



Prudential Capital Limited v CECM Lands, Housing Physical Planning, Municipai & Urban Development, Kiambu County Government & 2 others (Judicial Review E004 of 2024) [2025] KEHC 7689 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
JUDICIAL REVIEW E004 OF 2024**

A MSHILA, J

MAY 30, 2025

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS

BETWEEN

PRUDENTIAL CAPITAL LIMITED APPLICANT

AND

CECM LANDS, HOUSING PHYSICAL PLANNING, MUNICIPAL & URBAN DEVELOPMENT, KIAMBU COUNTY GOVERNMENT 1ST RESPONDENT

DIRECTOR, PHYSICAL PLANNING & URBAN DEVELOPMENT OF KIAMBU COUNTY GOVERNMENT 2ND RESPONDENT

KIAMBU COUNTY PHYSICAL & LAND USE PLANNING LIAISON COMMITTEE 3RD RESPONDENT

RULING

1. Before court is a Notice of Preliminary Objection by the 1st, 2nd and 3rd Respondents dated 26th April, 2024 to the Applicant’s applications dated 21st March, 2024 and 15th April 2024 and the entire suit on the grounds; -
 1. THAT this Honourable court lacks the original jurisdiction to entertain the present suit and said applications owing to the doctrine of exhaustion of statutory remedies.
 2. THAT the law provides a forum where grievances raised by the Applicant herein ought to be addressed in the first instance under the mandate of the County Physical Land Use Planning Committee.



3. THAT the Physical planning and land use regulations clearly state that upon expiration of the enforcement notice and whereupon the person on whom an enforcement has been served has not appealed to the liaison committee, an Enforcement Team shall within seven days enter the premises or property and execute the conditions in the notice.
 4. THAT Section 17 of the Physical planning and land use regulations further stipulates that any person who is aggrieved by a decision of the County Director may appeal against such decision in accordance with section 72 (3) and (4) of the *Physical and Land Use Planning Act*.
 5. THAT section 72(3) and (4) of the *Physical and Land Use Planning Act*, 2019 provides where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant County Physical and Land Use Planning Liaison Committee within fourteen days of being served with the notice and the committee shall hear and determine the appeal within thirty days of the appeal being filed.
 6. THAT further any party aggrieved with the determination of the county physical and land use planning liaison committee may appeal to the court only on a matter of law and the court shall hear and determine the appeal within thirty days.
 7. THAT the instant suit and before this Honourable court is therefore premature, abuse of the court process, vexatious and frivolous.
 8. THAT the Applicant's application is premature and ought to be dismissed with costs to the Respondents.
2. The preliminary objection was canvassed by way of written submissions.

RESPONDENTS' SUBMISSIONS.

3. The Respondents submit that there is a statutory procedure provided for under Section 72 of the *Physical and Land Use Planning Act* for challenging an enforcement notice and that an appeal mechanism is provided by the law. Reliance was placed in the case of Benson Ambuti Adegwa vs Kibos Distillers Ltd & 5 others (2020) eKLR.

APPLICANT'S SUBMISSIONS.

4. The claim by the respondents that the court lacks jurisdiction as the applicant's application offends the doctrine of exhaustion of remedies was said to be unfounded as the suit falls within the exceptions of the rule. Reliance was placed on among other cases the case of William Odhiambo Ramogi & 3 others vs Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) (2020) eKLR. The respondents were said to have a public duty to serve the applicant with proper notice as such the notice as prepared is illegal as it was not addressed nor served to the applicant. That the breach of the applicant's right to be heard went against the rule of natural justice. Reliance was placed in the case of Accounting Officer Kenya Ports Authority vs Public Procurement Administrative Review Board & 3 others (2019) eKLR. Judicial review was said to be permissible where there is bias or situations where someone was denied a chance to be heard and not the merits of the case. Reliance was placed in the case of Republic vs Attorney General & 4 others ex-parte Diamond Hashim Lalji and Ahmed Hasham Lalji. This court was said to be right forum as the demolitions were being done using a defective notice that was never served to the applicant. The applicant submits that referring the matter back to the Liaison Committee would be an academic exercise.



ISSUES FOR DETERMINATION.

5. Having considered the preliminary objection and the submissions, the main issue for determination is whether the Preliminary Objection herein should be upheld.

ANALYSIS.

6. The Applicant submitted that the suit falls within the exceptions to the exhaustion rule. They argued that the enforcement notice was defective and not properly served, thereby violating their right to be heard and breaching the principles of natural justice. The Respondents argued that the Applicant bypassed the statutory dispute resolution mechanism. They emphasized that Section 72 sets out a clear appeal process starting with the Liaison Committee.
7. Notably, that the Applicant did not demonstrate any attempt to approach the Liaison Committee, nor did they provide evidence that the committee is unavailable, biased, or unable to afford relief. The alleged defect in the enforcement notice, and the question of whether it was properly served, are precisely the kinds of factual disputes that the Liaison Committee is statutorily empowered to investigate and determine.
8. This Court is not the forum of first instance to evaluate the merits or defects of an enforcement notice. That jurisdiction rests with the Liaison Committee. While the Applicant raises the issue of breach of natural justice, it is premature for the Court to assume this without the matter first being brought before the statutory forum. This case falls within the doctrine of exhaustion, which requires that where a statute provides a specific procedure or forum for redress, parties must first exhaust those remedies before approaching the courts.
9. This doctrine was firmly established in the landmark case of Speaker of the National Assembly v Njenga Karume [1992] eKLR, where the Court of Appeal held:

“In our view, there is considerable merit... that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”
10. Further, Section 72 of the *Physical and Land Use Planning Act*, 2019, provides a structured dispute resolution mechanism through the County Physical and Land Use Planning Liaison Committee. In this case it is evident that the Applicant has sidestepped the statutory process without justifiable cause. The alleged breach of rights or procedural unfairness should first be addressed through the Liaison Committee, which has both the mandate and technical capacity to handle such disputes.

FINDINGS AND DETERMINATION.

11. For the forgoing reasons this Court makes the following findings and determinations;
 - i. This Honourable Court finds the Preliminary Objection has merit and;
 - ii. The Preliminary Objection is hereby upheld
 - iii. This Court lacks the original jurisdiction to entertain the present suit and said applications due to the doctrine of exhaustion of statutory remedies.
 - iv. The suit is found to be premature and it is hereby struck out with no order as to costs.

Orders Accordingly



DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 30TH DAY OF MAY, 2025

A. MSHILA

JUDGE

In the presence of,

Sanja – Court Assistant

Matumi h/b for Thimba for the Applicant

Nyakundi for the Intended Party

Nyakundi h/b for Natalia for the Respondents

