



Meath & another (Suing on behalf of Cola CBO) v Makori (Environment and Land Case E011 of 2023) [2025] KEELC 5689 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5689 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE E011 OF 2023**

NA MATHEKA, J

JULY 31, 2025

BETWEEN

JOAB OMANYALA MEATH AND AGABIO ISAAC NYAGA (SUING ON BEHALF OF COLA CBO) PLAINTIFF

AND

THOMAS OBUTU MAKORI DEFENDANT

JUDGMENT

1. The Plaintiff avers that they are a community-based organization which draws its membership from any member who has acquired a duly registered certificate of title deed with all its right and interest in the parcel of land LR. 20172 situated in Mavoko Municipality Machakos County. It is a special condition of the title L.R 20172 that the construction within the Cola Community Based Organization should be buildings hosting only one household, a condition which made the residents chose living there. That it is also a special condition of the title that no building shall be erected on the land nor shall additions or external alterations be made to any buildings otherwise than in conformity with plans and specifications previously approved in writing by the Commissioner of Lands and the local authority. Further, buildings shall not cover more than fifty per centum of the area of land or such lesser area as may be laid down by the local authority in its bylaws. The Defendant is erecting an unauthorized Highrise Multi residential property on LR. 20172/50 currently at its third level planned to host 16 households instead of one and which building covers more than fifty per cent of the area of land in which it is situated. The unauthorized illegal structure poses a security threat to the residents of Cola CBO and to the public at large. The unauthorized illegal structure will circumvent the privacy of the neighbours and security of the entire community if not stopped, which community has a total of about 250 households. The community's initial inquiry from the Defendant indicate that there is no evidence of prior County Approval, National Construction Authority Approval, no granted change of user, and no National Environment Management Approval. That the actions of the Defendant are



an illegality and a breach of the special conditions. That as a result of the illegalities by the Defendant, the Plaintiff is unable to enjoy its right to quiet possession and privacy.

2. The Plaintiff prays for Judgment against the Defendant for:
 - a. A Permanent injunction restraining the Defendant by himself, his servants, employee, agent and/or any one of them from continuing to erect an illegal structure within the community environment on LR. No. 20172/50 under Cola CBO by any means whatsoever and howsoever.
 - b. An order compelling the Defendant by himself, his servants, employee, agents and/or any one of them to demolish the already constructed illegal structure.
 - c. Costs of the suit.
 - d. Any other relief that the court deems fit to grant in the circumstances.
3. The Defendant states that he is the registered owner of Plot LR. No. 20172/50 in Mlolongo Phase 3 area, Mavoko Sub-County, Machakos County. The Defendant states that condition 1 of the special conditions allows the grantee of the parcel of land to erect any building on it subject to the approval of the plans and specifications in writing by the Commissioner of Lands and the local authority. This therefore does not bar the grantee from constructing a multi-residential property on the parcel. He states that the multi-residential property erected on Plot L.R No. 20172/50 in Mlolongo is not unauthorized since the Defendant acquired approval via a Notification of Approval of Development Permission from Mavoko Municipality dated 12th January, 2023 and further an Environmental Impact Assessment License dated 12th April, 2023 together with its conditions for licensing from the National Environment Management Authority.
4. The Defendant states that the project is for construction of ground plus two (2) floors comprising of eight (8) two-bedroom units and associated amenities. The Plaintiff's suit against the construction comprising of eight (8) two-bedroom units and associated amenities is clearly ill motivated because the Defendant is not the first resident within Cola CBO to construct multi-dwelling units. The Defendant states that the conditions in the Notification of Approval of Development Permission from Mavoko Municipality dated 12th January, 2023 as well as the general construction and operational conditions of the Conditions for Licensing of an Environmental Impact Assessment Project Report for the Proposed Multi-dwelling Residential Development on Plot LR No. 20172/50 in Mlolongo Phase 111 Area, Mavoko Sub-county, Machakos County from NEMA dated 12th April, 2023 safeguard quality construction for the well-being of the residents of Cola CBO and the public at large. The Defendant submits that the Plaintiff's grievance is in respect to land use and should have been presented before the Machakos County Physical and Land Use Planning Committee and not this court whose jurisdiction is reserved for appeals on matters of law from the Committee.
5. This court has considered the evidence and the submissions therein. It is not in dispute that the Defendant is the registered owner of Plot LR. No. 20172/50 in Mlolongo Phase 3 area, Mavoko Sub-County, Machakos County. The Plaintiffs aver that it is a special condition of the title L.R 20172 that the construction within the Cola Community Based Organization should be buildings hosting only one household. That it is also a special condition of the title that no building shall be erected on the land nor shall additions or external alterations be made to any buildings otherwise than in conformity with plans and specifications previously approved in writing by the Commissioner of Lands and the local authority. Further, buildings shall not cover more than fifty per cent of the area of land or such lesser area as may be laid down by the local authority in its bylaws. The Defendant states that condition 1 of the special conditions allows the grantee of the parcel of land to erect any building on it subject



to the approval of the plans and specifications in writing by the Commissioner of Lands and the local authority. This therefore does not bar the grantee from constructing a multi-residential property on the parcel and he has acquired all the necessary approvals.

6. Before this court can determine whether it has jurisdiction in this matter, the first issue is whether the impugned construction and intended project on Land Reference Number 20172/50 had the requisite approvals. The Defendant produced, as exhibits NEMA acknowledgement of the EIA Project report dated 2nd February 2023, Mavoko Municipality Notification of Approval of development Permission dated 12th January 2023, the EIA Report dated 12th April 2023 and NEMA License dated 12th April 2023. The court has looked at a copy of public notice carried in The Nation of 5th July 2022 which reads as follows: -

Change of User

The owner of plot number L.R. No. 20172/50 situated in Mlolongo, Mavoko Municipality intends to change its use from single dwelling to Multi Dwelling Residential subject to approval from Machakos County Government. Any Individuals, Organisations and Institutions etc with objections to this proposal are requested to forward them in writing within 14 days of this publication to;

The CECM – lands Energy, Housing & Urban Development, Machakos County Government.....”

7. Under Section 33(3) of the repealed Physical Planning Act, the jurisdiction of the Liaison Committee would be invoked only after the approving authority had made a decision on a development application. The jurisdiction of the Liaison Committee is duly triggered by a decision of the approving authority. Similarly, under Section 129 of the EMCA, the jurisdiction of the NET is invoked after NEMA has made a decision on an application.
8. It is clear that the Defendant has all the relevant approvals as regards the said construction. There is no dispute that under the repealed Physical Planning Act, disputes relating to land use and building permission (both called development permissions) were to be ventilated in the relevant Liaison Committees. Similarly, disputes relating to EIA licensing were to be ventilated in the National Environment Tribunal (the NET). The Defendant basically submits that the proper legal channels were followed in obtaining the change of user. The Plaintiffs have denied existence of approvals and state that if such decisions existed, they did not participate in such decisionmaking process and are not aware of the same. That in any event construction had started long before the approvals were obtained. I find that no evidence has been adduced to prove this. This court finds that the relevant approvals existed at the time of filing this suit. The issuing authorities that is NEMA and the Machakos County Government are not party to this suit. The Development Approval is stated to have been issued by one Dissent I. Ajanga for the Director Physical Planning.
9. The preliminary issue is whether the jurisdiction of this court was invoked prematurely. Pursuant to section 2 of the Physical Land Use Planning Act, 2019, the county executive committee is the authority responsible for development control and planning within the County, meaning that they are responsible for, amongst other things, the issuance of development approvals, compliance and licenses. Section 61(3) of the Act provides for a complaint mechanism against a decision of the County Executive Committee;

An applicant or an interested party that is aggrieved by the decision of a county executive committee member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee



within fourteen days of the decision by the county executive committee member and that committee shall hear and determine the appeal within fourteen days of the appeal being filed.”

10. Section 76 of the *Physical and Land Use Planning Act*, 2019 provides as follows;

There is established a County Physical and Land Use Planning Liaison Committee for each county.”

11. Section 78 outlines the functions of the Liaison Committees as follows:

The functions of the County Physical and Land Use Planning Liaison Committee shall be to —

- (a) hear and determine complaints and claims made in respect to applications submitted to the planning authority in the county;
- (b) hear appeals against decisions made by the planning authority with respect to physical and land use development plans in the county;
- (c) advise the County Executive Committee Member on broad physical and land use planning policies, strategies and standards; and
- (d) hear appeals with respect to enforcement notices.”

12. Whereas Section 80 under the head- Appeal to a County Physical and Land Use Planning Liaison Committee provides;

- (1) A person who appeals to County Physical and Land Use Planning Liaison Committee shall do so in writing in the prescribed form.
- (2) A County Physical and Land Use Planning Liaison Committee shall hear and determine an appeal within thirty days of the appeal being filed and shall inform the appellant of the decision within fourteen days of making the determination.
- (3) The Chairperson of a County Physical and Land Use Planning Liaison Committee shall cause the determination of the committee to be filed in the Environment and Land Court and the court shall record the determination of the committee as a judgment of the court Procedure of the County Physical and Land Use Planning Liaison Committees. Appeal to a County Physical and Land Use Planning Liaison Committee 653 2019 Physical and Land Use Planning and published in the Gazette or in at least one newspaper of National circulation.”

13. The aforementioned sections clearly set out the procedure for complaints against the approval permissions issued by the County.

14. That Section 129 (1) and (2) of the EMCA provide as follows:

129. Appeals to the Tribunal¹) Any person who is aggrieved by—

- a) The grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;
- b) The imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations;



- c) The revocation, suspension or variation of the person’s licence under this Act or its regulations;
- d) The amount of money required to paid as a fee under this Act or its regulations;
- e) The imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its Regulations may within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.
 - 1) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.”

15. Section 129 (3) of the EMCA provides as follows in relation to the powers of the National Environment Tribunal (NET):

- 1. Upon any appeal, the Tribunal may—
 - a. Confirm, set aside or vary the order or decision in question;
 - b. Exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
 - c. Make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just;
 - d. If satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;e.If satisfied upon application by any party, review any orders made under paragraph (a).”

16. From these Statutory provisions quoted, NET is empowered to issue conservatory/injunctive orders while exercising its mandate.

17. I find that the Plaintiffs should have exhausted administrative remedies provided in Section 80 of the *Physical and Land Use Planning Act* 2019 and Section 129 of the Environment Management and Coordination Act (EMCA) before coming to this court. I find that this court has no jurisdiction and the suit is struck off with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 31ST DAY OF JULY 2025.

N.A. MATHEKA

JUDGE

