kenya (repealed) and section 26 of the Land Registration Act No. 3 of 2012 which provides as follows;

“26(1) The Certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except ...”

28. It was counsel’s contention that the 1st Respondent’s plans were in consonance with special condition no. 3 in the title. He submitted that enforcement notices dated 25.1.2016 and 2.2.2016 produced by the 2nd Respondent indicated that the development was being done without

County Approval, not that the building was commercial in nature.

29. Counsel submitted that section 30 of the Physical Planning Act Cap 286 Laws of Kenya does not prescribe injunctive relief being issued since the duty of approving building plans lies with the County Government not individuals. He faulted the Appellants for usurping

the role of the County Government. He contended that the court should not issue an injunction as that would curtail the process of enforcement which is the role of the County Government.

30. To buttress his position he relied on **ELC Civil Suit No. 1034 of 2014, Nyayo Embakasi Residents Association (Suing through its registered officials George Ochola, Antony Sang, Aloise Lumutu) v National Social Security Fund & Another**. In the said case the court declined to grant an injunction on the grounds that the plaintiffs had failed to prove that the suit properties were reserved for public utility purposes. The court further held that since the 1st defendant was the registered owner of the suit property and their title had not been challenged and additionally since their development plans had been approved in compliance with the law, the plaintiff's only recourse was through the appeal process established under the Act.
31. Counsel further relied on the case of **Koome Mwambia v Deshum Properties (2014) eKLR** where the court declined to grant an injunction on the grounds that the Physical Planning Act provided for a clear mechanism of how to address contraventions of the Act by prescribing a penalty of a fine or imprisonment.
32. It was counsel's submission that the Appellants should not have resorted to court as the law empowers the County Government to deal with development control. He urged that allowing the prayers

sought would permanently hinder the 1st Respondent from using his land in contravention of section 26 of the Land Registration Act and legitimize the acts of an illegal entity

2nd Respondent's Submissions

33. The 2nd Respondent filed written submissions dated 15th May 2025 through its legal counsel, **Claire Ruth Nguru**. Counsel stated that the 2nd Respondent partially supported the appeal. She clarified that support was limited only to the trial court's failure to address the breach of zoning regulations. Conversely, counsel submitted that the 2nd Respondent strongly opposed any aspect of the appeal that sought to validate the Appellants' interference with the County Government's lawful mandates. Counsel identified one main issue for determination: whether the orders sought in this Appeal are merited. Counsel's submissions were structured into two sub topics as follows: (i) zoning and (ii) the Appellant's conduct and interference.

34. On the zoning issue counsel contended that the trial court made a material omission by failing to consider that the construction on the suit properties violated specific low-density residential zoning laws. Counsel argued that the construction of multi-dwelling units violated the land use and zoning policy. Counsel added that this failure constituted a sufficient ground for appellate intervention.

35. On the Appellants' conduct counsel submitted that the trial court was correct in its finding that the Appellants lacked *locus standi* to bring the suit. Counsel further argued that the Appellants' actions in purporting to approve building plans, levy charges and issuance of permits were an *ultra vires* interference with functions exclusively vested in the 2nd Respondent. They relied on the case of **Republic v County Government of Kiambu & Another Ex Parte Robert Gakuru & 3 Others [2016] eKLR** to reaffirm the County's exclusive constitutional mandate for planning and development control.

36. Counsel reiterated that whilst the trial court correctly addressed *locus standi* and the illegal interference by the Appellant, it failed to consider the zoning regulations the land (low-density vs multi-dwelling development). This is a material omission warranting appellate correction. Counsel relied on the decision in the case of **Mbogo vs Shah [1968] EA 93**, where it was held that an appellate court may interfere with a decision where the lower court:

- i). *Acted on wrong principles; or*
- ii). *Failed to consider relevant material; or*
- iii). *Exercised its discretion injudiciously.*

37. On the issue of costs counsel opposed the Appellants' claim for costs. Counsel maintained that the 2nd Respondent had acted within its statutory mandate throughout the proceedings and had

promoted compliance. Counsel urged the court to award the costs of both the trial and the appeal to the 2nd Respondent.

38. In conclusion, counsel for the 2nd Respondent urged the court to allow the appeal solely on the zoning issue, uphold the trial court's finding on the Appellants' lack of *locus standi* and their unlawful interference; and award costs to the 2nd Respondent.

Analysis and Determination

39. I have carefully considered the Record of Appeal, the Judgment of the learned trial magistrate, the Memorandum of Appeal, the rival submissions filed by counsel for the Appellants and the 2nd Respondent, as well as the applicable law and authorities cited. From the pleadings, evidence, and submissions, the following issues arise for determination:

- i). *Whether the Appellants had locus standi to institute the suit in the lower court.*
- ii). *Whether the 1st Respondent's developments on L.R No. 26680/24 and 26680/27 complied with the law, including zoning and planning regulations.*
- iii). *Whether the learned trial magistrate properly evaluated the evidence placed before the court.*
- iv). *Whether the appeal is merited and, if so, what reliefs should issue.*
- v). *Who should bear the costs of the appeal.*

Whether the Appellants had Locus Standi to institute the suit in the lower court.

40. The trial court found that the Appellants, as officials of Kay Welfare Association, lacked *locus standi* to sue. The Appellants argued that as residents of Kays Estate, they were entitled to enforce compliance of the estate regulations and conditions in the sale agreements.
41. It is trite law that *locus standi* is the right to be heard by demonstrating sufficient interest in the subject matter. Article 22 and 258 (2) of the Constitution of Kenya 2010 expands the scope of standing to allow any person to institute proceedings where a right has been infringed. In **Law Society of Kenya vs Commissioner of Lands & Others [2001] eKLR**, the court held that a person must have sufficiency of interest to sustain his standing in a court of law.
42. The Appellants adduced evidence that they are residents of the estate and that the sale agreements executed with Kays Investment Ltd contained restrictive covenants requiring single dwelling developments. However, there was no proof that the Kay Welfare Association is an agent of the Kays Investment Ltd.
43. That said, the Appellants brought the suit not only in the name of the

Association but also in their capacity as residents. The fact of residence and privity of contract through their purchase agreements makes them beneficiaries of obligations imposed on buyers of plots in the estate who are likely to be affected by the 1st Respondent's actions or omissions hence they have a right to institute this suit.

44. As was held in the case of **Wainaina Kinayanjui & 2 Others v Andrew Ng'anag'a (2013) eKLR:**

"The law regards the effects of development on the private rights of others as a material consideration in granting development permission and that is why there are elaborate provisions on consultation and participation by those who may be affected by a development in the Physical Planning Act . It is also clear from section 30 of the Physical Planning Act and section 58 of the Environmental Management and Coordination Act that approval is required to be given before commencement of any development or material change of use of land and not after such change has occurred."

45. It is therefore my finding that the trial magistrate erred in its finding that the Appellants lacked *locus standi* to institute the suit.

Whether the 1st Respondent's developments on L.R No. 26680/24 and 26680/27 complied with the law, including zoning and planning regulations.

46. The 1st Respondent maintained that his construction was residential and that he had approved plans. The Appellants on the other hand contended that as at 2016, construction commenced without approvals, and that subsequent approvals were obtained belatedly in 2018.
47. The 2nd Respondent, through its witness, the Development Control Officer, confirmed that the estate is zoned for single-dwelling residential use. The construction of multi-unit structures would be inconsistent with this zoning. The evidence on record, including enforcement notices issued in 2016, lends credence to the Appellants' argument that construction was not in compliance with the relevant regulations.
48. During cross-examination, Development Control Officer testified that the 1st Respondent was told to regularize or demolish the construction. He further testified 1st Respondent was told to stop construction and visit the 2nd Respondent's office which he did not. He added that the 1st Respondent did not act in accordance with the County Regulations. It was his testimony that the plans for the 2nd plot was approved. However, he did not identify the plot.
49. The trial magistrate failed to consider this zoning dimension and the enforcement notices issued by the 2nd Respondent. This omission was material as it went to the legality of the 1st Respondent's developments.

Evaluation of Evidence by the Trial Court

50. An appellate court is enjoined by the principle in **Selle vs Associated Motor Boat Co. Ltd [1968] EA 123** to reconsider and re-evaluate the evidence and reach its own conclusion.
51. The record reveals that the trial magistrate heavily relied on the 1st Respondent's evidence while glossing over critical evidence produced by the Appellants and the 2nd Respondent, including: (i) enforcement notices served on the 1st Respondent; (ii) photographs showing deviation from approved plans; and (iii) the zoning designation of the area. The failure to give due weight to this evidence amounted to a misdirection, warranting interference by this court.

Whether the Appeal is Merited

52. Having found that: (i) the Appellants had sufficient standing to sue as residents; (ii) the 1st Respondent commenced construction without requisite approvals and in violation of zoning regulations; and (iii) the trial court misapprehended and/or failed to evaluate relevant evidence. I am persuaded that the appeal has merit. However, I agree with the 2nd Respondent's submissions that the Appellants cannot arrogate to themselves the statutory mandate of the County Government in planning and development control. Their role is limited to reporting violations and seeking enforcement through lawful channels, not usurping approval powers.

53. On the other hand, whereas the Respondent is entitled to quiet possession and occupation of the suit properties, his right to property is subject to existing laws including the provisions of the Physical and Land Use Planning Act, 2019.

Who should bear the costs of the Appeal

55. The general principle under section 27 of the Civil Procedure Act is that costs follow the event. However, given that the 2nd Respondent has acted within its mandate and partially supported the appeal, and that the 1st Respondent also bears some blame for commencing construction without approvals, I find this to be an appropriate case for each party to bear its own costs of the appeal. In the result, the Appeal is allowed in the following terms:

- a) ***The Judgment of the trial court delivered on 7th December 2023 in Thika ELC No. 43 of 2016 is hereby set aside.***
- b) ***A declaration is issued that the construction by the 1st Respondent on L.R Nos. 26680/24 and 26680/27 commenced without requisite approvals and in violation of the zoning regulations applicable to KaysEstate.***
- c) ***The matter is remitted to the 2nd Respondent for enforcement in accordance with the Physical and Land Use Planning Act, 2019.***
- d) ***Each party shall bear its own costs of this appeal and of the proceedings in the lower court.***

Dated, signed and delivered virtually this 2nd day of October 2025.

.....
J. M ONYANGO
JUDGE

In the presence of:

1. Mr Kanyi for the Appellant
2. Mr. Mbiriche for the 1st Respondent
3. Court Assistant: Hinga.

ORIGINAL