

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC APPEAL NO. E061 OF 2025

**SPIFFY EDGES ENTERPRISES LIMITED
APPELLANT**

VERSUS

**KIAMBU COUNTY PHYSICAL AND LAND
USE PLANNING LIAISON COMMITTEE 1ST
RESPONDENT**

**BOMA ESTATE RESIDENTS' ASSOCIATION 2ND
RESPONDENT**

**KENYATTA UNIVERSITY BOMA HOUSING
CO-OPERATIVE SOCIETY LIMITED 3RD
RESPONDENT**

**PROF. FRANCIS K. GATHERI 4TH
RESPONDENT**

**ANGELA GAKII 5TH
RESPONDENT**

**ABRAHAM TUMUTI 6TH
RESPONDENT**

**DR. RACHEL WANJIRU KAMAU 7TH
RESPONDENT**

**SAMUEL KIBE 8TH
RESPONDENT**

**PROF. J. N. NGERANWA 9TH
RESPONDENT**

**MARSHAL KIGANJO 10TH
RESPONDENT**

**CATHERINE CHEGE 11TH
RESPONDENT**

**TIMOTHY NJUGUNA 12TH
RESPONDENT
COUNTY EXECUTIVE COMMITTEE MEMBER (CECM)
LANDS, HOUSING PHYSICAL PLANNING,
MUNICIPAL & URBAN DEVELOPMENT,
KIAMBU COUNTY GOVERNMENT13TH
RESPONDENT
DIRECTOR PHYSICAL PLANNING & URBAN DEVELOPMENT,
KIAMBU COUNTY GOVERNMENT..... 14TH
RESPONDENT
COUNTY GOVERNMENT OF KIAMBU..... 15TH
RESPONDENT**

RULING

1. Before me for determination is the 2nd to 12th Respondent's Notice of Motion application dated 20th August 2025 seeking a stay of implementation of the Kiambu Liaison Committee's determination in Complaint /Claim/Appeal No. CGK/KCLC/040 of 2025 dated 8th May 2025 and any consequential approvals by the Interested Parties pending the hearing and determination of the appeal herein.
2. The application is anchored on the grounds set out on the face of the Notice of Motion and the supporting affidavit of Prof. Francis Kimani Gatheri sworn on his own behalf and on behalf of the 2nd to 12th Respondents on the 20th August 2025.
3. The gist of the said affidavit is that the Liaison Committee in its decision dated 8th May 2025 made a determination and issued orders that had not been pleaded by the parties nor canvassed

during the hearing. He depones that if the said decision is implemented, the appeal shall be rendered nugatory.

4. The application met with resistance from the Appellant through their Grounds of Opposition dated 19th September 2025 in which they raise the following grounds:

- i) That the application is incompetent and fatally defective having been brought under the wrong provisions of the law, namely Order 40 Rule (1) (a) of the Civil Procedure Rules which is inapplicable to the relief sought.*
- ii) That the Applicants are guilty of material non-disclosure for failing to disclose to this Honourable court that they lodged a subsequent Complaint before the Kiambu County Physical Planning Liaison Committee where the issue of the freshly issued approvals was determined on 7th August 2025.*
- iii) That the Liaison Committee's determination of 8th May 2025 which the Applicants purport to cross-appeal against was in fact favourable to the Applicants and has already been implemented hence there is nothing left to stay.*
- iv) That the determination of 8th May did not contain any positive order capable of being stayed and the prayers sought are therefore misconceived.*
- v) That the said determination has been overtaken by events , including the filing of a subsequent Complaint by the Applicants which was dismissed on 7th August 2025.*

- vi) *That the Applicant has already filed an appeal to this court being ELCA E0107 arising from the said subsequent Complaint and they cannot therefore re-litigate the same issues through the instant application and purported Cross-Appeal.*
- vii) *That the purported Cross-Appeal filed simultaneously with the application is a non-starter, abuse of the process of the court and an afterthought, the same having been lodged after the Applicants' subsequent Complaint before the Liaison committee was dismissed on 7th August 2025.*
- viii) *That the reliefs sought by the Applicants in the purported Cross-appeal in so far as they relate to the determination of the 8th May 2025 are legally unsustainable, the said determination having already been implemented and overtaken by subsequent proceedings.*
- ix) *That at any rate, no valid appeal exists as this Court lacks jurisdiction to hear and determine an appeal outside 30 days as provided under section 72 of the Physical and Land Use Planning Act , 2019.*
- x) *That the Applicants have not laid any basis in law or fact for the grant of an injunction and/or stay of execution, having failed to satisfy the threshold under Order 40 of the Civil Procedure Rules.*

5. The application was canvassed by way of written submissions and pursuant to the court's directions, both parties filed their submissions which I have read and considered in arriving at my decision.

6. A brief background is necessary in order to put the application into perspective. Spiffy Edges Enterprises, the Appellants/ Respondents herein who are the registered owners of the property known as L.R No. 13136/440 in Ruiru town within Kiambu County embarked on developing their property.
7. On 8th April 2025, the Applicants filed a complaint before the Kiambu County Physical Planning Liaison Committee being Complaint No. 40 of 2025, alleging that the 1st Respondent was carrying out construction contrary to the approved plans.
8. On 8th May 2025, the Liaison Committee delivered its determination, ordering inter alia that the Enforcement Notice relied upon by the Applicants was invalid and that the 1st Respondent was at liberty to apply for fresh development approval of amended plans in line with section 67 of the Physical and Land Use Planning Act, 2019.
9. The 1st Respondent subsequently submitted amended development plans for approval by the County Government of Kiambu on 29th May 2025. The said plans were approved and the 1st Respondent was duly notified on 17th June 2025. The 1st Respondent was then issued with a construction permit and a Certificate of Compliance dated 20th June 2025 confirming that its project was compliant with the requisite laws.
10. In the meantime, the 1st Respondent filed the instant appeal faulting the Committee's determination.

11. Upon learning that the 1st Respondent had been granted fresh approvals, the Applicants filed another Complaint before the Liaison Committee being Complaint No. 42 of 2025 but the same was dismissed on 7th August 2025. It is the said dismissal that is the subject of the instant appeal.

ANALYSIS AND DETERMINATION

12. Having considered the application, Grounds of Opposition and rival submissions, the following issues emerge for determination;

- i) Whether the court lacks jurisdiction to hear and determine the application and appeal;**
- ii) Whether the application for injunction and/or stay of execution is well founded;**
- iii) Whether the Applicant has met the threshold for an injunction;**
- iv) Whether the Applicant is entitled to the orders sought.**

Jurisdiction

13. It has been submitted by learned counsel for the 1st Respondent that this court lacks jurisdiction to hear and determine this matter as the appeal was filed outside the 30 days specified in section 72 (4) of the Physical and Land Use Planning Act , 2019.

14. Section 72 (4) of the Physical and Land Use Planning Act , 2019.provides as follows:

“Any party aggrieved with the decision of the County Physical and Land Use Planning Liaison Committee may appeal to the Court only on a matter of law and the court shall hear and determine the appeal within 30 days.”

15. From the above provision of the Act, the time for filing the appeal is not circumscribed, rather it is the time for hearing and determining the appeal that is set at 30 days. Under Order 50 of the Civil Procedure Rules, applications for temporary injunctions are excluded from the provisions relating to time.
16. It is therefore my finding that the court has jurisdiction to hear and determine this application.

Whether the threshold for stay of execution/injunction has been met

17. Although the application is brought under Order 40 of the Civil Procedure Rules, it is clear from the substance of the application that what is sought is a stay of execution. In view of the provisions of Article 159 (2) (d) which mandates the court to administer justice without undue regard to technicalities, I shall not dwell on the technical inadequacies.
18. I shall now proceed to determine whether the Applicant has met the threshold for a stay of execution.
19. Order 42 rule 6(2) of the Civil Procedure Rules, 2010, prescribes the conditions under which a stay of execution may be granted. The provision reads:

“No order for stay of execution shall be made under sub-rule (1) unless -

(a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

20. The rule enunciates a triple threshold. First, it requires the Applicant to demonstrate that the refusal of a stay would occasion substantial and irreparable loss. Secondly, that the application has been advanced promptly, untainted by undue delay. And thirdly the provision mandates the furnishing of security to safeguard the eventual enforcement of the decree or order, thereby protecting the interests of the Respondent.
21. These requirements underscore the Court’s duty to strike a careful balance between preserving the rights of the Applicant pending appeal and ensuring that the Respondent is not prejudiced by the temporary suspension of execution.
22. In effect, the Court is called upon to exercise its discretion with circumspection, ensuring that equity, fairness, and judicial prudence converge in the assessment of whether a stay should issue.

23. In the instant case, the Applicant filed the application for stay after a period of 3 months without any explanation. The Applicants have also not demonstrated by way of affidavit that they will suffer substantial loss. The fact that they failed to disclose that they obtained development permission soon after the determination appealed against also goes to show that they are not being sincere in their apparent quest for justice.
24. With regard to security for costs, even though the Applicants have in their submissions indicated that they are willing to abide by any conditions the court may impose in respect of security for costs, the supporting affidavit is silent on this issue.
25. All in all, I am not persuaded that the Applicants have satisfied the conditions for stay of execution. Consequently, the application lacks merit and it is dismissed with costs to the Respondents.

Dated, signed and delivered virtually this 11th day of December 2025.

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J. M ONYANGO
JUDGE

In the presence of:

1. Mr Isahi for the Appellant
2. Mr. Maina for Mr. Nyakundi for the 2-12th Respondents
3. Ms Wanjiku for the 13th -15th Respondents

Court Assistant: Hinga

ORIGINAL