

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC MISC APPLICATION NO.ELCJR E002 OF 2024**

**FORMERLY HCCC NO. 31 OF 2016 (O.S) KIAMBU**

**IN THE MATTER OF THE PHYSICAL AND LAND USE PLANNING ACT  
NO. 0130 OF 2019, THE COUNTY GOVERNMENT ACT NO.17 OF  
2012, THE FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015,  
THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA, ORDER  
53 OF THE CIVIL PROCEDURE RULES, 2010 AND THE  
CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR  
ORDERS OF MANDAMUS**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**COUNTY DIRECTOR PHYSICAL PLANNING  
DEPARTMENT, KIAMBU COUNTY .....1<sup>ST</sup>  
RESPONDENT**

**CECM LAND, HOUSING,PHYSICAL PLANNING &  
URBAN DEVELOPMENT KIAMBU COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**MOSES MUKUNDI CHECHE ..... EX-PARTE APPLICANT**

**JUDGMENT**

1. Pursuant to leave granted by this court on 30<sup>th</sup> April 2024, the Ex-parte Applicant filed a Notice of Motion application dated 9th May 2025 seeking the following orders:
  - a. *That an order of Mandamus do issue to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to perform their public duty owed to the Applicant under sections 57 and 58 of the Physical and Land Use Planning Act by accepting the Applicant's application for Development permission and making a determination thereon.*
  - b. *That the honourable court be at liberty to make such further and other orders that it deems fit to meet the ends of justice.*
  - c. *That the costs of this application be provided for.*
2. The application is anchored on the statutory statement dated 29<sup>th</sup> April 2024 filed together with the application for leave and the verifying affidavit of Moses Mukundi Cheche.
3. In the said statutory statement he avers that he is the registered owner of land parcel number KARAI/GIKAMBURA/T.986. That in order to secure his investment, he erected a boundary wall around the suit property and submitted his building plans for approval by the Respondents in compliance with section 57 (1) of the Physical and Land Use Planning Act on 22<sup>nd</sup> December 2023 but the Respondents have failed to accept the Applicant's application in violation of the provisions of the Act and orally alluded to the fact that the Applicant's land is public land without providing any evidence.

4. Despite several reminders, the Respondents have failed to act on the Applicant's application. The Applicant asserts that the Respondents' actions are irrational, unreasonable and a gross violation of his legitimate expectation since the neighbouring plot owners have been granted permission. He adds that the Respondents' refusal to accept his application amounts to a refusal to perform his statutory duty and is contrary to the rules of natural justice.
5. The application was met with opposition by the Respondents through their Preliminary objection dated 4<sup>th</sup> July 2024 in which they challenge the jurisdiction of this court to entertain this suit. The gist of the P.O is that section 78 of PLUPA empowers the County Physical and Land Use Planning Liaison Committee to hear and determine complaints and claims in respect of applications submitted to the Planning authority in the county and therefore the first port of call ought to be the said committee and not the court.
6. The court directed that the P.O and application be canvassed concurrently through written submissions. Pursuant to the said direction, the Ex-parte Applicant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their written submissions which I have read and considered.

### **Ex-Parte Applicant's Submissions**

7. In her Submissions, the Ex-parte Applicant contends that in the absence of a decision by the Respondents, she was unable to invoke the provisions of Section 78 of PLUPA by appealing to the County Physical and Land Use Planning Liaison Committee as an appeal can only arise from a decision. She relied on the case of **Republic v City**

**Council of Nairobi & Another Ex-parte Shital Bhandari (2015)**

**KEHC 2777 KLR** where the court dismissed a similar objection based on the doctrine of exhaustion since the alternative remedy was not operable in the absence of a decision by the Respondent on the Ex-parte Applicant's application thus denying the Ex-parte Applicant an opportunity to lodge an appeal.

8. She argued that from 22<sup>nd</sup> December 2023 the Respondent had failed to accept her application for development permission or respond to her letters seeking an explanation for refusal thereby leaving her in limbo with no decision to appeal against.

**Respondents Submissions**

9. On their part, the Respondents submitted that section 78 (a) of PLUPA empowers the County Liaison Committee to hear complaints and claims in respect to the applications submitted to the planning authority in the county.
10. It is their contention that said section makes it clear that the first port of call for anyone who is dissatisfied with the decision or conduct of the planning authority is the County Liaison Committee, after which an appeal lies to the Environment and Land Court. It is submitted that by failing to follow the provisions of the Act the Ex-parte Applicant had failed to exhaust the mechanisms provided by the Act.
11. They relied on the case of **Immaculate Gichuku Mugo v Kiambu County Government (2021) eKLR** where B.M Eboso J while

relying on the Court of Appeal's decision in **Speaker of the National Assembly v James Njenga Karume ( 1992) eKLR** and **Kibos Distillers Limited & 5 Others v Benson Ambuti Adegga & 2 Others** held that where Parliament has through legislation established primary dispute adjudication mechanisms and organs, the same must be exhausted.

### **ANALYSIS AND DETERMINATION**

12. There are two issues for determination; Whether the Preliminary Objection should be upheld and whether the Ex-parte Applicant should be granted the reliefs sought.
13. The doctrine of exhaustion demands that a party to a dispute must use all available administrative means of resolving the dispute before seeking judicial redress. This ensures that statutory bodies that have been set up to resolve disputes handle disputes they are best equipped to resolve. It ensures that courts are not clogged with disputes that could be resolved elsewhere thus promoting judicial efficiency.
14. The Physical and Land Use Planning Act (PLUPA) provides an elaborate procedure for dealing with applications for development permission.

Section 58 of PLUPA provides as follows:

*“(1) A person shall obtain development permission from the respective County Executive Committee Member (CECM) by applying for development permission from*

*that CECM in the prescribed form and after paying the prescribed fee.*

- (2) An application for development permission shall provide development plans and particulars as may be required by the respective CECM to indicate the purpose of the proposed development.*

*Section 60(1)*

*Within 7 days of receiving an application for development planning the CECM shall give a copy to the relevant authorities and agencies to review and comment and the relevant authorities and agencies shall comment on all relevant matters including;*

*Land survey,*

*Roads and transport*

*Agriculture and Health*

*Public works and utilities*

*Environment and natural resources*

*Urban development*

*National security in respect of land adjoining or within reasonable vicinity of safeguarding areas and any other relevant authority.*

- (2) Within 14 days of receiving the copy of the development permission from a CECM, the relevant authorities or agencies shall submit their comments to the respective CECM*

*Section 61(2)*

*With regards to an application for development permission that complies with the provisions of this Act, and within 30 days of receiving an application for development permission, the CECM may:*

*(a) Grant the applicant permission in the prescribed form and may stipulate any conditions it considers necessary when granting the development permission.*

*(b) Refuse to grant the applicant the development permission in the prescribed form and state the grounds for the refusal in writing.*

*(3) An applicant or interested party that is aggrieved by the decision of the CECM regarding an application for development permission may appeal to the County Physical and Land Use Liaison Committee within 14 days of the decision by the CECM and that committee shall hear and determine the appeal within 14 days of the appeal being filed.*

*(4) An applicant or interested party who files an appeal under subsection (3) and who is aggrieved by the decision of the committee may appeal against the decision to the Environment and Land Court.*

*Section 78:*

*The functions of the committee shall be to:*

*(a) Hear and determine complaints and claims made in respect to applications submitted to the planning authority in the county”.*

15. From the above provisions of the Act, it is clear that an applicant for development permission who is aggrieved by the by the decision or conduct of the County Executive Committee Member must first file his or her complaint with the County Liaison committee as the first port of call before escalating it to this court.

16. Although the Respondent has argued that there was no decision by the CECM, section 78 of the Act makes provision for the committee to listen to complaints and claims in respect to applications for development permission which may not necessarily be against formal written decisions. Refusal to grant development permission or communicate its refusal is one such complaint.
17. The Ex-parte Applicant therefore ought to have complained to the Liaison Committee before filing the instant application. As was held in the cases of **Speaker of the National Assembly v James Njenga Karume ( 1992) eKLR** and **Kibos Distillers Limited & 5 Others v Benson Ambuti Adegga & 2 Others**, where Parliament has through legislation established primary dispute adjudication mechanisms and organs, the same must be exhausted.
18. In view of the foregoing, I am constrained to hold that the preliminary objection is merited as the Applicant has not exhausted the remedies provided under PLUPA. Consequently, this court lacks the jurisdiction to hear and determine this application at this stage and the same is struck out with costs to the Respondents.

**Dated, signed and delivered virtually this 9<sup>th</sup> day of December 2025.**

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**J. M ONYANGO**  
**JUDGE**

**In the presence of:**

1. Mr Wanjohi for the Ex-parte Applicant

2. No appearance for the Respondents

Court Assistant: Hinga

ORIGINAL