



REPUBLIC OF KENYA



KENYA LAW
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Plein v National Oil Corporation of Kenya & another (Environment and Land Case 247 of 2017) [2026] KEELC 1359 (KLR) (4 March 2026) (Judgment)

Neutral citation: [2026] KEELC 1359 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND CASE 247 OF 2017**

**LN MBUGUA, J
MARCH 4, 2026**

BETWEEN

PURITY MUTHONI PLEIN PLAINTIFF

AND

NATIONAL OIL CORPORATION OF KENYA 1ST DEFENDANT

COUNTY GOVERNMENT OF LAIKIPIA 2ND DEFENDANT

JUDGMENT

1. This suit was filed through a plaint dated 9.3.2016 in which the Plaintiff avers that she is the registered owner of land parcel L.R. No. Nyahururu Municipality Block 8/1036, a subdivision of L.R. No. 6585/285(IR 10952) situated in a residential zone. She came to learn that the 1st Defendant had acquired an adjacent land parcel L.R.No. Nyahururu Municipality Block 8 /375 where it intends to construct a petrol station. She lodged several objections to the petrol station project but the 2nd Defendant went ahead and approved the building plans thereof. She avers that the construction of the petrol station is fraudulent and illegal on account of;
 - failure to adhere to the provisions of EMCA,
 - failure to comply with the special conditions of the lease
 - approving building plans without the requisite license from NEMA.
2. The Plaintiff therefore seeks an order of permanent injunction restraining the Defendants from constructing a petrol station on L.R No. Nyahururu Municipality Block 8/375, an order compelling the 2nd Defendant to cancel the building plans for the intended petrol station and costs of the suit with interest.
3. The 1st Defendant's statement of defence is dated 3rd August 2018, where it is argued that the suit is speculative, frivolous and fails to disclose a reasonable cause of action. It stated that the Plaintiff's



property L.R No. Nyahururu Municipality Block 8/1036 is located in an industrial zone and not a residential zone, whereas its own parcel is located in a commercial zone thus the 1st Defendant is at liberty to undertake commercial activities thereon including constructing and running a petrol station. It stated that all its plans were legally, procedurally and regularly submitted and processed by the 2nd Defendant. It averred that the National Land Commission confirmed that the 1st Defendants property user conditions are industrial and the proposed construction of a service station was congruent to lease conditions and urges the court to dismiss the plaintiff's suit with cost.

4. The 2nd Defendant did not participate in the prosecution of this case despite the fact that they were served with the hearing notices.
5. At the trial the plaintiff, Purity Muthoni Plein adopted her witness statement dated 3.3.2016 as her evidence in chief. She also produced the documents in her list dated 9.3.2016 as exhibits 1-11, and the once in the list dated 9.22024 as exhibits 12-14. Her evidence mirrors her pleadings. She adds that through a letter addressed to her dated 17.2.2016, the National Land Commission acknowledged that the proposed project requires an EIA, adding that she is entitled to a clean and healthy environment.
6. On cross examination, PW1 reiterated that her plot is Block 8/ 1036 while that of the 1st Defendant is Block 8/ 375 and that in between the two plots, there is a 12-meter service road, though in her letter at page 29 of her bundle, she states that the distance between the two plots is 10 meters, terming the latter measurements as a typing error. She is not aware that an application for change of user had been made.
7. PW1 further avers that in the letter of 7.9.2015 at page 34 of her bundle, there is an amendment to the R.I.M., such that the subject matter fell in a mixed development area. She is not aware that an application to NEMA had been done, but at page 33 of her bundle, she is saying that an EIA had not been done and she was objecting to the issuance of a licence.
8. In re-examination, PW1 contended that she made inquiries about the change of user, of which the letter at page 44 of her bundle clarified that no change of user had been made. She averred that the plot of the 1st Defendant is opposite her gate.
9. The case of the 1st Defendant was advanced by Ms. Millicent Munene, its Assistant Manager (Business Development) who adopted her witness statement dated 11.7.2023 as her evidence. She produced the documents in her list dated 3.8.2018 as defence exhibits 1-4. Her case is that the 1st Defendant purchased parcel L.R no. Nyandarua/Nyahururu Municipality Block VIII/375 on 2.4.2016 with a view of constructing a service station thereon. Subsequently thereafter, the 1st Defendant went about getting the necessary approvals for the said construction including an Environmental Impact Assessment from NEMA which is pending approval. The 1st Defendant received a letter from the Plaintiff dated 3.2.2015 objecting to its intended acquisition of and planned construction of a petrol station. The 1st Defendant responded to the Plaintiff in a letter dated 23.2.2015 stating that the properties in that row were used for light industrial purposes. Adding that letters dated 17.2.2016 and 7.9.2015 from the National Land Commission indicated that the 1st Defendant's property was initially for industrial use and is currently for commercial use.
10. DW1 averred that the 1st Defendant, like any other person before the law has a constitutional right to utilization of its property in whichever manner it deems fit as long as the use is within the law and all the statutory requirements are met. She averred that this suit is an abuse of court process since the Plaintiff did not exhaust the remedies available under EMCA before moving to court. Further, that the 1st Defendant never got approval to construct the petrol station and the idea was shelved thus there is no cause of action. She urged the court to dismiss the suit with costs.



11. On cross examination, Dw1 reiterated that there was a condition in their lease that the land was to be used for shops, offices, flats but excluding sale of oil. She averred that they wanted to construct a petrol station and they had applied for a change of user. He contends that they got approvals which are the ones at page 38 and 39 of plaintiff's bundle. He avers that they were in the process of gathering information for public participation, but they had no NEMA certificate.
12. On re-examination, Dw1 stated that the proposal for change of user had been made, however, they had not constructed because they had not gotten the NEMA approval and they didn't have the change of user.
13. On 16.10.2025, the court gave directions for the Plaintiff to file and serve submissions by close of business of that day, this was after the Plaintiff had failed to file submissions since 28.7.2025. There was no compliance on the part of the Plaintiff. On the same date of 16.10.2025, the Defendants were directed to file and serve their submissions by 30.10.2025 regardless of whether they were served by the Plaintiffs. Similarly, there was no compliance with the aforementioned directions as 1st Defendant's submissions were filed on 24.11.2025, and were not served, hence they stand as expunged in terms of the directions given by the court on 16.10.2025.
14. I have considered the pleadings as well as the evidence tendered herein. It is not in dispute as to who owns the land parcels Block 8/1036 and Block 8/375, rather the question for determination relates to use and planning of the land. The Plaintiff produced a copy of her certificate of lease indicating that her parcel is in a residential zone, while the lease document for the 1st Defendant at clause 5 indicates that "The land and building shall always be used for shops, offices and flats excluding sale of petrol oils.". Thus, the two plots are in different zones though Plaintiff's parcel just happens to be the one bordering that other different zone separated by a road. On the other hand, the 1st Defendant avers that they indeed wanted to construct a petrol station and had commenced the process of getting the requisite approvals.
15. Ordinarily, matters of land use, planning and developments are governed by various statutory frameworks with various regulatory agencies whose authorization is required before a development is undertaken, See; *Kanyuira v Kenya Airports Authority* (Petition 7 of 2017) [2022] KESC 30 (KLR) (17 June 2022) (Judgment) Neutral citation: [2022] KESC 30 (KLR). Such agencies include those under *PHYSICAL AND LAND USE PLANNING ACT* of 2019, NEMA, National Construction Authority etc. For projects relating to the energy and petroleum sector, as is the case for the 1st Defendants project, the regulatory bodies like the Energy Petroleum Regulatory Authority (EPRA) would also be in the picture.
16. As at the time when the 1st Defendant acquired the property in year 2016 to construct a petrol station, the applicable law on planning was the Physical Planning Act Cap 286, which is, "An Act of Parliament to provide for the preparation and implementation of physical development plans and for connected purposes" (now replaced by the *Physical and Land Use Planning Act* N. 13 of 2019). The provisions of Section 29 of the aforementioned repealed Physical Planning Act stipulated that;

"Subject to the provisions of this Act, each local authority shall have the power—
 - (a) to prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
 - (b) to control or prohibit the subdivision of land or existing plots into smaller areas;



- (c) to consider and approve all development applications and grant all development permissions;
- (d) to ensure the proper execution and implementation of approved physical development plans”

17. Thus the 2nd Defendant is the one which had the statutory mandate to consider and give approvals relating to development controls in so far as the dispute at hand is concerned.
18. Firstly, find that the witness statement of the Plaintiff does not cross reference to her documents, but a perusal of her trial bundles reveals that the alleged approvals are the ones at page 38 and 39 of the 1st list. However, nothing can be discerned from those documents, not the content, dates or even approval stamps. The provisions of Section 107 and 108 of the *Evidence Act* places the burden of proof upon the person alleging a fact, See; Jennifer Nyambura Kamau v Humphrey Mbaka Nandi [2013] eKLR. Thus, it was pertinent for the Plaintiff to place credible and in the case at hand legible documents before the court for consideration. I must also add that the documents after page 33 are not legible.
19. Secondly, even if the approvals had been given by the 2nd Defendant, there are a raft of other regulatory processes which have to be interrogated by the various statutory bodies who have the mandate to give the go ahead of the project. There is nothing to indicate that these other bodies had completed the process of approvals paving way for the construction. Indeed, what DW1 states in her statement is that “it had embarked on the process of getting the necessary approvals to construct the said petrol station”.
20. To this end, PW1 did admit as per the document at page 33 clause 7 of her trial bundle, that the EIA had not been done and she was objecting to the issuance of a license.
21. If indeed the 1st Defendant has not shelved their plans to construct a service station as planned, it would still need to fulfil all the legal procedures involved such as change of user, EIA, license, Energy sector approvals amongst other approvals. This far, I can only conclude that the suit was filed prematurely. As such, the case is hereby dismissed. On costs, I note that the Plaintiffs suit touches on an issue in the realm of public interest, as such, I direct that each party shall bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 4TH DAY OF MARCH, 2026 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of;

Vanessa C/Assistant

Gichuki for 1st Defendant

Njoroge for Plaintiff

