



Radheshyam Transport Limited v Nairobi City County & another (Environment and Land Case Civil Suit E268 of 2020) [2025] KEELC 8622 (KLR) (4 December 2025) (Judgment)

Neutral citation: [2025] KEELC 8622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E268 OF 2020
AA OMOLLO, J
DECEMBER 4, 2025**

BETWEEN

RADHESHYAM TRANSPORT LIMITED PLAINTIFF

AND

NAIROBI CITY COUNTY 1ST DEFENDANT

NAIROBI METROPOLITAN SERVICES 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the 1st and 2nd Defendants vide Plaint dated 15th December 2020 seeking for the following orders;
 - a. A declaration that the 1st and 2nd Defendants actions in interfering with the Plaintiff's development of the suit properties is illegal and in bad faith.
 - b. A permanent injunction restraining the 1st and 2nd Defendants or any other person by themselves, their servants, agents and/or employees from demolishing, evicting, trespassing upon or in any other manner whatsoever interfering with land parcel L.R No. Nairobi/Block 82/1596 located at Donholm, within Nairobi City County or in any other way interfering with the Plaintiffs quiet possession and enjoyment of the properties.
 - c. Costs of the suit.
 - d. Any other relief this honourable court may deem fit and just to grant.
2. The Plaintiff averred that they are the registered owner of land parcel L.R No. Nairobi/Block 82/1596 herein after referred to as "the suit property". That they purchased the same and obtained all necessary architectural, structural, and development approvals from the 1st Defendant, as well as several environmental licences from NEMA. They stated that upon commencing construction, officers of the



- 2nd Defendant repeatedly harassed them by arbitrarily arresting workers, attempting to extort money, and stopping construction despite having valid approvals.
3. The Plaintiffs stated that on 10th December 2020, the 2nd Defendant's officers marked the site for closure without issuing any formal enforcement notice and arrested the project supervisor, who was later charged in court. The Plaintiff contends that the Defendants' actions are oppressive, unlawful, and violate its right to property. That despite issuing a demand and notice of intention to sue, the Defendants have failed to address the Plaintiff's grievances and that there is no other pending suit between the parties concerning the same subject matter.
 4. The 1st Defendant filed a defence dated 19th January 2021 denying that the Plaintiff is the registered owner of the suit property and further denies that the Plaintiff ever submitted or obtained any development or architectural approvals for the same. The Defendant also states that matters relating to NEMA licences are outside its mandate. While acknowledging that the Plaintiff commenced construction, the 1st Defendant maintains that the Plaintiff did so without the required approvals and denies any harassment of workers.
 5. The Defendant asserts that enforcement action is allowed under the Physical Planning Act, which gives local authorities discretion to issue enforcement notices where development is undertaken without permission. That aggrieved parties can appeal decisions through the prescribed statutory procedures, which it claims the Plaintiff failed to exhaust. The 1st Defendant denies violating any of the Plaintiff's rights and denies receiving any demand or notice of intention to sue.
 6. The Plaintiff filed a reply dated 14th November 2022 to the 1st Defendant's defence reiterating the contents of their Pleint.

Evidence

7. PW1, Peter Francis Mbaya, the operations manager of the Plaintiff testified in support of their case, adopting his written statement dated 21/3/2024 as evidence in chief. He also produced Plaintiff's list of documents and supplementary documents dated 15th December 2020 and 3rd July 2025 as exhibits.
8. He reiterated that the Plaintiff is the registered owner of the suit property, purchased in 2015. That there is a sale agreement but has not been produced and has not produced a search to the suit property. After acquiring the property, the Plaintiff prepared architectural and structural development plans and submitted them to the 1st Defendant of which Plans Nos. CPF AO 533 and CPF AQ 837 were duly approved by the Director of Urban Planning & Housing.
9. He also testified that a riparian reserve assessment was conducted by the Water Resources Authority (WRA) on 24th June 2019, which confirmed and pegged the required riparian reserve at 10 meters from the river bank. That the Plaintiff also obtained various NEMA licences, construction permits from the 1st Defendant, and a Certificate of Compliance from the National Construction Authority dated 20th August 2020. Additionally, the Plaintiff applied for a foul sewer connection from Nairobi City Water and Sewerage Company and paid the required fee. He confirmed that he has evidence for payment of Ksh.7,500 to NCA and stated that they pay rates although have not produced payment receipts.
10. The witness explained that secured all necessary approvals, the Plaintiff commenced construction on the property. However, officers of the Defendants began harassing and arbitrarily arresting their workers, demanding that construction cease. During cross examination, he admitted that they did not report the harassment to the police. He added that one officer from the 2nd Defendant allegedly attempted to extort money from the Plaintiff but had no evidence to prove the same. On 10th



December 2020, the Defendants' officers marked the property for closure, claiming it was illegal, despite issuing no formal enforcement notice. On the same day, the site supervisor was arrested and charged at the City Hall Court but does not have the proceedings from the said court.

Submissions

11. The Plaintiff and the 1st Defendant filed submissions dated 16th September 2025 and 17th September 2025 respectively.
12. The Plaintiff asserts lawful ownership of the suit property, relying on its Certificate of Lease issued on 7th December 2015. They argued that under Sections 24(a) and 26(1) of the [Land Registration Act](#), a certificate of lease is conclusive evidence of proprietorship unless impeached for fraud, illegality, or misrepresentation. They produced the said title to discharge its evidentiary burden under Sections 107–109 of the [Evidence Act](#). The Plaintiff relies on *Elijah Makeri Nyang'wara v Stephen Mungai Njuguna* (2013 eKLR), where the Court of Appeal held that title is only challengeable upon proof of fraud or illegal acquisition, which the Defendants failed to establish.
13. The Plaintiff further submitted that they obtained all requisite approvals before commencing construction, including building plan approvals, CPF AO 533 and CPF AQ 837, NEMA EIA licences, an NCA compliance certificate, and WRA riparian approval. That they also paid over Kshs. 18 million in statutory permit fees, noting that these approvals were validly issued under the then-operative legal framework and preserved by transitional provisions under the [Physical and Land Use Planning Act](#), 2019 (PLUPA).
14. On the issue of exhaustion, the Plaintiff submits that at the time of filing, year 2020, the County Liaison Committee had not yet been established as it was established in 2021, making administrative remedies unavailable. The Plaintiff relies on *Republic v CECM Kwale & Another; Tajano Ltd (Ex parte)* (2024 eKLR), where the ELC held that exhaustion is inapplicable where the statutory forum is non-existent. The Plaintiff contends that the Defendants' actions, harassing workers, making arbitrary arrests, and threatening closure without issuing an enforcement notice violated Article 40, right to property and Article 47, fair administrative action, of [the Constitution](#) 2010.
15. That no enforcement notice was ever issued as required by Section 72 PLUPA, rendering the Defendants' conduct unlawful, ultra vires, and procedurally unfair. Further, that the criminal charges against the Plaintiff's supervisor were later withdrawn after the Defendants' own compliance report exonerated the Plaintiff, confirming the baseless nature of the arrest. Citing *Ennio Limited v Kenya Revenue Authority* (2024 eKLR) on the principles governing permanent injunctions, the Plaintiff submits that it is entitled to a permanent injunction to protect its proprietary rights, prevent further unlawful interference, and restrain the Defendants from continued harassment.
16. On the other hand, the 1st Defendant argues that the Plaintiff has failed to prove lawful ownership of the suit property, as required under Sections 24–26 of the [Land Registration Act](#), 2012. That although the Plaintiff produced a Certificate of Lease, it did not provide the foundational documents such as a letter of allotment, transfer instruments, proof of consideration, registry extracts, or an official search necessary to establish the legality of its root of title. Relying on the Supreme Court decision in *Dina Management Ltd v County Government of Mombasa* (2023 KESC 30), the 1st Defendant stresses that a title is only indefeasible where the acquisition process is lawful.
17. The Defendant further contends that the Plaintiff never obtained a formal development permission under Section 57 of the [Physical and Land Use Planning Act](#) (PLUPA), and that documents such as NEMA licences, NCA certificates, drawings, or receipts do not constitute development permission.



The Defendant cites *Mwangi v Kiambu CEC* (2024 KEELC 5798) and *Mavisi v Nairobi County Government* (2025 KEELC 4758) to emphasize that development without such permission is illegal ab initio. The Defendant further argues that its enforcement actions such as stoppage of works, marking of the site, and attending the property were lawful exercises of statutory power under Sections 57 and 72 of PLUPA, supported by jurisprudence in *Republic v Nairobi City County ex parte Outdoor Advertising Association* (2019 eKLR) and *Koinange Investments v Nairobi City County* (2019 eKLR), which affirm the County's duty to regulate unauthorized development.

18. That also the suit is said to be premature for violating the doctrine of exhaustion, as the Plaintiff bypassed the mandatory appeal mechanism before the County Physical and Land Use Planning Liaison Committee under Section 61 PLUPA. The Defendant relies on *Speaker of the National Assembly v Karume* (1992 KLR 21), *Geoffrey Muthinja Kabiru v Samuel Munga Henry* (2015 eKLR), and *Mutanga Tea & Coffee Co. v Shikara Ltd* (2015 eKLR) to assert that statutory procedures must be strictly followed. That the Plaintiff cannot obtain declaratory or injunctive reliefs, as equity does not assist a party who disregards statutory obligations or fails to demonstrate a clear legal right.

Analysis and Determination:

19. I have considered the pleadings, evidence, and submissions filed by the parties. The issues that arise for determination are as follows:
- a. Whether the Plaintiff has proved ownership of L.R No. Nairobi/Block 82/1596.
 - b. Whether the Plaintiff obtained valid development approvals before commencing construction.
 - c. Whether the Defendants acted lawfully in stopping construction, arresting workers, and earmarking the site for closure.
 - d. Whether the suit is barred by the doctrine of exhaustion.
 - e. Whether the Plaintiff is entitled to the remedies sought.

a. Whether the Plaintiff has proved ownership of L.R No. Nairobi/Block 82/1596.

20. The Plaintiff relies on a Certificate of Lease dated 7th December 2015, produced as part of their documentary evidence to prove ownership of the same. Under Sections 24(a) and 26(1) of the [Land Registration Act](#), a registered proprietor is vested with absolute ownership unless the title is impeached for fraud, misrepresentation, or illegal acquisition.

Section 26(1) provides:

“The certificate of title issued by the Registrar upon registration shall be taken by all courts as prima facie evidence that the person named as proprietor is the absolute and indefeasible owner.”

21. The 1st Defendant, while denying ownership, did not plead or prove any fraud, illegality, or procedural impropriety against the Plaintiff's title to the standard required under the section 107-109 of the [Evidence Act](#). The 1st Defendant's submission that the Plaintiff did not produce documents relating to the root of title such as sale agreement, transfer or allotment was not supported by facts.
22. The reference to the case of *Dina Management Ltd v County Government of Mombasa* (2023 KESC 30), where the Supreme Court held that production of a title alone is not conclusive where the process of acquisition is under challenge would only lie if there was evidence adduce to contradict the facts presented by the Plaintiff



23. In this case, however, the Defendant did not lead any evidence to challenge or cast doubt on the process of acquisition. No competing claims to the land was proved, and no allegation of improper allocation was made. Thus, the denial of ownership, unsupported by facts, does not rebut the Plaintiff's statutory presumption.

b. Whether the Plaintiff obtained valid development approvals before commencing construction.

24. The Plaintiff argued that they acquired the requisite approvals and permits before commencing construction. The said permits and approvals produced included; Approved Plans Nos. CPF AO 533 and CPF AQ 837, development permission notification, NEMA EIA licences (2017, 2019, 2020), NCA Certificate of Compliance (20 August 2020), WRA riparian letter (25 June 2019), E-construction payment receipts and Various architectural/structural drawings.

25. Section 57 of the *Physical and Land Use Planning Act* (PLUPA) provides that no development shall be undertaken without development permission issued by the County Government. The 1st Defendant submitted that the Plaintiff never obtained a formal development permission as contemplated under Section 57 PLUPA. That NEMA licences, NCA certificates, drawings, or receipts do not amount to development permission and further the plans relied on by the Plaintiff do not constitute proof of approval.

26. However, the 1st Defendant did not adduce evidence that the development approvals presented in evidence were forgeries. Noting that transitional provisions under Section 91 PLUPA preserve the approvals issued under the repealed Physical Planning Act, it is my view and I hold that the Plaintiff's approvals of 2017–2020 remain valid.

c. Whether the 1st Defendants acts were lawful

27. The Plaintiffs stated that the 1st Defendant arrested their workers, attempted to stop construction, and marked the site for closure. They claimed all these actions were taken without issuing any enforcement notice. The 1st Defendant admitted that no notice was issued but denied harassing the Plaintiff's workers. The facts presented by the Plaintiff remain uncontested, as they cannot be contradicted through submissions.

28. Under Section 72 PLUPA, where a County Government believes development is illegal, it must issue an enforcement notice in writing specifying the alleged breach and required compliance steps. It provides as follows;

- “72. A county executive committee member shall serve the owner, occupier, agent
(1) or developer of property or land with an enforcement notice if it comes to the notice of that county executive committee member that-
- (a) a developer commences development on any land after the commencement of this Act without the required development permission having been obtained; or
 - (b) any condition of a development permission granted under this Act has not been complied with.



29. In the case of *Depar Limited v County Executive Committee Member for Lands, Physical Planning, Housing and Urbanization & another* [2021] eKLR, the court stated that;

“The court is of the opinion that a public authority must act within the four corners of the law wherever it takes any administrative or executive action. Every action must be anchored in the law and it must have a lawful justification or excuse. No action should be taken capriciously, arbitrarily and without due process. That is what the rule of law is all about”.

29. Further in the case of *Republic v Director of Physical Planning Ex-Parte Globe Developers Limited & 3 others* [2017] eKLR, Odunga J (As he then was) cited the case of *Onyango Oloo vs. Attorney General* [1986-1989] EA 456 where the Court of Appeal had expressed itself as follows:

“The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard”.

30. It is therefore my view that the 1st Defendant, having failed to issue an enforcement notice to the Plaintiff, deprived them of their right to be heard and their right to property under Articles 40 and 47 of *the Constitution* 2010.

d) Whether the suit is barred by the doctrine of exhaustion

31. The 1st Defendant contends that the claim is premature because the Plaintiff did not appeal to the County Physical and Land Use Planning Liaison Committee under Section 61 PLUPA. The Plaintiff asserts that at the time of initiating the suit in December 2020, the Liaison Committee had not yet been established and only became operational in 2021.

32. It is a general rule that where a statutory forum does not exist, exhaustion does not apply. This principle was affirmed in *Mutanga Tea & Coffee Co. v Shikara Ltd* (2015 eKLR) (supra) where it was held that exhaustion does not apply where remedies are inadequate or unavailable. Similarly, in this case, since the enforcement actions occurred in December 2020, and the committee was not in place, the Plaintiff had no alternative forum thus the doctrine of exhaustion does not bar this suit.

33. The Plaintiff having proved ownership of the suit property, valid development approvals and that the 1st Defendant acting without following due process, it is my view that the Plaintiff is entitled to protection of its proprietary rights under the law.

34. Consequently, I hold that the Plaintiff has proved its case to the required standard and enter judgment as sought in the plaint together with costs as against the Defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF DECEMBER, 2025.

A. OMOLLO

JUDGE

