



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELCE APPEAL NO. E001 OF 2023

DANIEL WAWERU MUGO.....1ST
APPELLANT

EDMOND JAMLECK KABAYA MUINAMIA.....2ND
APPELLANT

VERSUS

RIVERSIDE COURT WELFARE GROUP.....1ST
RESPONDENT

COUNTY GOVERNMENT OF KIAMBU.....2ND
RESPONDENT

*(Being an Appeal against the Determination delivered by
the Chairperson of Kiambu County Physical and Land Use
Planning Liaison Committee on the 16th June 2023)*

BETWEEN

RIVERSIDE COURT WELFARE GROUP.....
.....COMPLAINANT

VERSUS

DANIEL WAWERU MUGO.....1ST
RESPONDENT

EDMOND JAMLECK KABAYA MUINAMIA.....2ND
RESPONDENT

AND

COUNTY GOVERNMENT OF KIAMBU.....
....INTERESTED PARTY

JUDGMENT

1) By a Memorandum of Appeal dated the 14/07/2023, the Appellants being dissatisfied with the whole of the decision of the Kiambu County Physical Land Use Planning Liaison Committee dated and delivered on the 16/06/2023 over the Appellant's Appeal against the decision of the Chairperson of Kiambu County Physical and Land Use Planning dated which they appeal against the said decision on the following grounds:

1. THAT the County Physical and Land Use Planning Liaison Committee erred in law in failing to find and hold that the 1st and 2nd Appellants proved their case against the Riverside Court Welfare Group to the required standards.
2. THAT the County Physical and Land Use Planning Liaison Committee erred in law in failing to find that the Developer had already made an application for the regularization of the development under construction in accordance with the Physical and Land Use Planning Act, which application had been adhered by and fees paid to the County to that extent.
3. THAT the County Physical and Land Use Planning Liaison Committee wholly erred in law in failing to appreciate the option of penalization of the Appellants

as stipulated under Part 8 of the Fourth Schedule of Kiambu County Finance Act, 2021.

4. THAT the County Physical and Land Use Planning Liaison Committee wholly erred in law by failing to consider the great prejudice that would be occasioned to the Appellants if the Orders were to be implemented despite the Approval made after payments of the Regularization fees.
5. THAT the County Physical and Land Use Planning Liaison Committee wholly erred in law in directing compliance with the Enforcement Notice which had already been overtaken by events as the 2nd Respondent had acknowledged to have received the required payment for the regularization of the Development.
6. THAT the County Physical and Land Use Planning Liaison Committee erred in law by failing to analyse and take into consideration the respective pleadings by the parties and the evidence tendered and thus arrived at an unsupported and erroneous conclusion that the Appellants had not complied with the regularization of the construction.
7. Reasons Wherefore: The Appellant prays that:-
 - a) The Appeal herein be allowed.

- b) The Determination and/or Finding of the County Physical and Land Use Planning Liaison Committee be set aside.
- c) The 2nd Respondent be compelled to grant the necessary licences for the commencement of the stalled construction
- d) Parties to bear their own costs.

2) The Appeal was canvassed by way of written submissions.

Submissions

Appellants' Submissions

- 3) The Appellants in their submissions provide a factual background of the dispute herein. It is the Appellants' case that their stayed construction by the 2nd Respondent which is meant to be a residential building with two floors with two tenants and is not a high-rise building.
- 4) That due to an inadvertent misunderstanding of the construction process the Appellants mistakenly began construction before obtaining the requisite approvals as they thought the construction was within the range as per the area requirement.
- 5) The Appellants who were the Respondents in the complaint before the Committee received a stay order dated 31/03/2023 instructing them to stay any development in the property. The Appellants stopped any further construction and to rectify the mistake of non-compliance, they proceeded to make an application for regularization of the

development dated 25/05/2023. The 2nd Respondent herein who was the Interested Party at the Committee hearing issued an invoice to the Appellant to pay the regularization penalty and thereafter issued the Appellants with a receipt confirming payment of the regularization fee dated 26/05/2023.

- 6) As at the time of the hearing the Appellants were awaiting approval from the 2nd Respondent who was the Interested Party at the Committee hearing. The Appellant averred that the 2nd Respondent penalized them an amount of Ksh 208,510 in regularization of Compliant Change of Use in respect to Part 8 of the Fourth Schedule of the Kiambu County Finance Act, 2021.
- 7) That there was a second issue relating to the masts which touched on health but all parties were of the view that the Committee had no jurisdiction on rule on health matters.
- 8) In their submissions dated 23/04/2025 the Appellants identified four issues touching on matters of jurisdiction, legality of the decision by the Committee and that the Committee erred by directing compliance with the Enforcement Notice yet according to the Appellants it had already been overtaken by events.
- 9) The gist of the submissions by the Appellants is that the Committee lacked jurisdiction because the Committee was not clothed with the requisite jurisdiction to hear and determine the Complaint before it. According the Appellants

the Complaint before the Committee was brought in line with Section 80 (2) of the Physical and Land Use Planning Act, (PLUP) 2019, which provides only for Appeals of decisions made by the County Executive Committee Members. The Appellants submit that the matter before the Committee was a Complaint against the Appellants and not against any decision or conduct of the County Executive Members. To the Appellants, the Committee as per the reading of Section 80 (2) of the Act is clothed with handling Appeal against County Executive Committee Members but not disputes between individuals.

- 10) In their submission the Appellants were of the view that it is Regulation 6 of the Physical and Land Use-Development Control Enforcement Regulations, 2021. Therefore, the Complaint according to the Appellants ought to have been filed with the County Director and not the Committee as the Committee does not have the mandate to hear this particular Complaint since it exceeded its mandate as enshrined in the Act when it proceeded to hear the Complaint in the absence of any decision being appealed against.
- 11) On the issue of jurisdiction, the Appellants restated in their submission that since the Complaint was in relation to development the Committee did not have jurisdiction to hear and determine the Complaint since it was brought under Section 80 (2) of the Act. So according to the Appellants the

Committee did act outside their mandate since this kind of dispute can only be handled by the Environment and Land Court in line with Article 162 of the Constitution. That Complaints against members of the public or developers lies with the County Director or with the Court.

- 12) On the issue of jurisdiction, the Appellants relied on the cases of **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR** and the Court of Appeal case of **Kenya Ports Authority vs Modem Holding [EA] Limited MSA CA Civil Appeal No. 108 of 2016 [2017] eKLR.**
- 13) On the second issue, the gist of the Appellants’ submission is that the decision of the County Physical Land Use Planning and Liaison Committee is irregular since it offends provisions of Section 79 of the Physical and Land Use Planning Act. That the said provision mandates the Committee to make its decision by voting but the Appellant submits that perusal and scrutiny of the process does not indicate that the decision made by the Committee was made by majority and was subjected to voting.
- 14) Further that the Respondents’ area was not a zoned area and the decision made by the Chairman did not consider views from members who pointed out that the Appellants had already regularized their situation by paying a fine and had made an application for new construction.

- 15) On the third issue the Appellants submit that prior to hearing before the Committee they had paid a fine imposed by the 2nd Respondent for regularization. Despite the fact that the stay order issued by the 2nd Respondent was not in line with Regulation 7 and 8 of the Physical and Land Use Development Control Enforcement Regulations, 2021 and the Kiambu County Finance Act which provides for Regularization in the event a party has begun developments without the requisite approvals.
- 16) To the Appellants, they proved their case against both Respondents but they content that the 1st Respondents had not proved their case against them. This because they submitted that the representative of the 1st Respondents indicated to the Committee that they did not have any development regulations within the area meaning that individuals are at liberty to construct both single and multi-purpose dwelling units. And the building plans provided by the Appellants were within the range of other buildings in the area.
- 17) Further, that whereas Regulation 7 and 8 of the Physical and Land Use Development Control Enforcement Regulations, 2021 makes provision for issuance of a stay order it provides that the 2nd Respondent upon receiving a complaint must prepare a report and submit the said report to the County Director. That the 2nd Respondent did not

provide the evidence to show that they conducted a site visit and that a report was prepared. Therefore, the Appellants submit that the failure to conduct the site visit by the 2nd Respondent or Committee violated their right to fair administration of justice as enshrined under Article 47 of the Constitution.

18) Further the 1st Respondent and the Appellants sought to settle this matter out of Court after the 1st Respondents discovered that the Appellants had regularized their omission yet this fact was ignored by the Committee which was in a hurry to deliver its decision in violation of Article 159 which provides for alternative dispute mechanisms.

19) On the last issue the gist of the Appellants submission was that by the Committee directing that the Enforcement Notice be complied with it ignored the fact that it is the same 2nd Respondent who issued the Enforcement Notice and who also allowed the Appellants to regularize their approvals. So, the decision of the Committee failed to take into consideration the Appellants' act of regularization of the omission. It is the Appellants case that given this failure by the Committee, it failed to note that the enforcement notice was effectively vacated on 26/05/2023.

20) The 1st Respondent filed their submissions dated

26/05/2025 and identified two issues for determination which are whether the Appellants commenced the construction without approved building plans and whether or not they continued the construction in utter defiance of the stop orders issued by the 2nd Respondent resulting into the enforcement notice.

21) It is the 1st Respondents submissions that the Appellants have not disputed having started construction works without approvals from the 2nd Respondent which is an offence under Section 57 (2) of the PLUP Act. That this act prompted the 2nd Respondent to issue a stop order and the Appellants have also in their evidence stated that they made payment for regularization.

22) Accordingly, it is the contention of the 1st Respondent that if indeed they had stopped construction in March, then it follows that the Enforcement Notice issued on 18/05/2023 by the 2nd Respondent was superfluous. Yet one cannot ignore the fact that the enforcement notice was issued because the Appellants were still undertaking construction despite their having been issued with the stay order and so this prompted the issuance of the Enforcement Notice.

23) Further they submit that when the stop order was issued dated 31/03/2023 the construction was at the ground

level and when the Enforcement Notice was issued on 18/05/2023 the construction was at the slab level and clear indication of defiance.

24) Again the 1st Respondents submit that the Appellants cannot hide behind double jeopardy having disobeyed a stop order which made them be slapped with a penalty which they rushed to pay but they did not disclose to the Committee the process that led to the issuance of the penalty. Since the Enforcement Notice did not invite them to pay any penalty but that somehow after 7 days of the Notice an invoice was generated where the penalty was promptly paid.

25) Thus, they submit that the Appellants who defied lawful order should not be allowed to hide behind the doctrine of double jeopardy by rushing to pay a penalty and that todate they have not complied with the Enforcement Notice inviting criminal sanctions under Section 72(5) of PLUP 2013.

26) It is the submission of the 1st Respondent that the Appeal has no merit and should be dismissed with costs to the 1st Respondent.

27) The 2nd Respondent did not file any submissions to the Appeal.

Analysis and Determination

- 28) I have considered the Memorandum of Appeal, Record of Appeal and rivaling submissions. The Appellants have appealed against the decision of the Kiambu County Liaison Committee, which upheld an Enforcement Notice issued by the 2nd Respondent. The crux of the Appellant's case is that they applied for regularization, paid the requisite fees under the Kiambu County Finance Act, 2021, and obtained approval. Consequently, they argue that the enforcement notice is redundant, oppressive and a violation of the principle of legitimate expectation.
- 29) These to me are the issues that are up for determination considering the facts of this Appeal:
- i. Whether payment of regularization fees constitutes a "pardon" or approval that nullifies an enforcement notice.***
 - ii. Whether the 2nd Respondent is estopped from enforcing a stop-order after accepting fees.***
 - iii. Whether the County Liaison Committee failed to consider the evidence of compliance.***
- 30) The Appellant argues that under the Kiambu County Finance Act, they opted for penalization in lieu of demolition. However, in **Kenya Conservative Forum & 4 Others v County Government of Nairobi & 3 Others [2017] eKLR**, the Court noted that the payment of fees to a County

Government does not, by itself, grant a right to bypass planning standards.

- 31) In essence, regularization is a process, not just a payment. While the **Physical and Land Use Planning Act (PLUP)** allows for the regularization of developments, the payment of a fee is a procedural step. It does not automatically cure substantive defects such as building on a riparian reserve or exceeding plot ratios or as has been presented in the case leading to this appeal, building a multiple dwelling facility in a single dwelling area. Unless a Formal Letter of Approval is issued.
- 32) At the hearing it emerged that the 1st Respondents did not have development regulations but this in itself does not allow any developer to overlook the established custom and practice where all the residents have built single dwelling residences. Further the Appellants did not present any public participation report to the Committee to justify the fact that they had consulted the resident members of the 1st Respondent.
- 33) They also did not rebut the averment of the 1st Respondents allegations that they had severally sought to be presented with the approved plans to no avail. In any case the Appellants did not dispute that they started construction without approvals.
- 34) The Appellant contends that by accepting the money, the County created a legitimate expectation that the

construction could proceed. As held in **Republic v Kenya Revenue Authority Ex parte Nutritiri (Limited) [2003] KLR**, for a legitimate expectation to arise, there must be a clear, unambiguous representation.

35) If the 2nd Respondent issued a demand note specifically for regularization of unauthorized development and accepted the funds, the County cannot, in the same breath, issue a demolition order without demonstrating that the development remains a threat to public safety. This was echoed in **Maina Kiai & Another v Cabinet Secretary, Ministry of Interior and Coordination of National Government & 3 Others [2017] eKLR**, where the Court emphasized administrative fair play.

36) The Appellant argues the Enforcement Order was overtaken by events. In administrative law, once an authority accepts a penalty meant to regularize an act, it is generally barred from punishing the party again for that exact same act unless new breaches occur. To take the money and still demand a stop-work order without refunding the fee or explaining the rejection of the building plans presented does indeed amount to unreasonable administrative action under Article 47 of the Constitution.

37) I therefore do find that the Liaison Committee erred by failing to examine the nexus between the payment made and the status of the application. Because, if the Appellant paid for regularization, the 2nd Respondent was under a duty

to either issue the Certificate of Approval or provide reasons why the payment did not suffice to cure the breach but not another enforcement order. In the circumstances, to uphold an enforcement notice after collecting regularization fees without a Notice of Refusal is indeed a violation of the Fair Administrative Action Act.

38) Given the foregoing I make the following orders:

a) The Appeal is hereby allowed.

b) The decision of the Kiambu County Physical and Land Use Planning Liaison Committee is hereby set aside.

c) The Enforcement Notice issued by the 2nd Respondent is quashed, on the condition that the Appellant provides to the 2nd Respondent proof of the final approved Building Plan drawings within 30 days.

d) If the 2nd Respondent find the development fundamentally unsound where it violates the single dwelling plan in the 1st Respondent's zoned area, they must issue a fresh, reasoned report and provide the Appellant an opportunity to be heard before further enforcement.

e) Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS THIS 24TH DAY OF FEBRUARY, 2026.

**MOGENI J
JUDGE**

In the presence of:

..... Appellants
..... 1st Respondent
..... 2nd Respondent
Melita..... Court Assistant

**MOGENI J
JUDGE**

ORIGINAL