

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC EP MISC E005 OF 2024

**BIBIAN WAHITO GATHEKIA 1ST
APPELLANT**

VERSUS

**MARTIN KIVUVA.....1ST
RESPONDENT**

**DAVID CHEGE 2ND
RESPONDENT**

AND

**COUNTY EXECUTIVE COMMITTEE MEMBER, LANDS, HOUSING,
PHYSICAL PLANNING, MUNICIPAL ADMINISTRATION & URBAN
DEVELOPMENT, KIAMBU COUNTY1ST INTERESTED PARTY
KIAMBU COUNTY GOVERNMENT 2ND INTERESTED
PARTY**

**COUNTY GOVERNMENT OF KIAMBU.....3RD INTERESTED PARTY
KAHAWA SUKARI LIMITED 4TH INTERESTED PARTY
NEW KAHAWA SUKARI RESIDENTS
ASSOCIATION.....5TH INTERESTED
PARTY**

RULING

1. Before me for determination is the application dated 30th September 2024 seeking the following orders:

a) *Spent.*

b) *This honourable court do make the determination rendered by the Kiambu County Physical and Land Use*

Planning Committee on 9th July 2024 in CGK/KCLC/035 of 2024 to be a judgment of this court and to issue a decree.

c) That a permanent mandatory injunction to issue restraining the Respondents an the 4th and 5th Interested parties from interfering with the compliance of the judgment of this court or the orders of the Liaison committee in CGK/KCLC/035 of 2024.

d) The Officer Commanding Station Kahawa Wendani do supervise the order no. 3 issued above.

2. The application is premised on the grounds set out on the face of the Notice of Motion and the Applicant's Supporting Affidavit sworn on 30th September 2024.
3. In the said affidavit she deposes that she is the proprietor of the property known as No.1769 Elm Court Kahawa Wendani. That on 19.7.24 the Kiambu County Physical and Land Use Planning Liaison committee made a determination that she complies with the orders of the said committee by complying with the conditions of Enforcement Notice Number RRU-003120 dated 4th June 2024.
4. It is her deposition that the 1st -3rd Interested Parties were required to ensure compliance with the said Notice but the 4th and 5th interested parties have instead denied her workers access to the suit premises . As s result of the said refusal, the applicant is incurring heavy losses as her building materials have been damaged by the rains. She therefore prays that the application be allowed.

5. In response to the application the 2nd Respondent filed a Replying Affidavit sworn by Martin Kivuva on 6th January 2025 in which he deposes that the Applicant's application is misconceived and bad in law as it is contrary to the provisions of section 80 of the Physical and Land Use Planning Act.
6. He further deposes that the Applicant was sued in CGK/KCLC/035 of 2024 because of undertaking construction contrary to the approval given by the 1st and 3rd Interested parties and in contravention of zoning regulations. He added that they had no problem with the Applicant complying with the orders issued in CGK/KCLC/035 of 2024.
7. He denied that they had restrained the Applicant from proceeding with construction and stated that she had been restrained by the Liaison Committee which required her to comply with the conditions in Enforcement Notice No. RRU- 003120 dated 4th June 2024.
8. He asserted that the Respondents were not parties to CGK/KCLC/035 of 2024 and that they have been improperly joined in this suit . That they are the Chairman and Secretary of ELM Court where the suit premises are located and they have the mandate to ensure that all developments comply with the approvals given. He urged the court to dismiss the application.
9. The 1st and 2nd Respondents also filed and Notice of Preliminary Objection dated 28th October 2024.

10. Pursuant to the court's directions, the Applicant, 1st Respondent, 2nd Respondent and 5th Interested Party filed their written submissions on the Preliminary Objection.

ANALYSIS AND DETERMINATION

11. I have considered the Application, Replying Affidavit and Preliminary Objection and the main issue for determination is whether the preliminary Objection should be upheld.
12. Section 80 of the Physical and Land Use planning Act (PLUPA) provides as follows:

“Appeal to a County Physical and Land Use Planning Liaison Committee

1. *A person who appeals to the County Physical and Land Use Planning Liaison Committee shall do so 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 and published in the Gazette and in at least one newspaper of national circulation”.

13. From the above provision of PLUPA, the duty to file the determination of the Liaison committee in the Environment and Land court is placed on the Chairman of the said committee and not any of the parties.
14. The word “shall” in this section means that it is peremptory or mandatory. Since the Act does not contemplate a situation where a party files the committee’s determination in court, a party who purports to file the application in the Environment and Land Court lacks the capacity or locus standi to do so and the court is divested of jurisdiction to entertain the application as it is filed by a person without locus standi.
15. I therefore agree with the submissions of counsel for the 1st and 2nd Respondents and 5th Interested Party that the application is bad in law as it contravenes the provisions of section 80 of PLUPA.
16. Consequently, the Preliminary Objection is merited and I uphold it and strike out the entire Miscellaneous application dated 30.9.24 with costs to the 1st and 2nd Respondents and 1st Interested Party.

Dated, signed and delivered virtually this 8th day of December 2025.

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J. M ONYANGO
JUDGE

In the presence of:

1. Mr Maria for Mr Thuku for the 1st & 2nd Respondents
2. Ms Ngure for Mr Nzuli for the applicant

Court Assistant: Hinga

ORIGINAL