



**Maranga v Upper Kapiti Residents Association & 2 others (Environment & Land Case E080 of 2022) [2024] KEELC 4878 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4878 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E080 OF 2022  
MN GICHERU, J  
JUNE 20, 2024**

**BETWEEN**

**HANNAH NJAMIU MARANGA ..... PLAINTIFF**

**AND**

**UPPER KAPITI RESIDENTS ASSOCIATION ..... 1<sup>ST</sup> DEFENDANT**

**PAUL N. MAEMA ..... 2<sup>ND</sup> DEFENDANT**

**THE COUNTY GOVERNMENT OF KAJIADO ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated 14/3/2024. The motion is brought under Sections 1, 1A, 3 and 3A of the *Civil Procedure Act*, Order 51 of the *Civil Procedure Rules* and all other enabling provisions of law. It seeks the following residual orders.
2. That this court be pleased to review and revoke the enforcement notice dated 22/3/2023 on Plot No. Kajiado/Kaputiei-North/15369.
3. In the alternative to Order 2 above, the plaintiff be allowed to proceed with the construction on the suit property known as Title No. Mavoko Town-Block 3/56569 on ground floor (parking) and two other floors only, and leaving the upper open slab to future development (subject to issuance of new approvals and licenses where necessary) should the circumstances change.
4. That the plaintiff be at liberty to apply for such further or other orders and/or directions as the court may deem fit and just to grant.
5. That the costs of this application be in the cause.
6. The motion is supported by an affidavit by the plaintiff dated 14/3/2024 which has five (5) annexures. It is also based on sixteen grounds.



The gist of the above material is as follows. Firstly, after the court ruling of 18/9/2023 which dismissed the plaintiff's application for injunction dated 13/10/2022, she filed an appeal with the Kajiado County Liaison Committee on 26/1/2024 through her counsel on record. Secondly, she has not received any response from the said committee which is either non-existent or not constituted and gazetted. Thirdly, in December 2023, she summoned the chairman of the 1<sup>st</sup> defendant who is the second defendant requesting to be allowed to continue with the construction on the suit property up to 2<sup>nd</sup> floor, however the same was in vain. Fourthly, she continues to suffer irreparable loss of property, time and investment since the disruption of the construction on the suit property by defendants. Finally, her project of approximately Kshs. 75 million remains exposed unless the orders sought in this motion are granted.

7. The motion is opposed and the third defendant has filed grounds of opposition dated 5/4/2024 which are as follows. Firstly, the application is a misnomer and a blatant abuse of the court process and also devoid of any merit as it is not anchored on any law. Secondly, the issues raised in the application are re judicata having been dealt with in the application dated 13/10/2022 which was dismissed and it seeks to revise the court's ruling of 18/9/2023 through the back door without affording the parties a proper hearing. Thirdly, the court has no jurisdiction to grant the orders sought in the application specifically the review and revocation of an enforcement order. Finally, the application is an affront to the express provisions of Section 72 of the *Physical and Land Use Planning Act*.

For the above and other reasons, counsel prays for the dismissal of the motion.

Only the 3<sup>rd</sup> defendant's counsel filed written submissions on 13/6/2024 which was outside the deadline of 15/5/2024. From the said submissions, I discern the following issues even though they have not been clearly set out.

- i. Whether this court can revoke the enforcement notice dated 22/3/2023 except on appeal.
  - ii. Whether this court can issue an order authorizing the plaintiff to proceed with construction on the suit land.
  - iii. Whether this court has jurisdiction over property situated in Mavoko Town which is presumably in Machakos County.
8. I have carefully considered the motion in its entirety including the grounds in support and the affidavits as well as the grounds of opposition. I have also considered the written submissions. I make the following findings on the issues raised.

On the first issue of whether this court can revoke the enforcement order dated 22/3/2023, I find that it cannot because as per paragraph 26 of the ruling dated 18/9/2023, I found that under Section 72 of the *Physical and Land Use Planning Act*, it is not envisaged that a party aggrieved by a decision by County Physical and Land Use Planning Liaison Committee will commence a case in any other manner than through an appeal. This suit was commenced by way of plaint on 13/10/2022. I can also see a notice of appeal dated 20/9/2023 filed by the plaintiff against the ruling of this court dated 18/9/2023. I do not know how far the appeal has gone. The plaintiff needs to disclose this so that we do not have parallel proceedings in this court and the court of appeal.

9. Regarding the second issue, I find that this court cannot issue the plaintiff with an order to proceed with construction on the suit land because the court has no jurisdiction under the *Physical and Land Use Planning Act* (Act No. 13 of 2019) or any other law. The only jurisdiction that this court has under the relevant *Act* is to entertain an appeal.



10. Finally on jurisdiction over land situated in Machakos, the court has no geographical jurisdiction over land in Machakos because we have two ELC Judges in Machakos.

For the above stated reasons, I find that the motion dated 14/3/2024 has no merit and I dismiss it. Costs in the cause.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 20<sup>TH</sup> DAY OF JUNE 2024.**

**M.N. GICHERU**

**JUDGE**

