

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
JUDICIAL REVIEW NO. E016 OF 2025

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

COUNTY EXECUTIVE COMMITTEE MEMBER, MINISTRY OF LANDS, HOUSING, URBAN DEVELOPMENT AND ENERGY.....1ST RESPONDENT

COUNTY GOVERNMENT OF MACHAKOS.....2ND RESPONDENT

AND

EASY PROPERTIES LIMITED.....EX PARTE APPLICANT

RULING

1. By Notice of Motion dated 15th October 2025, the *ex parte* applicant seeks the following orders under judicial review:

1. THAT this Honourable Court be pleased to issue an order of CERTIORARI, against the respondents, namely the County Executive Committee Member for Lands, Housing, Urban Planning and Energy and the County Government of Machakos to remove to this court the decision of the respondents of refusing to grant development permission to the applicant to

develop residential Easy Prestige Annex and develop club house both on L.R. NO. 12715/552 situate in Syokimau area;

- 2. **THAT** this Honourable Court be pleased to issue an order of PROHIBITION against the respondents, prohibiting them from purporting to refuse development permission to the applicant to develop residential Easy Prestige Annex and develop club house respectively both on L.R. NO. 12715/552 situate in Syokimau area and further prohibiting the respondents from issuing any enforcement notice or stopping the applicant from carrying out the said development;*
- 3. **THAT** this Honourable Court be pleased to issue an order of MANDAMUS against the respondents, namely the County Executive Committee Member for Lands, Housing, Urban Planning and Energy and the County Government of Machakos directing them to issue development permission to the applicant to develop residential Easy Prestige Annex and develop club house respectively both on L.R. NO. 12715/552 situate in Syokimau area;*
- 4. **THAT** the Honourable Court be pleased to grant any other and/or further relief under terms that it may find fair and just in the circumstances;*
- 5. **THAT** the costs of this application be provided for;*

2. The application is supported by the grounds on the body of the Motion and the supporting affidavit of the *ex parte* applicant's director, Pamela Onyambu, sworn on 15th

October 2025, together with the statutory statement, dated 8th October 2025. According to the applicant, it submitted two applications for development permission on 15th April 2025 and paid the requisite fees. It therefore had a legitimate expectation that permission would be granted within the prescribed timelines.

3. Under section 61 of Physical and Land Use Planning Act, (the Act) the 1st respondent was required to consider applications of this nature and communicate its decision within 30 days. The applicant contends that this did not happen. Further, pursuant to section 58 (6) of the Act, if a decision is not communicated within 60 days, the application is deemed to have been approved.
4. Despite this statutory framework, the 1st respondent issued Notifications of refusal of applications, both dated 23rd September 2025, rejecting the applicant's applications and giving reasons for refusal. That communication was received on 30th September 2025, 160 days after the applications were submitted. This was done without notifying the applicant that there would be delays in delivery of the decision.
5. According to the deponent, the decision was influenced by external third parties, was not objective, unjustified in law, unconstitutional, violated the principles of natural justice. It was alleged to be a breach of the applicant's property rights and an abuse of public authority. The decision was said to

contravene the applicant's right to fair administrative action, under Article 47 of the Constitution, as it was made without affording the applicant an opportunity to be heard and without conducting any site assessment visits, in blatant violation of Article 50 of the Constitution. Moreover, the reasoning in both decisions was identical, suggesting that the outcome was predetermined.

6. It was further contended that the application for Easy Prestige Annex was a renewal application for development of a partially constructed building that had earlier been approved but stalled at the first-floor stage due to lack of funds. The applicant explained that, water had been leaking into the house, rendering the building uninhabitable during the rainy season. Its intention was to complete the second floor with a proper roof to stop the leakage. It was also explained that the club house belonging to Block F, which had for a long period of time been irregularly used as a garbage dumping site, was intended to be rehabilitated to provide a decent meeting room for the residents, who had approved its construction. For these reasons, the applicant contended that the proposed developments did not hinder or limit access and parking as alleged by the 1st respondent.
7. The applicant further explained that it had obtained a National Environmental Impact Assessment Licence approving the proposed development. In addition, it had received verbal approval by the sub-county planning office.

Following the refusal decision, the applicant requested minutes and other documents forming the basis of the decision from the respondent on 1st October 2025. However, that request has not been acted upon. In the applicant's view, this demonstrated that the process leading up to the decision was flawed and lacked transparency.

8. The applicant stated that it intended to lodge an appeal to County Physical and Land Use Planning Liaison Committee in accordance with statute but was reliably informed that the 2nd respondent had not established the committee as confirmed in the letter dated 6th October 2025. This rendered the appeal process unavailable. The applicant contended that it had met all statutory requirements for the grant of permission and that no valid reasons justified the refusal. It further expressed apprehension that it would be issued with an enforcement notice to comply with the 1st respondent's decision, hence the need for prohibitory orders. For these reasons, it prayed that the application be allowed.
9. The respondents did not file any response to the application despite being duly served with the requisite hearing notices and the application. During the hearing, the *ex parte* applicant relied entirely on its application and supporting documents urging the court to allow the same. I have considered the application and the applicable law. The applicant seeks a raft of prerogative writs. It is noteworthy

that the proceedings revolve around the application of the Physical and Land Use Planning Act. Section 58 (1) provides:

“A person shall obtain development permission from the respective county executive committee member by applying for development permission from that county executive committee member in the prescribed form and after paying the prescribed fees.”

10. Further, under section 58 (6) ***“where an applicant does not receive written response for development permission within sixty days, such permission shall be assumed to have been given in terms of this Act.”***

11. The Act further governs the period within which the county executive committee member is required to render a decision. The relevant provision is section 61 (2). Additionally, the right of an aggrieved party to appeal from such a decision is set out in section 61 (3) and (4). Those provisions state:

“(2) With regards to an application for development permission that complies with the provisions of this Act and within thirty days of receiving an application for development permission, the county executive committee member may—

(a) grant the applicant the development permission in the prescribed form and may stipulate any conditions it considers necessary when granting the development permission; or

(b) refuse to grant the applicant the development permission in the prescribed form and state the grounds for the refusal in writing.

(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.”

12. In the present case, the *ex parte* applicant submitted two applications for development permission on 15th April 2025 and paid the requisite fees. On 23rd September 2025, the 1st respondent issued Notifications of refusal rejecting both applications and giving reasons for refusal. These notifications were served upon the *ex parte* applicant on 30th September 2025.
13. The issue to address is the proper forum for dispute resolution. Under section 61 (3), an aggrieved applicant is required to lodge an appeal before the County Physical and Land Use Planning Liaison Committee within fourteen days

of the decision. A further appeal lies to the Environment and Land Court under section 61(4). This framework embodies the doctrine of exhaustion, which requires parties to first utilize internal dispute resolution mechanisms provided by statutes before invoking the jurisdiction of the courts. The Court of Appeal in the case of **Geoffrey Muthiga Kabiru & 2 others vs. Samuel Munga Henry & 1756 others** [2015] eKLR commented as follows on the doctrine:

“It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.”

14. This doctrine has exceptions, however, is not absolute. The Court of Appeal in **Fleur Investments Limited vs. Commissioner of Domestic Taxes & another** [2018] eKLR held as follows:

***“Whereas courts of Law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under the Constitution and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.*”**

15. In the present case, the ex parte applicant bypassed Section 61(3) and lodged judicial review proceedings directly, being dissatisfied with the 1st respondent’s decision. However, the applicant explained—through its counsel’s letter dated 6th October 2025—that compliance with Section 61(3) was impossible because the County Physical and Land Use Planning Liaison Committee had not been established at the time. This position has not been rebutted or contradicted by the respondents.

16. It is my finding that, this is a quintessential case warranting the application of the exceptions to the doctrine of exhaustion. Firstly, the applicant could not exercise its statutory right of appeal in the absence of the Liaison Committee. Secondly, it is precisely such

circumstances that justify judicial intervention to prevent miscarriage of natural justice. I therefore find that the application was properly filed before me.

17. Turning to the merits of the application, it is undisputed that the decision of the 1st respondent was communicated well beyond the statutory period of thirty days. In fact, the decision was rendered 160 days after the lapse of the statutory time limit.
18. The drafters of the Physical and Land Use Planning Act anticipated such scenarios and enacted section 58 (6) of the Act which cushion applicants against administrative inaction by deeming permission granted after the lapse of 60 days. This provision is couched in mandatory terms and leaves no room for alternate interpretation.
19. The purpose and tenor of judicial review proceedings was set out by the Court of Appeal in the case of **OJSC Power Machines Limited, Trans Century Limited, and Civicon Limited (Consortium) vs. Public Procurement Administrative Review Board Kenya & 2 Others** [2017] eKLR in the following words:

"The law on the jurisdiction of the High Court to entertain judicial review proceedings are encapsulated in several decisions, some of which were cited before us while the learned Judge applied others in his judgment. The law, from these decisions is to the following effect; That the purpose of judicial review is to ensure that a party receives fair treatment in the hands

of public bodies; that it is the purpose of judicial review to ensure that the public body, after according fair treatment to a party, reaches on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court in a judicial review proceeding.

Put another way, judicial review is concerned with the decision making process, not with the merits of the decision itself. In that regard, the court will concern itself with such issues as to whether the public body in making the decision being challenged had the jurisdiction, whether the persons affected by the decision were heard before the decision was made and whether in making the decision, the public body took into account irrelevant matters or did not take into account relevant matters.”

20. Applying these principles, it is clear that the 1st respondent acted in breach of section 58 (6) when it purported to refuse the applications on 23rd September 2025 outside the statutory timelines set out in section 61 (2) of the Physical and Land Use Planning Act. Once the sixty-day lapsed, the 1st respondent had no jurisdiction to refuse the applications. The decision was therefore unlawful, and the court is entitled to intervene. That reason alone justifies the present application.
21. However, it must be emphasized that the grant of judicial review orders does not exempt the applicant from complying with all other applicable laws and regulations. The applicant remains obligated to obtain all necessary approvals from

relevant statutory bodies and to comply with the conditions given before commencing development. Judicial review cannot be used to bypass substantive compliance with the law; it only cures procedural illegality.

22. Accordingly, I allow the Notice of Motion dated 15th October 2025 in the following terms:

- 1. An order of CERTIORARI, is hereby issued, against the respondents, namely the County Executive Committee Member for Lands, Housing, Urban Planning and Energy and the County Government of Machakos, quashing the decision refusing to grant development permission to the applicant to develop residential Easy Prestige Annex and develop club house both on L.R. NO. 12715/552 situate in Syokimau area;**
- 2. An order of PROHIBITION, is hereby issued, against the respondents, prohibiting them from purporting to refuse development permission to the applicant, to develop residential Easy Prestige Annex and develop club house respectively both on L.R. NO. 12715/552 situate in Syokimau area**
- 3. An order of MANDAMUS, is hereby issued against the respondents, namely, the County Executive Committee Member for Lands, Housing, Urban Planning and Energy and the County Government of Machakos, directing them to issue development permission to the applicant to develop residential Easy Prestige Annex and develop club house respectively both on L.R. NO. 12715/552 situate in Syokimau area, in line with section 58 (6) of the Physical and Land Use Planning Act;**

4. The applicant shall comply with all other statutory requirements and obtain all other necessary approvals from relevant authorities before commencing development

5. No orders as to costs since the application was unopposed.

It is so ordered.

Dated, signed and delivered at Machakos this 9th day of April 2026.

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant