Muchui v Nairobi City County Gov't (Environment and Planning Miscellaneous Application E011 of 2025) [2026] KEELC 350 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 350 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND PLANNING MISCELLANEOUS APPLICATION E011 OF 2025

AA OMOLLO, J

JANUARY 29, 2026

BETWEEN

BEATRICE WAIRIMU MUCHUI .... APPLICANT

AND

NAIROBI CITY COUNTY GOV'T .... RESPONDENT

RULING

1. The Applicant filed a Notice of motion dated 4th August 2025 supported by an affidavit sworn on the same date and a further affidavit sworn on 5th November 2025 both by Beatrice Wairimu Muchui seeking for the following orders;

   a. Spent.

   b. That pending the hearing and determination of the application, a temporary injunction be issued restraining the Respondent, its agent or servants from demolishing, interfering with, or evicting tenants or threatening demolition of developments on L.R. no. 36, section 1, Eastleigh, Nairobi.

   c. That pending the hearing and determination of the main suit, a permanent injunction do issue on the same terms.

   d. That the OCS Pangani police station and the county police commander, Nairobi do ensure compliance and enforcement of the orders issued herein.

   e. That costs of this application be provided for.

2. The motion is based on the grounds that the Applicant is the registered proprietor of L.R. No. 36 Section 1, Eastleigh, Nairobi, originally acquired jointly with her late husband hereafter referred to as "the suit property". That she has been in peaceful and open possession of the suit property and developed it lawfully for commercial use. The Applicant stated that in July 2025, Nairobi City

County issued public health and enforcement notices and marked the premises for demolition, causing tenants to flee. Despite her efforts to engage the County and demonstrate willingness to comply, the Respondent proceeded to unlawfully evict tenants without a court order.

3. The Respondent filed a replying affidavit sworn on 6th October 2025 by Michael Munyi Njeru, its Principal Development Control Officer. He stated that on 21st July 2025 County officers conducted a routine inspection of the suit property and found that the developments lacked the requisite County approvals and had questionable structural integrity. Debris was reportedly falling from the slab, posing a danger to tenants. As a result, the Applicant was served with a Public Health Notice requiring relocation of tenants until defects such as cracks, dampness, chipped floors, defective drains, lack of water, damaged ceilings, and exposed wiring were repaired.

4. Further, that an Enforcement Notice was also issued under the *Physical and Land Use Planning Act* and the National Building Code, directing cessation of occupation and removal of illegal developments. The Respondent contends that the notices were issued in the public interest to avert danger and not in violation of the Applicant's rights. It asserts that the Applicant has not shown any evidence of having applied for or obtained development approvals or an occupation certificate.

5. The Respondent maintains its officers acted lawfully within their statutory mandate and that the enforcement actions were justified by the Applicant's non-compliance. Thus, her application should be dismissed with costs.

6. The Applicant filed a further affidavit sworn on 5th November, 2025 to contradict the facts brought out in the replying affidavit. She averred that she has never been requested to produce the approvals of her development, as the Respondent only spoke to her caretaker, who is not the custodian of the said documents. She added that it is her late husband who handled the construction and she has been trying to trace the documents from his personal records.

7. That after issuance with the enforcement notice, she applied on 27th July, 2025 for authorization from the Respondent to undertake the necessary repairs and renovation of the property. That the application was declined with reasons that the Respondent required a structural engineer's report before commencement of any works. She denied that she has refused to comply with the Respondent's requirements.

8. The Applicant asserted that the building is currently vacant therefore poses no danger to the public as alleged by the Respondent. She reiterated that issuing enforcement and demolition notices without affording her the opportunity to be heard violates her right to fair administrative action under Article 47.

Submissions

9. The Applicant prosecuted her application by filing submissions dated 5th November 2025, which were responded to by the Respondent's submissions dated 23rd January 2026, filed late on 26th January 2026.

10. The Applicant submits that the issues for determination are whether she has established a prima facie case, whether she faces irreparable harm, where the balance of convenience lies, and whether the Respondent's enforcement violated her right to fair administrative action. She relies on Giella v Cassman Brown & Co Ltd (1973) EA 358, affirmed in Nguruman Ltd v Jan Bonde Nielsen & 2 Others [2014] eKLR, and Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR.

11. The Applicant argues that she has shown apparent infringement of her proprietary rights and that she is the lawful owner, yet was not formally asked to produce approvals. However, she has applied for

renovation authorisation as exhibited under BWM-1 and BWM-2, and is obtaining a structural report to demonstrate good faith and ongoing compliance.

12. Regarding irreparable harm, the Applicant contends that demolition or interference would permanently destroy her property and investments, a loss not compensable by damages. She submitted that Courts have consistently held that destruction of property constitutes irreparable harm justifying preservation, including in Nduati & Others v Chemutai & Others [2024] eKLR.

13. She adds that the building is currently vacant, thereby eliminating any imminent public safety risk, and that enforcement at this stage serves no legitimate purpose. On the balance of convenience, applying the case of American Cyanamid Co v Ethicon Ltd [1975] AC 396 (as applied in Giella v Cassman Brown), the inconvenience to her of losing the property permanently outweighs any temporary delay to the Respondent's enforcement mandate.

14. Finally, on fair administrative action, the Applicant invokes Article 47 of *the Constitution* and Section 4(3) of the *Fair Administrative Action Act*, 2015, arguing that the Respondent issued notices and threatened demolition without prior notice, reasons, or an opportunity to be heard. She relies on Republic v Nairobi City County; Ibrahim (Ex parte) [2022] eKLR and Nairobi City County Government v Jolec Company Limited [2021] eKLR to show that enforcement without engagement and due process is invalid.

15. Further, Republic v County Government of Kiambu; Ex Parte Robert Gakuru [2016] eKLR and Republic v National Land Commission & Another Ex Parte Holborn Properties Ltd [2016] eKLR underscore that decisions made without procedural fairness violates Article 47 and are liable to be quashed. That on this basis, the Applicant seeks interim and preservatory orders to maintain the status quo and facilitate lawful renovations upon compliance.

16. The Respondent submits that they served the enforcement notice dated 21st July, 2025, pursuant yto section 72 of PLUPA after the development was flagged for structural defects and lack of approvals. It argues that the Applicant engaged the services of an architect post-facto and paid a nominal fee of Kshs 14000 in an attempt to regularize the illegality.

17. The Respondent questioned the jurisdiction of this court in handling this matter citing the case of Muka & Another versus Malal & 12 Others (2022) KEHC 10131Eklr. It also cited the Court of Appeal in Nairobi City Council vers Thabiti Enterprises Ltd (1997) KECA 59 (KLR) for the proposition that no injunction can issue to restrain a public authority from enforcing the law against an illegality.

18. On irreparable loss, the Respondents contends that in Nduati, the contentious issue was a title dispute whereas this matter involves development control. That the Applicant's title is not in dispute. The Applicant further admits that property is vacant and that there is no threat of eviction of tenants. The harm is a purely economic loss which is self-inflicted as a result of the Applicant's non-compliance. It is quantifiable and compensable in monetary damages.

19. The Respondent submits that the balance of convenience tilts in its favour as it is tasked with ensuring strict compliance of the Nairobi City County Development Control Policy, which even though is a draft policy, the Court of Appeal recognized it as a guiding instrument, pending its gazettement, as held in CM] Appeal No. E160 of2025-Anami & 20 Others (suing as officials of Raphta Road Residents Association) vs CECM Built Environment & Urban Planning, Nafrobi Ci5'County& 20 Others (2025). The zone where the Applicant's development is situated is in Eastleigh, which according to the Policy, is identified as a high-density area. Allowing unapproved structures without intergrity comprises the safety of neighbours.

20. It concluded its submissions by urging the court to grant the following prayers:

a. Declares that the development on the suit property is unapproved and therefore illegal;

b. Lifts the temporary injunction restraining the Respondent from exercising its mandate;

c. Directs the Applicant to be in strict compliance of the county bylaws and the enforcement notices dated 21 st July 2025;

d. Dismisses the Applicant's Application dated 4th August 2025 for lack of merit and with costs.

Analysis and determination:

21. The manner in which the application is framed, what is pending for determination is prayer (c) which, at this interlocutory stage, is seeking an order of permanent injunction restraining the Respondent from demolishing or interfering with developments on the suit property. Prayer (d) is security to ensure enforcement of the order while (d) is a prayer on costs.

22. It is settled law that an order of permanent injunction can only issue at the conclusion of a matter In Ngatuny & 2 Others v Mosoiko & 2 Others [2024] KECA 1656 (KLR), the Court of Appeal emphasized that a final injunction cannot be granted on affidavit evidence alone and before the substantive issues have been tried. Similarly, in Joseph Gitahi Gachau & Another v Pioneer Holdings (A) Limited & 2 Others [2009] KECA 201 (KLR), the Court held that a permanent injunction is only available after the court has heard the suit and determined the parties' rights, and not at an interlocutory stage.

23. In the present matter, the issues raised as of whether the developments lack approvals, whether the building is structurally unsafe, and whether the Respondent acted lawfully within its statutory mandate are contested and require full analysis of both affidavits and may be oral evidence. They are matters that cannot be conclusively resolved on affidavit evidence only.

24. Additionally, there is no proper suit before the court, as this case was brought as a miscellaneous application. Hence, there will be nothing pending once the present application is determined, yet prayer (c) is worded so that the orders are to be granted pending determination of the suit.

25. Accordingly, while the Court may, in appropriate cases, issue temporary or preservatory or conservatory orders to maintain the status quo, the prayer for a permanent injunction pending the hearing and determination of a non-existent suit is legally untenable. Therefore, I shall not address the merits of this application as it is incompetent.

26. The orders I make are that the application is incompetent and is hereby struck out. Each party shall bear their own costs. The existing orders for interim injunction are automatically discharged.

DATED, SIGNED AND DELIVERED BY UPLOAD ON CTS THIS 29TH DAY OF JANUARY, 2026

A. OMOLLO

JUDGE