



Kigwe v PCEA Gateway Parish, Thome Estate C/o The Presbyterian Foundation & 3 others (Environment and Land Case E341 of 2024) [2024] KEELC 14057 (KLR) (11 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14057 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E341 OF 2024
AA OMOLLO, J
DECEMBER 11, 2024**

BETWEEN

PAUL MUTHONI KIGWE PLAINTIFF

AND

PCEA GATEWAY PARISH, THOME ESTATE C/O THE PRESBYTERIAN FOUNDATION 1ST DEFENDANT

NEMA 2ND DEFENDANT

NATIONAL CONSTRUCTION AUTHORITY 3RD DEFENDANT

THE COUNTY GOVERNMENT OF NAIROBI 4TH DEFENDANT

RULING

1. In her application dated 19th August, 2024, the Plaintiff contends that whereas she is the registered owner of parcel number L.R No. NRB/BLK xxx Thome Estate, Plateau Crescent and the 1st Defendant is the registered owner of land parcels number LR. No. NRB/BLK xxx and L.R No. NRB/BLK xxx, the 1st Defendant’s ongoing construction of the said parcels and in particular parcel number xxx that borders her land is interfering with her quiet possession of the land.
2. In her affidavit in support of the application, she deposes that the 1st Defendant’s construction is illegal and unlawful first, because it had not acquired the requisite approvals, permissions and licenses from the 2nd, 3rd and 4th Defendant. Secondly, the Plaintiff states that the 1st Defendant took down the notices to stop construction that had been placed there by the 3rd Defendant as well as the site billboard.
3. She faults the 2nd, 3rd and 4th Defendants for their refusal or, neglect and/or failure to perform their regulatory and statutory mandates to protect her from the 1st Defendant’s unlawful construction. The Plaintiff states further that activities such as church services and weddings are prohibited for Zone B



because they emit noises that exceed the maximum possible level for that zone as provided for by the Environmental Management and Coordination (Noise and Excessive Vibration Pollution) Control Regulations, 2009.

4. At paragraph 16 of her affidavit, the Plaintiff lists a myriad of reasons on how the construction is affecting her quiet possession and enjoyment of the property including but not limited to the following:
 - a. Producing excessive noise which pose a health risk to her family;
 - b. Causing excessive vibrations that affect her home and the structures thereon;
 - c. Causing an immense amount of air pollution which brings the risk of contracting respiratory diseases;
 - d. Mental and psychological anguish because the construction goes on until late at night;
 - e. Violation of her right to privacy because the windows of the structure overlook her property;
 - f. More health risks for her family because the washrooms on the structure are in close proximity to her property and are facing her home;
 - g. Security risks because the structures are adjacent to her perimeter wall;
 - h. Interference with the natural light to her property because the construction is above the legal height;
 - i. Lack of the necessary amenities such as roads and parking to support the intended purpose of the structure; and
 - j. The structure will hinder her ability to use and access her property.
5. It is for the aforementioned reasons that she seeks the following orders:
 - a. Spent;
 - b. Spent;
 - c. This Honourable Court be pleased to grant a temporary injunction restraining the 1st Defendant, its servants, agents, employees, representatives, tenants and/or any other persons acting on its behalf from carrying out or continuing with any construction on all that property known as L.R No. NRB/BLK xxx pending hearing and determination of this suit;
 - d. This Honourable Court be pleased to grant a temporary injunction restraining the 2nd, 3rd and 4th Defendants, their servants, agents, employees, representatives, and/or any other persons acting on their behalf from issuing licenses, permits and/or approvals allowing the 1st Defendant to carry out any construction on all that property known as L.R No. NRB/BLK xxx pending hearing and determination of this application;
 - e. This Honourable Court be pleased to grant a temporary injunction restraining the 2nd, 3rd and 4th Defendants, their servants, agents, employees, representatives, and/or any other persons acting on their behalf from issuing licenses, permits and/or approvals allowing the 1st Defendant to carry out any construction on all that property known as L.R No. NRB/BLK xxx pending hearing and determination of this suit;



- f. This Honourable Court be pleased to grant a temporary injunction restraining the 1st Defendant from emitting noise pollution in any way and exceeding the maximum permissible noise level for Zone B as provided by the Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009 pending hearing and determination of this application;
 - g. This Honourable Court be pleased to grant a temporary injunction restraining the 1st Defendant from emitting noise pollution in any way and exceeding the maximum permissible noise level for Zone B as provided by the Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009 pending hearing and determination of this suit;
 - h. An order directing the Officer Commanding Thome Police Station to ensure compliance of the above orders;
 - i. Costs of this application be provided for.
6. The 1st Defendant responded to the Application vide its affidavits sworn by Nahashon Wamugi on the 24th of September, 2024 and 26th October, 2024. The Defendant denied the averments in the supporting affidavit that the construction is in a residential area by stating that the area is not entirely residential as there are other commercial activities going on. On the issue of licenses and approvals, the Defendant stated that the same have been obtained and it was only the process of amalgamation that is currently ongoing, which process can be viewed in the 4th Defendant's website. The Defendant denied the allegations that the construction was causing a lot of vibrations and noise and stated that the noise produced if any was within the normal and acceptable levels for that Zone with work only being done during the day and not as night as alleged by the Plaintiff. They also refuted the security concerns raised by the Plaintiff and urged this Court to dismiss the application because stopping the construction will be highly prejudicial to the 1st Defendant and would have a negative effect in the running of the project.
 7. The 3rd Defendant's responded to the application vide the replying affidavit deponed on the 6th of September, 2024. The Defendant listed its functions as provided in the [National Construction Authority Act](#) No. 41 of 2011 and deposes that the 1st Defendant's site had an NCA compliance certificate, an NCA registered contractor with a valid license, NCA accredited skilled workers and site supervisors, a site board showing all approvals and professionals engaged in the project, personal protective equipment was on site, hoarding, fencing and netting as well as all safety signs.
 8. The 3rd Defendant deponed further that it received a complaint and in line with sections 5(2)(g), 23 A, 23(1) and (2) of the Act conducted an inspection of the 1st Defendant's site on the 4th of July, 2024 in particular the ongoing construction works on plot L.R No. NRB/BLK xxx. That the Defendant established that the certificate of compliance it had issued was for a proposed project on plot number L.R NRB/BLK xxx. That it issued a suspension of works order S/No: NCA 196711 subject to compliance and until issue of variation of the plots was resolved. The 3rd Defendant stated that it visited the plot several times to confirm compliance of the suspension notice and found that the works had stopped but on the 3rd of September, 2024 their visit led to the arrest of one person because they found workers on site. The 3rd Defendant stated that it had not lifted the suspension of works order S/No: NCA 196711 dated 4th July, 2024.
 9. The 4th Defendant vide their preliminary objection dated 16th October, 2024 pleaded that this court lacks jurisdiction to entertain this claim. It contends that the Plaintiff's suit as well as the Notice of Motion are incurably defective for failure to properly invoke this Court's jurisdiction as this Court's lacks original jurisdiction to determine the Plaintiff's suit on the grounds that:



- a. The Plaintiff suit raises the question of planning, use and development of all that property known as Nairobi Block xxx which matters are regulated under the Physical and Land Planning Act, 2026 and in particular section 61(3) which mandatorily stipulates that all disputes regarding issuance of development permission by the 4th Defendant must first be referred to the County Physical and Land Use Planning Liaison Committee;
 - b. The question of issuance of an Environmental Impact Assessment License in respect of the suit property for the proposed project by the 1st Defendant therein, which matters are regulated under the Environmental Management Co-ordination [Act No. 8 of 1999](#). In particular section 129 of the Act stipulates that all disputes in relation to issuance of Environment Impact Assessment licenses be referred to the National Environment Tribunal.
10. This Court directed that the preliminary objection and the application be heard together and the parties agreed to canvass the same together by way of written submissions.

Submissions

11. The Plaintiff's submissions are dated 16th October, 2024 and she submitted on two issues for determination: on the merit of preliminary objection dated 16th October, 2024 and whether her application dated 19th August, 2024 has merit. On the first issue, she relied on the locus classicus case of *Mukisa Biscuit Manufacturers Ltd Vs. West End Distributors LTS (1969) EA* and that of *ORARO VS. MBIJA (2005) ECLR* which she submits lay down the factors to be considered in determining preliminary objection. She submitted that the preliminary objection before the Court is based on matters of fact which require interrogation of the same.
12. She also placed reliance on the case of *Independent Electoral & Boundaries Commission Vs. Jane Cheperenger & 2 others (2015) ECLR* where the Supreme Court held that:
- “The occasion to hear this matter accords us an opportunity to make certain observations regarding the recourse by litigants to preliminary objections. The true preliminary objections serve two purposes of merit: firstly, it serves as a shield for the originator of the objection-against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”
13. The Plaintiff submitted that section 61(3) of the Physical and Land Use Act 2019 relates to appeals from a decision of the County Executive Committee while in the present case there has not been any application for development permissions on L.R No. NRB/BLK xxx. That no permissions have been issued in respect of the said parcel and as such an appeal is not warranted. On the issue of the National Environmental Tribunal, the Plaintiff submitted that the jurisdiction of the Tribunal can only be brought up when there is a license issued as per section 129 of the Environment Management Co-ordination Act whereas no license has been issued with respect to land parcel L.R No. NRB/BLK xxx. She relied on the case of *Ken Kasinga Vs. Daniel Kiplagat Kirui & 5 others (2015) ECLR* where the Court stated that:

“...the ELC has an extremely expansive jurisdiction. Indeed, in my view as long as a dispute can be categorized as being a dispute over environment, or over land, the ELC has unlimited



jurisdiction. One cannot therefore be faulted if he originates his suit at the ELC and not in NET (National Environmental Tribunal) for the ELC has original jurisdiction...”

14. The Plaintiff urged this Court to find that the matters in this suit fall outside the jurisdiction of the County Physical and Land Use Planning Liaison Committee as well as the National Environmental Tribunal and that this Court is the only forum where the Plaintiff can seek redress. She prayed for the dismissal of the preliminary objection for lacking merit.
15. On her second issue, the Plaintiff submitted that the application has met the threshold for granting injunctive reliefs as laid down by the case of Giella Vs. Cassman Brown Co. LTS 1973 EA 358 as well as that of Nguruman Ltd Vs. Jan Bone Nielsen & 2 others (2014) EKLK.
16. She submitted that she had proved that she had a prima facie case because of the 1st Defendant’s pollution and interference with her quiet possession of the land whilst Article 42 of *the Constitution* and section 3 of the *Environmental Management and Co-ordination Act* which entitle every person in Kenya to a clean and healthy environment. She faulted the 1st Defendant for the excessive noise pollution which she says has caused her family health complications and deprived them of quiet enjoyment of the property.
17. The Plaintiff reiterated that the 1st Defendant had failed to acquire requisite licenses from the 2nd, 3rd and 4th Defendants for the construction on land parcel number NRB/BLK xxx. She submitted that the defense of amalgamation fronted by the 1st Defendant did not salvage their failure to obtain licenses for the land. She stated that she had already proved that she will suffer irreparable harm if the orders sought are not granted and reiterated that she has a legal right to a clean and healthy environment. That the balance of convenience tilts in her favour.
18. The 1st Defendant’s submissions are dated 28th October, 2024 submitting inter alia that it had applied for and had been granted the requisite approvals. That the dispute herein falls squarely under section 61 of the *Physical and Land Use Planning Act* as well as sections 129 and 130 of the Environmental Management Coordination Act. Thus, the proceedings before the court are premature and this Court lacks original jurisdiction to hear and determine the same. He relied on the case of Isiolo County Assembly Service Board & Another Vs. Principal Secretary (devolution) Ministry of Devolution and Planning & Another (2016) EKLK where the Court upheld the preliminary objection in accepting that the Petition therein was prematurely filed.
19. With regards to the application, the 1st Defendant submitted that it owns three adjoining plots and one of plots next to the Plaintiff’s plot has a church standing thereon. That they applied and were issued with the relevant permits by the 2nd to 4th Defendants who have not rebutted this. The 1st Defendant submitted further that the Plaintiff found the church in situ at the time she purchased the subject property and was therefore aware that the activities to be carried on there would be those she complained about like weddings.
20. That the Plaintiff’s application fails to meet the threshold for grant of injunctive relief as outlined in the Giella case (supra) as she has failed to demonstrate a prima facie case and what irreparable damage she would suffer if the construction was to proceed. The Defendant on the other hand contends that it stands to suffer greatly if the construction was to be stopped because it will expose the materials on site to waste and contract change especially since there has been no offer or deposit for security for costs.
21. The 1st Defendant continued to submit that the Plaintiff had failed to provide any evidence with regards to the noise and smoke pollution and contended that a report on the same would have aided this Court to determine the extent of the alleged pollution. The Defendant urged this Court not to grant the prayers and order sought in the application and that the suit proceeds to hearing on merit.



22. The 3rd Defendant submitted that the purpose of the doctrine of exhaustion is to maintain comity between the courts and administrative agencies and to ensure that Courts are not burdened by cases in which juridical relief is unnecessary. He quoted section 61 (3) of the [Physical and Land Use Planning Act](#), 2019 and section 129 of the Environmental Management Co-ordination Act and submitted that these cannot be the first port of call and as such the Plaintiff had not failed to exhaust all the available dispute resolution mechanisms.
23. On the second issue, the 3rd Defendant relied on the GIELLA case (supra) and submitted that the principles set out in that case must be applied sequentially and failure to meet any of the condition would disentitle a party to the injunctive relief sought. On whether the Plaintiff had a prima facie case, the Defendant submitted that the 1st Defendant was mandated by law to provide proof of licenses and approvals as required by law.
24. Whereas the construction is approved by the 2nd and 4th Defendants, the 3rd Defendant's compliance certificate is missing. That this is because the said 3rd Defendant issued a certificate of compliance for the proposed project on plot number L.R No. NRB/BLK xxx and not NRB/BLK xxx. The fact that there was no compliance certificate issued is sufficient to prove that a prima facie case has been established. The 3rd Defendant submitted further that the Plaintiff has raised genuine concerns because the 1st Defendant's construction was a blatant abuse of the legal process and that unless the order of injunction is granted, the public will likely suffer irreparable damage if the construction proceed minus the requisite licenses.
25. On whether the Plaintiff will suffer irreparable damage if the injunction is not granted, the 3rd Defendant placed reliance on the cases of Stephen Abu Mukhobi Vs. Daniel Oriah Odhiambo & Another (2016) eKLR and that of Alternative Media Limited Vs. Safaricom Limited (2004) EKLR and submitted that the project registration with the 3rd Defendant is essential to ensure that the said project is being constructed as per the required standards in the construction industry and to ensure the public's safety. It is submitted that the Plaintiff may suffer irreparably unless the project is enjoined.
26. The 3rd Defendant submitted further having successfully proved the first two conditions, the balance of convenience shifts to granting the injunction sought against the 1st Defendant. The Defendant urged this Court to consider granting a temporary injunction against the 1st Defendant and not the 3rd Defendant since the latter has demonstrated that it acted in line with the provisions of the [National Construction Authority Act](#) No. 41 of 2011 and the relevant regulations.
27. The 4th Defendant's submissions are dated 16th October, 2024. It submitted on only one issue for determination: whether the preliminary objection is merited. The Defendant quoted section 61(3) of the [Physical and Land Use Planning Act](#), 2019 and section 129 of the Environmental Management Coordination Act and submitted that his Court lacks original jurisdiction to hear and determine the dispute because the Plaintiff had failed to invoke the aforesaid mandatory provisions and dispute resolution mechanisms. While relying on the decision of the Court of Appeal in the case of Kibos Distillers & 4 Others Vs. Benson Ambuti Adegga & 3 Others (2020) eKLR the Defendant submitted that it is trite law that a party cannot be allowed to confer jurisdiction on a court or to oust jurisdiction of competent organ through the art and craft of drafting pleadings.
28. He submitted there is a clear procedure for redress of any particular grievance prescribed by [the Constitution](#) or an Act of Parliament and that procedure should be strictly followed. That the procedure for redress of the Plaintiff's grievances has been properly set out under section 61(3) of the [Physical and Land Use Planning Act](#), 2019 as well as section 129 of the Environmental Management and Coordination [Act No. 8 of 1999](#). That the instant suit raises issues of planning,



use and development of L.R NRB/BLK xxx and those of an issuance of an environmental impact assessment license. It relied on the following holding in the KIBOS case (supra):

“In addition, section 129 (3) of EMCA confers power upon the NET to, inter alia, exercise any power which could have been exercised by NEMA or make such other order as it may deem fit. The provisions of section 129 (3) of EMCA is an all-encompassing provision that confers at first instance, jurisdiction upon the Tribunal...”

29. He relied further in the case of ADEGA & 2 OTHERS supra where the Supreme Court held that:

“It would therefore seem that the Superior Court, determined. Quite incorrectly, that it has the power or jurisdiction to hear and determine the Petition, which although raised issues that were clearly within its purview, were also intertwined with other issues which were rather obviously not within its jurisdiction, and which could have been effectively determined by another legislatively established tribunal, in this instance two bodies, the National Environmental Tribunal and the National Environmental Complaints Committee...”

30. The 4th Defendant relied on several other decisions whose input has been duly noted and concluded by submitting that the Plaintiff’s application is fatally defective as the same has been lodged in contravention of the doctrine of exhaustion of statutory remedies as enshrined under section 61(3) of the *Physical and Land Use Planning Act*, 2019 as well as section 129 of the Environmental Management and Coordination Act. The Defendant urged this Court to find and hold that the preliminary objection is merited and allow the same with costs.

Analysis and Determination

31. The application and the preliminary objection raised the following issues:

- a. Whether this Court has the requisite jurisdiction to entertain this suit;
- b. Whether the orders for temporary injunction sought should be granted

32. The locus classicus case of MUKISA BISCUITS (supra) discussed what constitutes a preliminary objection:

“---a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

33. The 4th Defendant avers that the Plaintiff should have first presented her grievances to the Physical and Land Use Planning Liaison Committee according to section 61(3) of the *Physical and Land*



Use Planning Act, 2019 and the National Environment Tribunal in accordance to section 129 of the Environmental Management Coordination Act, No. 8 of 1999.

34. Section 61 (3) of the Physical and Land Use Planning Act, 2019 provides that:

“(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.”

35. Section 129 of the Environmental Management Coordination Act on the other hand provides that:

(1) Any person who is aggrieved by—

- a. a refusal to grant a licence or to the transfer of his licence under this Act or regulations made thereunder;
- b. the imposition of any condition, limitation or restriction on his licence under this Act or regulations made thereunder;
- c. the revocation, suspension or variation of his licence under this Act or regulations made thereunder;
- d. the amount of money which he is required to pay as a fee under this Act or regulations made thereunder;
- e. the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations made thereunder, may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

- a. confirm, set aside or vary the order or decision in question;
- b. exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
- c. make such other order, including an order for costs, as it may deem just.

(4) Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

36. On the issue of this Court’s jurisdiction, Article 162 of the Constitution as read with section 13 of the Environment and Land Court Act provide thus:

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.



2. In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
 - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. relating to compulsory acquisition of land;
 - c. relating to land administration and management;
 - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - e. any other dispute relating to environment and land.”

37. The 4th Defendant has submitted that the Plaintiff should have relied on the doctrine of exhaustion and explored the dispute resolution mechanisms in the Physical and Land Planning Act, 2019 and the Environmental Management Coordination Act No. 1999 before approaching this Court.

38. The doctrine of exhaustion was discussed by the Supreme Court in the case of *Nicholus Abidha Vs. Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others (interested Parties) (petition E007 Of 2023)* [2023] KESC 113 (KLR) (28 DECEMBER 2023) (JUDGMENT) where the Court stated thus:

“Flowing from the above findings and in that context, it is our view that, where the reliefs under the alternative mechanism are not adequate or effective, then there is nothing that precludes the adoption of a nuanced approach, as we have stated. What must matter at the end is that a path is chosen that safeguards a litigant’s right to access justice while also recognizing the efficiency and specificity that established alternative dispute resolution mechanisms can offer. This is because, to achieve a harmonious and effective legal framework, it is imperative to strike a judicious balance between the emphasis on providing the initial opportunity for resolution to entities established by law and the assertion of a litigant’s right to access the court. However, such convergence requires a case-by-case assessment by considering issues such as the nature of the dispute and the adequacy of the alternative dispute mechanism...”

39. The jurisdiction of the Physical and Land Liaison Planning Committee and that of the National Environmental Tribunal is invoked once a license has been applied for and denied and or issued and a party is not agreeable to the conditions therein. The 1st and 4th Defendants have not provided any proof of the licenses issued for parcel number L.R No. NRB/BLK xxx. The 3rd Defendant has submitted that they did not issue any licenses for the said parcel and had suspended the construction on the said parcel of land vide order S/No. NCA 196711 dated 7th July, 2011.

40. Further, I have considered some of the prayers sought which includes a declaration that the Plaintiff’s constitutional right to a safe and clean environment has been violated by the 1st Defendant’s construction. Although the suit is commenced by way of plaint, by virtue of seeking declaration on violation of constitutional rights implies that it is this Court and not the alternative dispute resolution mechanisms which can grant such an order. Thus, this court has the requisite jurisdiction to handle both the application and the case.



41. This brings us to the issue of whether the Plaintiff's application for a temporary injunction is merited. This Court retains the discretion to either grant an injunction or not. This was the holding in the case of Nyutu & Other Vs. Gatheru & Others (1990) KLR 554, where the Court held that: -

“Whether or not to grant an injunction is in the discretion of the Court and the discretion is a free one but must be judicially exercised”.

42. The application is founded on Order 40 of the Civil Procedure Rules which provides for the temporary or interlocutory injunctions. The Court in the locus classicus case of Giella Vs. Cassman Brown & Co. LTD 1973 E.A. 358 laid out the following principles as a guide to determine the grant of temporary injunctions:

- a. The Applicant must show the existence of a prima facie case with a probability of success at the trial.
- b. A temporary injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury which cannot adequately be compensated by an award of damages, and;
- c. If in doubt, the Court will determine the application on the balance of convenience.

43. Most of the reasons that the Plaintiff has given for the grant of the injunction require evidence to be adduced during trial save for the fact that the 1st Defendant only had a license to construct on land parcel number L.R NRB/BLK xxx whereas the construction is being done on both parcel xxx and L.R NRB/BLK xxx. There were no licenses issued for the construction on the latter parcel which fact has been confirmed by the 1st Defendant and the 3rd Defendant.

44. The 1st Defendant attempted to explain away the lack of the license by submitting that they were in the process of amalgamating the two parcels. The 3rd Defendant was however categorical that it did not issue a license for the construction on L.R No. NRB/BLK xxx . Once it confirmed that there was construction thereon, it suspended the same vide S/NO NCA 196711 dated 4th July, 2024 and which suspension remains to date.

45. This means that the 1st Defendant's depositions that the construction if stopped will cause wastage of materials is not the correct position as the 3rd Defendant's suspension notice is to be put into consideration. The said Defendant's attempt to regularize its position is not lost on this court, however, the regularization should have preceded the construction.

46. The balance of convenience tilts towards granting the temporary injunction in favour of the Plaintiff and order (c) of the application dated 19th August, 2024 is granted. The costs of this application shall abide with the winner of the instant suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF DECEMBER, 2024.

A. OMOLLO

JUDGE

