



Wanjiru v Kiambu County Government & another (Environment & Land Petition E007 of 2024) [2024] KEELC 6419 (KLR) (30 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6419 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ENVIRONMENT & LAND PETITION E007 OF 2024

JG KEMEI, J

SEPTEMBER 30, 2024

IN THE MATTER OF ARTICLE 185 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ARTICLES 1(1) 2(1) (2) (4) 2(1) 22(3) D, 23, 27, 28, 30, 31, 35, 40, 47, 48, 50, 67, 68, 73, 258, 259 AND THE FOURTH SCHEDULE OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ALELGED CONTRAVENTION OF FUNDAMENTAL RIGHTS & FREEDOMS UNDER ARTICLES 22(3) E, 23, 27, 28, 40, 47, 48, 50, 67, 68, 73 AND THE FOURTH SCHEDULE OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: CHAPTER 4 OF THE CONSTITUTION OF KENYA 2010

AND

SUPERVISORY JURISDICTION UNDER SECTION 13(7) (B) AND 19 OF THE ENVIRONMENT AND LAND COURT ACT NO. 19 OF 2011 AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL RULES

BETWEEN

STEPHEN MBUGUA WANJIRU PETITIONER

AND

KIAMBU COUNTY GOVERNMENT 1ST RESPONDENT

COUNTY GOVERNMENT OF KIAMBU 2ND RESPONDENT



RULING

1. The Petitioner Stephen Wanjiru Mbugua in his Notice of Motion Application dated 19/4/2024 invokes Articles 22(1), 23, 3 (b), (c) & (d), 159, 162, 165 of the Constitution of Kenya and urges the Court to grant Orders that;
 - a. Spent
 - b. Spent
 - c. That a conservatory order be and is hereby issued suspending the commencement, levying, obligations operationalization and effecting the contents of the Kiambu County Valuation and Rating Bill, No. 6 of 2016 pending the hearing and determination of the Petition.
 - d. That a temporary conservatory order be issued prohibiting the Respondents either by themselves, their agents and / or any other person (s) whatsoever from acting and/or giving effect to The Kiambu County Valuation and Rating Act 2016.
 - e. That the Honourable Court be pleased to issue an order directing the Respondents to avail to the Petitioner and/or to Court all the information on public participations including but not limited to the memoranda, mode, area of coverage, avenues, methods, and any other document in its possession that was submitted, used and ways of Public Participation which the County Government of Kiambu the 2nd Respondent employed on this bill.
 - f. That any other or/and further orders which this Honourable Court may deem fit to grant for justice to the people of Kiambu County to be attained.
 - g. Cost be provided for.
2. Before delving into the merits of the Application I note that the Petitioner filed the instant Motion alongside his Petition dated 19/4/2024. The Petition is supported by an Affidavit of even date. However, the record before me shows that the instant Notice of Motion Application filed under Certificate of Urgency is not accompanied by a Supporting Affidavit.
3. Order 51 rule 4 of the Civil Procedure Rules outlines the contents of a Motion to be filed in Court as follows;
 - “4. Contents of notice [Order 51, rule 4.]
Every Notice of Motion shall state in general terms the grounds of the Application, and where any motion is grounded on evidence by Affidavit, a copy of any Affidavit intended to be used shall be served.”
4. In the case of University of Nairobi v George Mabele ELRC Appeal No 22 of 2020 [2021] eKLR the Court held;
 - “That an Application without a Supporting Affidavit lacks in a material way. It is filed against the rules of the Court. It is not a mere technicality that can be cured in any manner by the Court and must be struck of for want of Supporting Affidavit”.
5. The Application is incompetent for want of a Supporting Affidavit. It is hereby struck out with no orders as to costs.



6. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30TH DAY OF SEPTEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Kiama HB Mageto for Petitioner

1st and 2nd Respondents – Absent

Court Assistants – Phyllis

