



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO.46 OF 2019

CHARLES MIGICHI MUNGAL.....1ST PLAINTIFF/APPLICANT

ZIPPORAH NYAGUTHII MATHENGE.....2ND PLAINTIFF/APPLICANT

ROSELYNE WANJIRU WANYOIKE.....3RD PLAINTIFF/APPLICANT

NELSON MWANGI.....4TH PLAINTIFF/APPLICANT

JAMES KABUKI NGURE.....5TH PLAINTIFF/APPLICANT

ESTHER WAMBUI KUNGU.....6TH PLAINTIFF/APPLICANT

SIMON GITHAIGA GATIMU.....7TH PLAINTIFF/APPLICANT

MARY WAMBUI WANYOIKE.....8TH PLAINTIFF/APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF KIAMBU.....DEFENDANT/RESPONDENT

RULING

The matter for determination is the *Notice of Preliminary Objection* raised by the Defendant on 6th March 2019. The said *Notice of Preliminary Objection* seeks for the dismissal of the entire suit on the following grounds:-

- 1) *That this Honourable Court does not have jurisdiction to hear and determine this matter.*
- 2) *That then Physical Planning Act (No.6 of 1996) clearly outlines the procedure to be followed when dealing with the issues before this court.*
- 3) *That the Physical Planning Act under Section 7 establishes the Physical Planning Liaison Committee.*
- 4) *That the Physical Planning Liaison Committee is empowered under Section 10 of the Physical Planning Act to hear appeals lodged by persons aggrieved by decisions made by the Director or County Government.*
- 5) *That any person who is aggrieved by a decision made by the Director shall appeal the decision to the Liaison Committee as provided under Section 13 of the Physical Planning Act.*
- 6) *That Section 13 of the Physical Planning Act provides for the procedure for dispute resolution at the instance where a party is aggrieved by the decision of the Director Physical Planning concerning any physical development plan or matters connected therewith.*

The Plaintiffs have objected to the said issues raised in the *Preliminary Objection* vide their response dated 21st March 2019, and have averred as follows:-

- 1) *That the issues raised by the Plaintiffs are not subject of determination by the Liaison Committee as has been established in Section 7 of the Physical Planning Act 2012.*

2) That the Liaison Committee has completely no jurisdiction over the dispute herein vis-à-vis the functions itemized in Section 10 of the Physical Planning Act 2012 (Revised Edition).

3) That the Liaison Committee has no powers to issue orders as have been prayed in this suit as they are a preserve of the courts. The Liaison Committee is just but a quasi-judicial body.

4) That this Preliminary Objection is misplaced and therefore should be dismissed with costs to the Plaintiffs.

The Court directed the parties to canvass the said **Preliminary**

Objection via written submissions which this Court has now carefully read and considered.

Before embarking on the merit of the **Preliminary Objection**, the Court will first determine whether the instant **Preliminary Objection** falls under the rubrics of **Mukisa Biscuits Manufacturing Co. Ltd..Vs...West End Distributors Limited (1969) EA. 696**, where the Court held that:-

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

The Defendant has raised the issue of jurisdiction and it is trite that jurisdiction is everything and a court without jurisdiction has no option but to down its tools. See the case of **The Owners of the Motor Vessel ‘Lillian S’...Vs... Caltex oil (Kenya) Ltd 1989 KLR 1** where the Court held that :-

“..Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

Since the Defendant’s **Preliminary Objection** is on jurisdiction, the Court finds that it is a pure point of law and if the same is upheld, it is capable of bringing the matter to an end preliminarily. Therefore the objection herein fits the description of the **Preliminary Objection** as prescribed in the **Mukisa Biscuits Case (supra)**.

Is the **Preliminary Objection** merited? It is clear that the Plaintiffs filed this suit on **18th December 2018** and sought for various orders against the Defendant. Among the orders sought are:-

a) A declaration that the 1st, 2nd, 3rd, 4th, 5th, 7th and 8th Plaintiffs were/are the registered owners of plot numbers (1A, 21,22), 4A, (14A & 14B),, 8A, 7A, 3, (9A & 9B, 17A & 17B) and 17 respectively.

b) A declaration that the Defendant has no rights whatsoever to evict the 1st, 2nd, 3rd, 4th, 5th, 7th and 8th Plaintiffs were/are the registered owners of plot numbers (1A, 21,22), 4A, (14A & 14B),, 8A, 7A, 3, (9A & 9B, 17A & 17B) and 17 respectively and that the intended demolition of the Plaintiffs’ structures/building is unlawful, irregular null and void.

The Plaintiffs averred that they were allocated the parcels of land by the Defendant and others purchased them from the allottees of the said plots who were allotted the same by the Defendant vide various allotment letters issued between **1996-2008**. The Plaintiffs further averred that they have constructed various developments on the said plots and had been issued with approved development plans by the Defendant.

However, vide various enforcement Notices dated **14th October 2018**, the Defendant requested the Plaintiffs to remove various constructions of commercial development on the public land. It is also evident that the Plaintiffs have various allotment letters and approved development plans which they have annexed to their pleadings.

In the instant **Preliminary Objection**, the Defendant alleges that the Court has no jurisdiction as the matter ought to have been referred to the **Liaison Committee** first instead of being brought to court. It was the Defendant’s assertion that the existence of Physical Planning Liaison Committee to deal with matters of this nature ousts the court’s jurisdiction.

From the Plaintiffs pleadings, it is evident that they are aggrieved by the decision of the Defendant to serve them with **Enforcement Notices** for removal of the structures on the public land. However, the Plaintiffs alleged that they have allotment letters and approved development plans and the plots are no longer public land.

The Court finds that the issue that will call for determination in the Plaintiffs suit is whether the suit plots are public land or not. These are issues that fall squarely under the jurisdiction of the Environment & Land Court as provided by **Section 13** of the **Environment & Land Court Act** which provides:-

“The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.”

The issues in the Plaint are none of the issues provided by **Section 7** of the **Physical Planning Act 2012** (Revised Edition) on the functions of the Liason Committee.

The Plaintiffs have come to court seeking remedies and enforcements of their right to own property and such remedies can only be awarded by the **Environment & Land Court** and not the **Physical Planning Liason Committee**. Further, the Court finds no decision of the Director or the Defendant that needs to be referred to the Liason Committee but the issues raised herein falls squarely under the jurisdiction of this Court.

The upshot of the foregoing is that the **Preliminary Objection** raised by the Defendant is not merited and the same is dismissed entirely with costs to the Plaintiffs.

The suit to be set down for hearing and be determined on merit.

It is so ordered.

Dated, Signed and Delivered at Thika this 21st day of May 2019.

L. GACHERU

JUDGE

21/5/2019

In the presence of

M/S Wangiro for the Plaintiffs/Respondents

Mr. Wahome holding brief for Mr. Sanaet for Defendant/Objector

Diana - Court Assistant

Court – Ruling read in open court in the presence of the above advocates.

L. GACHERU

JUDGE

21/5/2019