Pridelands Self Help Group (Suing Through its Officials Calvince Onduru – Chairman Secretary Makau – Secretary Samuel Waweru – Treasurer) v Ahmed & another (Environment and Land Case E057 of 2024) [2026] KEELC 2008 (KLR) (14 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2008 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ENVIRONMENT AND LAND CASE E057 OF 2024

AY KOROSS, J

APRIL 14, 2026

BETWEEN

PRIDELANDS SELF HELP GROUP (SUING THROUGH ITS OFFICIALS CALVINCE ONDURU – CHAIRMAN SECRETARY MAKAU – SECRETARY SAMUEL WAWERU – TREASURER) .... PLAINTIFF

AND

YUSSUF AHMED .... 1ST DEFENDANT

COASTAL KENYA ENTERPRISES LIMITED .... 2ND DEFENDANT

RULING

1. Before this court for determination is the plaintiff's notice of motion dated 31 July 2024, which is said to have been brought under Section 3A of the *Civil Procedure Act*, Order 40, Rules 1, 2, 3 and 4 and Order 51 Rule 1 of the Civil Procedure Rules, and all other enabling provisions of the law. It seeks the following orders from this court: -

   a. Spent.

   b. Spent.

   c. That this honourable court be pleased to issue orders of temporary injunction restraining the defendants, through themselves, their agents and/or servants, or anybody claiming through them, from constructing flats or in any way interfering with the plaintiff's enjoyment of their properties known as Land Reference number 18228/94 and Land Reference number 18228/16, neighbouring land parcel number Land Reference 18498, pending the hearing and determination of the main suit.

   d. That the cost of this motion be in the cause.

2. The motion is grounded on the apparent facts on its face and the supporting affidavit of the plaintiff's chairman, sworn on 31 July 2025 and chiefly, he informs the court that the plaintiff resides in Sabaki, Mavoko Sub County, Machakos County, and have authority from the residents to file this suit as owners of Land Reference numbers 18228/94 and 18228/16 ("plaintiff's land"). The neighbourhood is a controlled development area within Mavoko Municipality, as per the County Government of Machakos bylaws.

3. On or around May 2024, the defendants commenced construction of commercial-cum-residential units on Land Reference number 18498, located in the neighbourhood, without the plaintiff's consent or authority as a neighbour. On behalf of the residents, the plaintiff reported to the county's planning and enforcement offices, but no action was taken, and construction continues. The defendants have not involved the plaintiff in public participation towards approval and construction. The defendants presented an approval letter dated 26 June 2024, but the plaintiff is uncertain of its genuineness. This letter was presented to the court. They did not present copies of the plaintiff's title documents or records that they ever approached the county's planning and enforcement offices.

4. In opposition, the 1st defendant challenges this motion by his replying affidavit deposed on 18 February 2025, where he states that he is the registered owner of Athiriver/Athiriver/Block7/9 ("1st defendant's land"), measuring 0.0451 Hectares, and asserts that the plaintiff is a stranger to the properties in question. The area surrounding the suit property is a controlled neighbourhood where commercial buildings are not permitted.

5. Thus, on or about 27th May 2024, applications for approval to build residential houses on the suit property were submitted to the relevant county and sub-county offices by him. An approval was issued on 28th June 2024 by the County Director of Physical Planning for the Sub-county of Mavoko to develop a residential apartment on the property. Upon receipt of the approval letter, the building plans were submitted and approved by the Department of Physical Planning, the Sub-County Office of the Engineer, the Sub-County Office of Health, and the Sub-County Office of the Fire Department, allowing construction to commence.

6. Upon approval, excavation began, but unknown individuals attempted to halt the process, claiming the construction encroached on an existing road. According to the survey map, the property does not touch the road. Construction continued as approved by Mavoko Sub-County. In August 2024, court documents were served, alleging that flats or apartments were being constructed without proper approvals. He similarly tendered the approval, a copy of his title documents and building plans. He also filed a supplementary affidavit sworn on 20 May 2025 without leave of the court, and it is hereby expunged from the record.

7. Regarding the 2nd defendant, an affidavit sworn on 13 March 2025 by Avi Bhogal affirms that the 2nd defendant is the owner of Land Reference Number 18498 IR No. 254427 ("2nd defendant's land"), with an area of 2.282 hectares. The 2nd defendant has not subdivided its property; therefore, the allegations by the 1st defendant that the property was subdivided to establish the first defendant's land are false. The investigation into this matter is still ongoing.

8. This matter was previously reserved for ruling on 11 November 2025, and parties filed their respective submissions as previously directed by the court. Upon review of the record, it became necessary for the parties to address the court's jurisdiction to entertain the suit, as jurisdictional issues should be addressed at the earliest opportunity. Consequently, the court directed the parties to file supplementary submissions on this jurisdictional issue; some complied, and the court expresses its gratitude to the parties for their submissions.

9. Having carefully considered the motion, grounds, affidavits, and submissions, including the supplementaries, the following issues, which shall be addressed separately, arise for determination: (a) whether this court has jurisdiction to entertain the suit, and (b) whether the plaintiff has satisfied the criteria necessary to warrant the grant of injunctive relief. We shall now proceed.

Whether this court has jurisdiction to entertain the suit.

10. This matter was addressed by Ms. Muttisya & Co. Advocates on behalf of the plaintiff by submissions dated 27 November 2025, and Ms. Bulle & Co. Advocates representing the 1st defendant by submissions dated 24 November 2025. In their submissions, the plaintiff argues that a proper interpretation of Article 162(2)(b) of *the Constitution*, in conjunction with Section 78 of the Physical & Land Use Planning Act ("PLUPA") and the reliefs sought in the plaint, establishes that this court has jurisdiction to hear the matter. Conversely, the 1st defendant contends that, given the plaintiff's assertion that the 1st defendant's plans violate regulations governing the controlled area, jurisdiction lies with the County Physical and Land Use Planning Liaison Committee as defined in Section 78(a) of PLUPA.

11. Accordingly, and in accordance with the provisions of Article 162(2) of *the Constitution* and Section 13 of the Environment and Land Court (ELC) Act, this court has jurisdiction over matters relating to the environment and the use and occupation, and title to, land and thus, it would ordinarily have jurisdiction to hear and determine this case, which involves issues concerning the purported issuance of development permissions without public participation (plaintiff's participation as alleged). Nonetheless, another body, the Machakos County Physical and Land Use Planning Liaison Committee ("Committee"), also has jurisdiction to hear this matter, as provided under Sections 61(3) and (4) and 78 of the PLUPA. The establishment of this Committee endorses the objectives set forth in Section 3(e) of PLUPA, which aim to create mechanisms for resolving disputes related to physical and land-use planning. It is necessary to highlight these Sections 61(3) and (4) and 78 of the PLUPA.

Section 61(3) and (4)

> " (3) An applicant or an interested party that is aggrieved by the decision of a county executive committee member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee within fourteen days of the decision by the county executive committee member and that committee shall hear and determine the appeal within fourteen days of the appeal being filed.
>
> (4) An applicant or an interested party who files an appeal under sub-section (3) and who is aggrieved by the decision of the committee may appeal against that decision to the Environment and Land Court."

Section 78

> " The functions of the County Physical and Land Use Planning Liaison Committee shall be to—
>
> (a) hear and determine complaints and claims made in respect to applications submitted to the planning authority in the county;
>
> (b) hear appeals against decisions made by the planning authority with respect to physical and land use development plans in the county;

(c) advise the County Executive Committee Member on broad physical and land use planning policies, strategies and standards; and(d)hear appeals with respect to enforcement notices."

12. A close examination of these Sections of PLUPA indicates that, in matters concerning disputes over development permissions, this court functions as an appellate court. In other words, the Committee serves as the primary dispute resolution body, while this court exercises appellate jurisdiction over its decisions. Accordingly, the jurisdictional issue is anchored on the doctrine of exhaustion, which, when strictly interpreted, does not mean that this court is precluded from addressing the matter; rather, it signifies that once a designated primary dispute resolution mechanism in this case the Committee exists to determine the issue in question, then such a mechanism should be followed before approaching this court for consideration.

13. The presence of an alternative dispute resolution mechanism under law only delays the need to invoke the court's jurisdiction but does not eliminate the court's authority. In fact, having such mechanisms often makes the court the last resort rather than the first point of contact. Pointedly, there are exceptions to the doctrine of exhaustion. In a more recent decision addressing this doctrine, the Court of Appeal in Civil Appeal No. E160 of 2025 Claire Kubochi Anami & Others Vs County Executive Committee Member (CECM) Built Environment And Urban Planning, Nairobi City County & 20 Others stated: -

> "In our view, the doctrine of exhaustion serves an important constitutional function. It promotes institutional comity by recognizing the legislature's intent that certain technical disputes be resolved in specialized fora. It enhances efficiency by allocating cases to bodies with subject-matter expertise. This Court has consistently reaffirmed that principle, most famously in Speaker v Karume (supra), Geoffrey Muthinja (supra) and Kibos Distillers Limited & 4 Others v Benson Ambuti Adega & 3 Others [2020] eKLR. We reaffirm the general principle: where Parliament has prescribed specialized fora and a clear path of review, parties must ordinarily exhaust those remedies. That discipline respects legislative design, leverages technical expertise, and refines records for judicial review.However, our jurisprudence has equally recognised that exhaustion is not an inflexible rule. As the High Court observed in William Ramogi (supra), courts may intervene where statutory mechanisms are plainly inadequate to deal with constitutional claims, or where insistence on exhaustion would result in a denial of justice. Differently put, the exhaustion doctrine is not an iron cage. Courts retain a narrow gate for exceptions — where a dispute transcends routine merits review (for example, where it raises systemic constitutional issues); where the statutory path is ineffective; or where urgent structural relief is necessary and no practical alternative exists."

See also Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023), Waity v Independent Electoral and Boundaries Commission & 3 others [2019] KESC 54 (KLR) and Muthinja & another v Henry & 1756 others [2015] KECA 304 (KLR) and William Odhiambo Ramogi & 3 Others -vs- Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (2020) eKLR.

14. In the present case, the plaintiff's claim does not fall under the exceptions alluded to in Claire Kubochi Anami (Supra) as it asserts that the defendant(s) commenced construction on the 2nd defendant's land in May 2024 without obtaining prior approval or permission from the plaintiff. The court's understanding of this claim is that there was no public participation as required by Section 58 (7)

and (8) of PLUPA, which stipulates that an individual applying for development permission must also notify the public of the proposed development project in a manner prescribed by the Cabinet Secretary. This notification invites the public to submit any objections to the proposed development to the relevant county executive committee member for consideration. In its plaint, it seeks permanent injunctive orders over the 2nd defendant's land, restraining it from developing it or, in the alternative, demolition of the developments.

15. The plaintiff has submitted to this court a development permission issued to the 1st defendant for its land. The plaintiff has informed this court that a copy of the permission, which is typically issued pursuant to Section 57 of the PLUPA, was provided to it by the 1st defendant. From this document and assertions, it emerges that the plaintiff was aware of the happenings on the 1st defendant's land prior to, during, and following the issuance of the development permit. At this juncture, this court has been unable to establish a nexus between the two separate parcels of land owned by the two defendants. Nonetheless, this is not central to the substance of the plaintiff's claim.

16. Accordingly, upon being given this permit, the provisions of the PLUPA, which establish a comprehensive legal framework for dispute resolution by delineating the procedure for complaints against approval permissions issued by the county governments, came into force. Aside from invoking Sections 61(3) & (4) and 78 of PLUPA, which were earlier highlighted, the plaintiff should have sought procedural guidance from Section 80 of the PLUPA and Regulation 12 of the Physical and Land Use Planning (Local Physical and Land Use). These provisions state thus:

Section 80

> "(1) A person who appeals to County Physical and Land Use Planning Liaison Committee shall do so in writing in the prescribed form.
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> (2) A County Physical and Land Use Planning Liaison Committee shall hear and determine an appeal within thirty days of the appeal being filed and shall inform the appellant of the decision within fourteen days of making the determination.
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> (3) The Chairperson of a County Physical and Land Use Planning Liaison Committee shall cause the determination of the committee to be filed in the Environment and Land Court and the court shall record the determination of the committee as a judgment of the court and published in the Gazette or in at least one newspaper of national circulation."

Regulation 12 of the Physical and Land Use Planning (Local Physical and Land Use Development Plan) Regulations.

> (1) A person aggrieved by a decision of the County Executive Committee Member concerning the local physical and land use development plan may, within sixty days of being notified of the decision, appeal to the County Physical and Land use Liaison Committee in writing against the decision in Form PLUPA L-3 as set out in the First Schedule.
>
> (2) Representations made by the County Executive Committee Member in response to an appeal lodged before the County Physical and Land use Liaison Committee shall be in writing.

(3) The Liaison Committee shall consider the appeal within thirty days and may set aside, confirm or vary the decision appealed against and make such order as it deems necessary or expedient to give effect to its decision and communicate the decision to the appellant within fourteen days.

(4) In exercising its power to set aside, confirm or vary the decision appealed against, the County Physical and Land use Liaison Committee shall do so in accordance with the rules of natural justice and fair administrative action.

(5) A person dissatisfied with the decision of the County Physical and Land use Liaison Committee may lodge an appeal to the Environmental and Land Court within a period of thirty days from the date of the making of the decision by the Liaison Committee." Emphasis added.

17. In light of the allegations contained in the plaint, the assertions made by the plaintiff, and the accompanying annexures to the motion, this court hereby finds and holds that the exhaustion doctrine is applicable in this matter. It finds that adequate safeguards are in place to facilitate a valid determination of the plaintiff's claim through the Committee, which possesses the authority to grant the reliefs sought by the plaintiff. Furthermore, the court finds that the plaintiff has failed to exhaust the available remedies through the primary mechanism and has effectively circumvented the established process by prematurely initiating this suit. It finds it lacks original jurisdiction. In consequence, it is unnecessary to determine the second issue.

18. In the end, and for the reasons and findings set out above, the notice of motion dated 31 July 2024 and the entire suit are hereby struck out to allow the parties to ventilate their case before the Committee. As a matter of trite law, costs follow the event, and, being unsuccessful, the plaintiff shall bear the defendants' costs of the suit and motion. This file is hereby effectively marked as closed.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 14TH DAY OF APRIL, 2026.

HON. A. Y. KOROSS

JUDGE

14. 04.2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant

Mr. Ayieko Owino for 2nd defendant.

Miss Mburu holding brief for Mr. Bunde for 1st defendant/respondent.

No appearance for other parties.