



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1158 OF 2020

BETWEEN

ONE HUNDRED AND TWO PEONI ROAD LLP.....1ST APPLICANT

PEONI ROAD RESIDENTS ASSOCIATION (IN FORMATION).....2ND APPLICANT

VERSUS

NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY.....1ST RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT.....2ND RESPONDENT

AIR VIEW PROPERTIES LIMITED.....3RD RESPONDENT

RULING

The Application

1. The Applicants herein have filed an application by way of a Chamber Summons dated 17th December 2020, seeking the following orders:

1. This application be certified urgent and it be heard ex-parte in the first instance.

2. Leave be granted to the Applicants to apply for an Order of Certiorari to remove into the High Court and quash forthwith the Environmental Impact Licence dated 13 October 2020 issued by the 1st Respondent to the 3rd Respondent.

3. Leave be granted to the Applicants to apply for an order of Certiorari to remove into the High Court and quash forthwith the Environmental Impact Assessment Report dated 3 March 2020 submitted by the 3rd Respondent to the 1st Respondent.

4. Leave be granted to the Applicants to apply for an order of Certiorari to remove into the High Court and quash forthwith the Form PPA 2 - Notification of Approval of Development Permission dated 13 November 2018.

5. Leave be granted to the Applicants to apply for a Declaration that the 3rd Respondent's Environmental Impact Assessment report dated 3 March 2020 and the 1st Respondent's Environmental Impact Assessment Licence dated 13 October 2020 violates the provisions of Regulation 17, 21 and 22 of the Environmental (Impact Assessment and Audit) Regulations, 2003 and the provisions of Article 47 of the Constitution of Kenya, 2010 and the Fair Administrative Action Act, 2015.

6. Leave be granted to the Applicants to apply for a Declaration that the 2nd Respondent's decision to issue Form PPA 2 - Notification of Approval of Development Permission dated 13 November 2018 to the 3rd Respondent for construction of office blocks violates the 2nd Respondent's Zoning Guide for Nairobi County and the provisions of Article 47 of the Constitution of Kenya, 2010 and the Fair Administrative Action Act, 2015.

7. Leave be granted to the Applicants to apply for an order of Prohibition against the 3rd Respondent for continuing with any construction of office blocks on Land Reference Number 17/432 (the 3rd Respondent's Property) along Peponi Rise

Road, off Peponi Road.

8. The grant of leave to institute judicial review proceedings do operate as a stay of the 1st Respondent's Environmental Impact Assessment Licence dated 13 October 2020 and a stay of the ongoing construction being carried out by the 3rd Respondent on the 3rd Respondent's Property.

9. An order of general damages be issued against the 1st – 3rd Respondents for violating the Applicants' constitutional right to fair administrative action as guaranteed under Article 47 of the Constitution of Kenya, 2010.

10. The costs of this application be provided for.

2. It is evident that the Applicants are seeking orders in relation to the use of land, and environmental impacts thereof in the said application. Any disputes and orders sought in relation to title, use and occupation of land, and relating to the environment now fall within the exclusive jurisdiction of the Environment and Land Court, pursuant to Articles 162(2) (b) and 165(5) of the Constitution, and section 13 of the Environment and Land Court Act. This Court therefore has no jurisdiction to hear and determine the Chamber Summons dated 17th December 2020.

The Orders

3. In the premise I direct and order that this suit be and is hereby transferred to the Environment and Land Court at Nairobi for further hearing and determination. The Applicants' Chamber Summons dated 17th December 2020 shall accordingly be placed before the **Duty Judge** at the **Environment and Land Court at Nairobi** on **4th January 2021**, for directions.

4. The Deputy Registrar of this Court shall send a copy of this ruling by electronic mail to the Applicants, and to the Deputy Registrar of the Environment and Land Court at Nairobi, by close of business on 21st December 2020.

5. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF DECEMBER 2020

P. NYAMWEYA

JUDGE