**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC APPEAL NO. E052 OF 2024**

**DR. LAWRENCE KIMANDA**

**DR. WILSON MUNA**

**PETER RINGERA**

**JOHN WAKERI**

**BERNARD WACHIURI**

**ENG PURITY MURIGI**

**ENG JOEL CHEGE (Suing as officials of Croton Ridge Gardens Residents Association)…… APPELLANTS**

**VERSUS**

**RAHAB WANJIKU MWAURA…… ……RESPONDENT**

**COUNTY GOVERNMENT OF KIAMBU……1ST INTERESTED PARTY**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY ……..2ND INTERESTED PARTY**

**NATIONAL CONNSTRUCTION AUTHORITY……..3RD INTERESTED PARTY**

**MANGU INVESTMENTS LIMITED……..4TH INTERESTED PARTY**

***(Being an appeal from the Ruling and Orders of Ho. Charles Mwaniki PM at Ruiru ELC No E055 of 2024 dated 30th May 2024)***

**DR. LAWRENCE KIMANDA**

**DR. WILSON MUNA**

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**ENG JOEL CHEGE (Suing as officials of Croton Ridge**

**Gardens Residents Association)…… PLAINTIFFS**

**VERSUS**

**RAHAB WANJIKU MWAURA……DEFENDANT**

**COUNTY GOVERNMENT OF KIAMBU……1ST INTERESTED PARTY**

**NATIONAL ENVIRONMENT**

**MANAGEMENT AUTHORITY ……2ND INTERESTED PARTY**

**NATIONAL CONNSTRUCTION AUTHORITY……..3RD INTERESTED PARTY**

**MANGU INVESTMENTS LIMITED……..4TH INTERESTED PARTY**

**JUDGMENT**

1) In his Ruling delivered on 30/05/2024 in **Ruiru ELC No. E055 OF 2024** Hon. Charles Mwaniki (PM) found for the Defendant who is the Respondent in the Appeal. Stating that the value of the suit exceeded the pecuniary jurisdiction of the Court and that the Plaintiff/Appellant did not exhaust the avenues put in place to hear and resolve the grievances that he had raised in Court. Therefore the Hon. Magistrate upheld the Preliminary Objection and vacated the temporary injunctive orders that had earlier been granted.
2) Aggrieved by this decision, the Appellants filed a Memorandum of Appeal dated 5/06/2024 on the grounds:
    1. The Learned Magistrate erred in law and fact by stating that the alleged failure of the various government institutions to halt the development by the Respondent undertaken on land known as JUJA-KIAURA BLOCK 7/2645 located in Croton Ridge Gardens Estate, Kenyatta Road was a decision therefore the Appellants should have utilized the laid down internal dispute mechanisms as laid down by the various statutes
    2. The Learned Magistrate erred in law and fact by misapplying the doctrine of exhaustion by requiring exhaustion of administrative remedies where no administrative action was initially taken to be appealed against. The requirement to exhaust remedies does not apply when there is no decision or action by the administrative bodies to contest.

3. The Learned Magistrate erred in law and fact by misapplying the doctrine of exhaustion of statutory remedies under the Physical and Land Use Planning Act, 2019, and the Environmental Management and Coordination Act. The Appellants could not appeal a non-existent decision from the County Executive Committee Member or NEMA, as no such decisions had been made.
4. The Learned Magistrate erred in its interpretation and application of pecuniary jurisdiction since the value of the land and the developments was way below the pecuniary jurisdiction as outlined in the Magistrate Court Act. The Learned Magistrate should have referred the matter before the Chief Magistrate Court at Ruiru for hearing and determination since the matter was within the Jurisdiction of the Chief Magistrate
5. The Learned Magistrate erred in its interpretation and application of the pecuniary jurisdiction as outlined in the Magistrates' Courts Act. The monetary valuation of the land should consider only the bare land value for jurisdictional purposes, not incorporating the value of developments or improvements made thereon.
6. The Learned Magistrate erred in law and fact by refusal to assume jurisdiction over the enforcement of the Physical and Land Use Planning Act and the Environmental Management and Coordination Act. The

Court unduly restricted its jurisdiction, thereby denying the Appellant a forum to address alleged illegalities by the Respondent.

7. The Learned Magistrate erred in law and fact by making the decision to strike out the case the same was based on a misapprehension of the material facts, particularly regarding the procedural history and the factual background of the case as presented by the Appellants regarding the lack of required approvals for the development of the suit property.
8. The Learned Magistrate erred in law and fact by failing to properly consider the Appellants' argument that the Respondent did not seek or obtain the requisite approvals for the development, thus directly contravening planning laws and environmental regulations.
9. The Learned Magistrate's decision to strike out the suit based solely on Preliminary Objections related to jurisdiction effectively denied the Appellants a fair hearing on substantive issues regarding environmental and land use compliance of the development in question
10. The Learned Magistrate erred in law and fact by sticking out the Suit and Application and setting aside the interim orders issued on 19th March 2024.

The Appellant therefore seeks the following:

i. **The Appeal be allowed.**
ii. **The Ruling and Orders of Hon. Charles Mwaniki (PM) dated 30th May 2024 be set aside in its entirety.**
iii. **That the Appellants Suit and Application dated 4th April 2024 be heard afresh before the Chief Magistrate and the interim.**
iv. **Costs of the suit in the Superior Court and in this Appeal be to the Appellants.**

3) The Appeal was canvassed by way of written submissions. The Appellant filed their submissions dated 9/11/2025 and the Respondents filed their submissions on 17/09/2025.
4) A brief history of the matter will be useful. The Appellants who were Plaintiffs in the lower Court filed a Plaint where they sued the Defendant and joined the Interested Parties.
5) They averred that on/or about 2013 the 4th Interested Party applied to Thika Land Control Board and was granted approval to subdivide into 750 plots measuring 50 by 100 ft each parcel No. JUJA/KIAUR BLK 7/2645. All members who purchased the subdivided plots were informed that the area was strictly a controlled development area.
6) Thus, all Plaintiff members have been aware that all that parcel of land previously known as JUJA/KIAUR BLK 7 and 8 and referred to as Croton Ridge Gardens Estate is a single dwelling residential area. The suit property herein JUJA/KIAUR

BLK 7/2645 emanated from a subdivision of JUJA/KIAUR BLK 7 & 8.

7) That so far, no commercial or residential multi-dwelling flats are allowed within the estate since there is no zonal plan that has been formulated and approved by the County Physical Planner as stated under the Physical Planning and Land Use Act 2019.

8) According to the Appellant/Plaintiff, on or about December 2022 and early January 2023 the Defendant/Respondent started construction of multi-story commercial units contrary to the approved building plans for the area. That although the Plaintiff petitioned the 1st, 2nd and 3rd Interested Parties the construction has continued unabated. Also, that the Defendant did not undertake a Change of User nor any public consultation to move from single dwelling to commercial user.

9) This continued construction according to the Plaintiff infringe on the Plaintiff's members right to clean and health environment. The Plaintiff sought to have the Court declare as illegal ab initio the construction of a multi-storey commercial unit, an order directing the Defendant to demolish the illegal building, an order for revocation of any permits and/or approvals by the 1st, 2nd and 3rd Interested Parties.

10) However, before the case was heard, the Defendant filed a Notice of Motion seeking to have the Magistrate's

Court strike out the suit for want of pecuniary jurisdiction in light of the Physical and Land Use Planning Act since the County Government of Kiambu was vested with powers to control development under the planning department.

11) At the same time the 1st Interested Party filed a Notice of Preliminary Objection on the grounds that the Court lack jurisdiction to entertain the suit owing to the doctrine of exhaustion. That the Plaintiff's suit primarily raises the question of planning, use and development of and enforcement of notices which are matters regulated under the Physical and Land Use Planning Act.

12) Further that an agreed party by the decision of the County Executive Committee Member regarding an application for development may appeal against the decision to the County Physical and Land Use Planning Liaison Committee.

13) The 4th Interested Party also filed a Preliminary Objection raising the issues of the Court lacking jurisdiction and stating that the Plaintiff should have approached the Liaison Committee.

14) In their response, the Plaintiffs averred through a Replying Affidavit that the issues raised in the Plaint relate to land use and breach of environmental rights as opposed to ownership. Further that the Physical and Land Use Planning Act is not applicable since the claim was that the Defendant neither sought nor obtained approvals prior to developing

the property. He maintained that the Court had jurisdiction to hear the matter.

15) The Learned Magistrate found that the value of the subject property exceeds the pecuniary jurisdiction of the Court. Further that the Plaintiff had not exhausted the avenue in place to resolve grievances such as the ones raised by the Plaintiff. So, he vacated the temporary injunctive orders earlier issued and upheld the Preliminary Objections.

16) It is this Ruling that is the subject of this Appeal.

**Appellant's Submissions**

17) According to the Appellant, the Magistrate did not just make a minor error, but a fundamental jurisdictional blunder in their decision since an appealable decision is non-existent. The Appellant has focused what they have considered to be the three most vulnerable points of the lower Court's decision namely the **non-existence of an appealable decision**, the **miscalculation of pecuniary jurisdiction**, and the **failure to transfer** rather than strike out the suit.

18) The Appellants submit that the Magistrate applied the Doctrine of Exhaustion in a vacuum. That one cannot exhaust a remedy that has not been triggered. Under Physical Land Us Planning Act Section 61(3), the Liaison Committee's jurisdiction is appellate. If there is no decision to appeal, the committee has no subject matter to hear.

19) They have cited the case of **Republic v NEMA Ex parte Sound Equipment Ltd [2011] eKLR** where the Court observed that regulatory silence is not a decision; it is an abdication of duty, which falls under the ELC's original jurisdiction to remedy. Further they referred to the case of **Okalo v Sofat & 3 Others [2023] KEELC 20291 (KLR**) where the Court affirmed that the Liaison Committee and NEMA's jurisdiction only kicks in after a formal decision is made.

20) The second issue raised by the Appellants in the submission is that there is misapplication of pecuniary jurisdiction. That pecuniary jurisdiction must be based on the value of the subject matter recognized by law and that this refers to the value of the bare land at the time of filing. The Appellants contend that if the Respondent built an illegal structure worth Kesh 10 million on land worth Kesh 7 million, the Respondent should not be allowed to use the value of that illegal act to oust the Court's jurisdiction.

21) That even if the Court agreed the value was 17 million (exceeding the Principal Magistrate's 15 million limit), the Appellants submit that Section 18 of the Civil Procedure Act favors transfer over striking out. According to the Appellants, striking out a suit for a minor jurisdictional overlap is a draconian measure that violates Article 159(2)(d) which provides that justice shall be administered without undue regard to procedural technicalities.

22) The Appellants contend that the ELC have the power to stop illegalities directly. That under Article 162(2)(b) and Section 13 of the ELC Act, the Court has original jurisdiction over land use planning and environmental protection. Thus, the Magistrate downed tools prematurely based on a Preliminary Objection. By doing so, he failed to fulfill his constitutional mandate to oversee environmental compliance. They cite the case of **Owners of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited [1989] KLR 1** where they highlight that the Court held that while jurisdiction is everything, the Court must correctly interpret the source of that jurisdiction. At the same time they referred to the case of **Ernest Kevin Luchidio v Attorney General & 2 Others [2015] eKLR**, and they advance the point that the cage of jurisdiction includes the power to stop clear violations of the law when state agencies fail to act.

23) They also raised the issue about access to justice and fair hearing and the question they paused is; Does a procedural technicality override the right to a fair hearing? They argue that by striking out the suit, the Appellants were denied a hearing on the substantive merits which point to the lack of NEMA and NCA approvals. According to the Appellants, the Court prioritized a mechanical application of the exhaustion doctrine over Article 48 on access to Justice and Article 50 on fair hearing.

**Respondents Submissions**

24) The Respondent filed their submissions dated 17/09/2025 and started by arguing that the Court cannot jump the queue**.** They argue that by coming to Court, the Appellants have ignored the mandatory specialized first stops created by Parliament.

25) The Respondent submit that the cases of **Lilian "S" (supra)** and Supreme Court case of **Samuel Kamau Macharia & Another v**. **Kenya. Commercial Bank & 2 Others, SC Application No. 2 of 2011;** [**2012**] **eKLR** show that the jurisdiction is not a gift a Court can give itself; it must flow strictly from the Constitution or a specific Act of Parliament.

26) The Respondent argues that since the dispute is about land use and environmental licenses, the law directs these grievances to specialized bodies, not the Magistrate's Court. They rely on the classic **Owners of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited [supra]** to remind the Court that if it lacks jurisdiction, it must down its tools immediately. They cite **Samuel Kamau Macharia & Another v KCB & Others [supra]** and argue that a Court cannot arrogate to itself powers it does not have.

27) The central argument in their submissions is that the Appellants circumvented the law by skipping the Tribunals. They cite Section 61(3) and (4) of the Physical and Land Use Planning Act, 2019. They argue that any party aggrieved by

a development decision must appeal to the County Physical and Land Use Planning Liaison Committee first.

28) They refer to Section 129(1) of the Environmental Management and Coordination Act, asserting that the National Environmental Tribunal (NET) is the only proper forum for EIA-related grievances. In their submissions they rely on the case of **Speaker of the National Assembly v Karume (Civil Application 92 of 1992) [1992] KECA 42 (KLR)** where the Court stated that where a specific procedure for redress is prescribed by Statute, that procedure must be strictly followed**.**

29) The Respondent contends that the Appeal is fundamentally flawed because it seeks to ignore the Doctrine of Exhaustion. Further that the appeal violates the Constitutional principle that promotes Alternative Dispute Resolution (ADR) as provided in Article 159(2)(c).

30) They claim that they do have all approvals as stated at Paragraph 11 and that the Residents' Association is acting without legal basis thus not having a *locus standi* and are interfering with private land in a vexatious manner.

31) The Respondent concludes by asking the Court to find the Appeal procedurally incompetent and wholly unmerited, essentially asking the High Court to uphold the Magistrate's decision to stay out of the matter entirely.

**Analysis and Determination**

32) This is an Appeal against the Ruling of the trial Court which struck out the Appellants' suit on the grounds of want of pecuniary jurisdiction and failure to exhaust administrative remedies. The Appellants (Residents' Association) seek to stop a development they claim is illegal, while the Respondent maintains the Court is barred from hearing the matter until specialized Tribunals have weighed in.

33) Having considered the Memorandum of Appeal and the rival submissions, the Court finds two pivotal issues for determination:

*(a) Whether the Doctrine of Exhaustion applies in the absence of a formal administrative decision.*

*(b) Whether the valuation of the suit property for jurisdictional purposes should include allegedly illegal developments.*

*(c) Whether striking out the suit was the proper remedy under Article 159 of the Constitution.*

34) On the doctrine of exhaustion and the non-existent decision, the

Respondent relies on the **Speaker of the National Assembly v Karume (Civil Application 92 of 1992) [1992] KECA 42 (KLR)** and **Mutanga Tea & Coffee Limited v Shikara Limited & Another (Application 19 of 2016) [2017] KESC 17 (KLR) (24 March 2017) (Ruling)** to argue that the Appellants must first go to the

Physical and Land Use Planning Liaison Committee. However, there is a distinct difference between appealing a wrong decision and seeking a remedy for total administrative bypass.

35) Section 61(3) of PLUPA and Section 129 of EMCA are appellate in nature. They presuppose that an application was made, considered, and a decision rendered. The Appellants' case is that the Respondent commenced construction without applying for licenses. You cannot appeal against a nothing. This Court finds that the Respondent's reliance on Section 61(3) of PLUPA is misplaced in this specific factual context.

36) The Court of Appeal in **Geoffrey Muthinja & Another v Samuel Muguna Henry & Others [2015] eKLR** held that the exhaustion doctrine is not an absolute bar, particularly where the internal mechanism is ineffective or illusory.

37) The South African Supreme Court of Appeal in **Koyabe and Others v Minister for Home Affairs and Others [2009] ZACC 23** noted that internal remedies must be available, effective and adequate. If a developer completely bypasses the licensing body, the remedy of an administrative appeal is non-existent because there is no paper trail to challenge in a Tribunal.

38) The statutory language is clear an Appeal to the Liaison Committee is triggered by a decision regarding an

application**.** The Appellants have consistently averred and NEMA and the NCA have corroborated via Affidavit that no licenses or approvals were ever issued. As held in **Republic v. NEMA Ex parte Sound Equipment Ltd [2011] eKLR,** regulatory silence or the act of building without a permit does not constitute an appealable decision. One cannot appeal against a vacuum.

39) In the circumstances the Learned Magistrate erred by treating regulatory silence as an appealable decision. In the absence of a formal approval or enforcement notice, the ELC retains original jurisdiction under Article 162(2)(b) to stop a manifest illegality.

40) On Pecuniary Jurisdiction and the Power of Transfer; the trial Court struck out the suit because the value of Kesh 17 million exceeded the Magistrate's Ksh 15 million limit. The Appellants argue the value should be bare land only. I do agree with the Appellants since what they are challenging is the illegal construction and not the value of the land.

41) While the Magistrates' Courts Act is strict on limits, the law does not favor the slaughter of cases on technicalities. Section 18 of the Civil Procedure Act provides a clear remedy, transfer. However, Case Law has established that if a suit is a nullity meaning that it is filed in a Court with no jurisdiction at all, it cannot be transferred, as there is nothing to transfer.

42) Transfer applies where a Court has jurisdiction but is not the most convenient or lowest Court, or for transferring between Courts of equal competence. If the Court lacks jurisdiction, the suit must be filed afresh in the correct forum.

43) In **Divecon Ltd v Samani [1995-1998] 1 EA 48**, the Court of Appeal held that the power to transfer suits is meant to ensure that a party is not driven from the seat of justice because of a technical error in filing. Similarly, Article 159(2)(d) of the Constitution commands that justice shall be administered without undue regard to procedural technicalities.

44) However, my reading of the facts in the instant suit is that it was filed in the correct Court since the issues at hand were not about the value of the land but the environmental degradation by the Respondents who were putting up a commercial building in a zoned area without the requisite approvals.

45) The Respondent correctly quotes **Owners of Motor Vessel 'Lillian S' [Supra]** stating that Jurisdiction is everything. However, jurisdiction also includes the duty of the Court to protect the environment. If a Court downs tools while an illegal forest is being cleared or an illegal skyscraper is being built, it abdicates its Constitutional mandate under Article 70.

46) Additionally, The Precautionary Principle dictates that where there are threats of serious or irreversible damage to the environment, lack of full scientific certainty or, by extension, a pending procedural/jurisdictional dispute should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

47) Further, the Principle of Public Trust implies that the Court, as a state organ, holds the environment in trust for the people of Kenya. Jurisdiction, therefore, is not just a power to hear a case, but a trust to protect the subject matter in this case the environment from being destroyed while legal technicalities are debated.

48) Article 69 on Sustainable Development provides the constitutional basis for balancing development like building skyscrapers as is the alleged case here with environmental protection, ensuring that jurisdiction is exercised to prevent ecologically unsustainable outcomes.

49) And lastly the Prevention Principle which unlike the precautionary principle applies when the harm is known or certain e.g., an illegal forest being cleared or a construction that is detrimental to the area where it is being put up which in the matter at hand is meant for single dwelling and not multiple dwelling or commercial buildings. It mandates that the Court must act to prevent the harm before it occurs, as environmental damage is often irreversible.

50) The trial Court's decision to strike out the suit was premature and legally flawed. The doctrine of exhaustion cannot be used to shield a developer who has allegedly bypassed the very administrative systems the doctrine seeks to protect.

51) Accordingly, the Court makes the following Orders:

i. ***The Appeal is hereby allowed.***

ii. ***The Ruling and Orders of the trial Court dated 30/05/2024 are hereby set aside in their entirety.***

iii. ***The Suit (Ruiru ELC No. E055 of 2024) is reinstated for hearing and determination on merits.***

iv. ***The Interim Injunctive Orders issued on 19/03/2024 are hereby reinstated pending the mention of the matter before the Court.***

v. ***Costs of this Appeal and the lower Court proceedings are awarded to the Appellants.***

**Orders Accordingly.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF MARCH 2026.**

**.....**

**MOGENI J**

**JUDGE**

**In the presence of:-**

..... for the Appellants

..... for the Respondent

..... for the 1st Interested Party

..... for the 2nd Interested Party

..... for the 3rd Interested Party

..... for the 4th Interested Party

Melita ..... for Court Assistant

**.....**

**MOGENI J**

**JUDGE**