



REPUBLIC OF KENYA



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Manyani Road Residents Association (MARA) v Bell Kenya Limited & another (Environment & Land Case E003 of 2025) [2025] KEELC 3421 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEELC 3421 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E003 OF 2025
AA OMOLLO, J
FEBRUARY 26, 2025**

BETWEEN

MANYANI ROAD RESIDENTS ASSOCIATION (MARA) PLAINTIFF

AND

BELL KENYA LIMITED 1ST DEFENDANT

**COUNTY EXECUTIVE COMMITTEE MEMBER BUILT ENVIRONMENT &
URBAN PLANNING 2ND DEFENDANT**

RULING

1. The Applicant filed a Notice of Motion dated 14th February 2025 supported by an affidavit sworn by Rukhisana Haq on the same date seeking for the following orders;
 - a. Spent.
 - b. Spent.
 - c. The Applicant thus seeks an injunction restraining the 1st Respondent, their servants, agents and/or any other person acting under their instructions from continuing with the development of the proposed townhouses on property L.R No. 209/7501, pending the hearing and determination of the suit.
 - d. That the Honourable Court be pleased to grant such orders or further orders as it may deem fit and just to meet the ends of justice.
 - e. That costs of the Applicant be in the cause.
2. The motion was based on the grounds that the 1st Respondent is currently developing six townhouses on property L.R. No. 209/7501, despite zoning regulations permitting only one unit per 0.1 hectare. That the Applicant first raised concerns in 2015 when the previous landowner tried to sell the



property for such development with approvals from various authorities, including NEMA, National Construction Authority, and the County Government.

3. In July 2023, the Applicant's committee notified the 1st Respondent about the zoning restrictions, but construction continued, prompting the Applicant to file an appeal in February 2024 at County Physical and Land Use Planning Liaison Committee, which found it lacked jurisdiction and dismissed it.
4. The Applicant was instructed to file a new suit with the Environment and Land Court, which, in 10th June 2024, granted a temporary injunction and for a fast tracked hearing of the Appeal in the County Physical and Land Use Planning Liaison Committee. That on December 9, 2024, the Environment and Land Court ruled that the Physical and Land Use Planning Liaison Committee should have allowed the Applicant more time to file their appeal, thereby reinstating the case.
5. The Applicant stated that despite this judgment, the 1st Respondent has continued the development of the townhouses and in 23rd January 2025, the Applicant filed a new matter with the Liaison Committee seeking injunctive orders to stop the development until the appeal is fully resolved. That, the Committee has not provided any feedback, and the Applicant has sent multiple requests for guidance, including a letter dated 7th February, 2025. The Applicant argues that granting the application will not harm the Respondents but will allow the Committee to fully address the dispute.
6. The 1st Respondent filed a notice of preliminary objection dated 28th February 2025 on the grounds that the application is res judicata and therefore an abuse of court process and that this court lacks jurisdiction to hear and determine the same by dint of Section 61(3) & (4) of the [Physical and Land Use Planning Act](#) & the judgement delivered in ELCEPA E008 of 2024-Manyani Road Residents Association vs Bell Kenya Ltd & Another on 9th December 2024.
7. In opposition, the 2nd Respondent filed replying affidavit sworn by Wilfred Wanyonyi Masinde on 27th March 2025. He deposed that the Applicant has not exhausted all available legal avenues for resolving the dispute, as directed by the court in ELCEPA No. E008 of 2024. That the court had instructed the Applicant to file their case at the Nairobi City County Physical Planning Liaison Committee but despite this directive, the Applicant filed the current application before this court, attempting to bypass the court's decision.
8. Additionally, the Respondent argues that the matter is sub-judice since an appeal is already pending before the Liaison Committee, awaiting its decision. The deponent further emphasized that the 1st Respondent followed the required procedures for obtaining development approvals from Nairobi City County. That the 1st Respondent applied for development permission in 2015 and obtained approval through Plan Number CPF-A1342, with a subsequent renewal in February 2023 via Approval Number PLUPA-BPM-001581-Q.
9. On 20th December 2022, the 1st Respondent also received approval for a change of use, with conditions including the submission of building plans. The building plans were subsequently submitted and approved, fulfilling the conditions set by the Nairobi City County Planning Technical Committee. Consequently, the 2nd Respondent assert that the 1st Respondent complied with all necessary legal and planning requirements, thus has no complaint regarding the construction.

Analysis and Determination:

10. I have read and considered the pleadings, the submissions filed by the Applicant and the 1st Respondents. The question this court is called to determine is whether or not the application meets the threshold for granting an order of temporary injunction as laid out in the case of renowned case



Giella versus Cassman Brown. I have framed the following issues as arising for determination of this application;

- a. Res judicata
- b. Lack of jurisdiction
- c. Merit of the application

11. The 1st Respondent narrates that this application and suit is res judicata ELC EPA E008 of 2024- Manyani Road Residents Association vs Bell Kenya Ltd & another. The principles of res judicata is enunciated in section 7 of the *Civil Procedure Act* Inter Alia that the subject matter is the same. There is no dispute that the present applicant had lodged an appeal against the decision of the 2nd Respondent's physical Liaison Planning Committee.
12. The subject matter of the appeal was against the dismissal by the Planning Liaison Committee an application to extend time because it did not have jurisdiction to do so. The Applicant had argued that the Planning Liaison Committee indeed had powers to extend time. Thus the appeal in EPA E008 of 2024 was not concerned with the development plan licence now being challenged in this suit. I am not persuaded that the present application and suit is re judicata.
13. The Respondents pleaded and argued that this court lacks jurisdiction under the doctrine of exhaustion mechanism. The 1st Respondent relied on the case ELC EPA E008 of 2024 to submit that this court had already held that the first part of call for the Application was the Nairobi City Physical Planning Liaison Committee and not this court. They accused the Applicant of indolence and cited the case of Amina Karama Vs. Njagi Gachangua & 3 Others (2020) eKLR which emphasised that equity aids the vigilant not the indolent.
14. The Applicant responded by quoting the provisions of Section 9(4) of the Fair Administrative Actions Act. It states thus;

“Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.”
15. They further relied on the case of William Odhiambo Ramogi & 3 Others Vs. Attorney General & 4 Others; Muslims for Huma Rights & 2 Others (Interested parties) (2020) EKLK in which the High Court (sitting as 5 judge bench) went on to outline the exceptions to the exhaustion doctrine as follows:

“...the second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively.”
16. The Applicant has pleaded that pursuant to the decision in ELC EPA EPA E008 of 2024, they filed an application before the Planning Liaison Committee. That the said application has not been attended to because the Committee is on strike. The 1st Respondent confirms that the committee is on strike under paragraph 9 of its submissions. The fact that this committee is on strike brings into question its adequacy.



17. Although the 1st Respondent argues that it should not be punished for the failure of that committee to sit, the filing of this case does not take away any of their rights but instead guarantees both parties opportunity to be heard. As pointed in the case of William Odhiambo Ramogo supra, the alternative dispute mechanism does not oust the jurisdiction of court perse but in principle requires of parties to start their claims from the lowest in the ladder before going up.
18. In this case the body to be approached first being on strike present an exceptional circumstance for removing the Applicant of this requirement. Consequently, I dismiss the objection that this court lacks jurisdiction to entertain this claim. I am not persuaded by the argument that the indolence of a party can oust the jurisdiction of a court.
19. Lastly, on the question of merit of the application, the same is challenged on the basis that the impugned developments were approved. It is the approval process which this suit challenges. If the orders are not granted and the suit succeeds, implementing the decree would be an uphill task together with the ensuing costs. In the event the suit fails, the 1st Respondent shall be at liberty to continue with the development. To protect the interests of the 1st Respondent in the Applicant is directed to give undertaking as to damages.
20. Therefore, I am persuaded to hold as I hereby do that the Applicants have established a prima facie case and the balance of convenience tilts in halting the constructions until the case is heard and determined. In the result, the application is granted in terms of prayer (c) of the motion with costs to the Applicant in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF FEBRUARY, 2025

A. OMOLLO

JUDGE

