REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

JUDICIAL REVIEW DIVISION

JR. MISC. CIVIL APPLICATION NO. 602 OF 2016

BETWEEN

GLOBE DEVELOPERS LIMITED.....APPLICANT

VERSUS

NAIROBI CITY COUNTY.....1ST RESPONDENT

ABDUL HAMEED SHEIKH

DANIELA PROSKE

GEORGE NDEGWA

RIVERSIDE GARDENS

RESIDENT ASSOCIATION.....2ND RESPONDENTS

FRED OCHANDA.....3RD RESPONDENT

JUDGEMENT

Introduction

1. By a Notice of Motion dated 8th December, 2016, the applicant herein, **Globe Developers Limited,** seeks the following orders:

> **1) An order of Prohibition against the Respondent prohibiting them by their servants, agents and or employees from stopping any developments on plot numbers 209/4904 and 209/40905/1 in Riverside Gardens by the Applicant.**
>
> **2) An order of Prohibition against the Respondent prohibiting a review of approvals given on the 18th August, 2015 for developments on plot numbers 209/4904 and 209/40905/1 in Riverside Gardens by the Applicant.**
>
> **3) An order of Certiorari to remove to this Honourable Court and quash the decision of the Respondent in the letter dated 1st November, 2016 ordering the ceasing of all developments by the applicant on 209/4904 and 209/40905/1 in Riverside Gardens and ordering for a**

cancellation of the approvals given on 18th August 2015.

4) An order of Mandamus directed at the Respondents and each of them compelling them to remove the illegal signage posted on plot numbers 209/4904 and 209/40905/1 in Riverside Gardens.

5) A Declaration that the 3rd Respondent has acted contrary to the Public Officers Ethics Act, Cap 183 Laws of Kenya, and the relevant Code of Conduct and Ethics, against the Physical Planning Act the Constitution of Kenya, has abused his office and acted in misfeasance of public office.

6) The Respondents be condemned to pay compensation to the Applicant for stoppage of the works.

7) The costs of this application.

***Ex Parte* Applicant's Case**

2. According to the Applicant, it is the owner of Plot number 209/4904 and 209/40905/1 on Riverside Gardens in Nairobi County (hereinafter referred to as "the suit properties") while the 1st Respondent is the Nairobi County Government while the 2nd Respondents are officials of the Resident Association in the neighbouring area.

3. The applicant averred that it successfully proposed for a project to be commenced on the it properties for the construction of nine (9) blocks of apartments with one (1) Duplex Unit per floor having a total of sixty-six (66) three (3) and four (4) bedroom apartment units and in proposing the said project complied with the relevant laws and regulations. According to the applicant:

a) It sought a Change of User from single dwelling to multiple dwelling units (Apartments) under the ***Physical Planning Act*** No. 6 of 1996 and the Notification of Approval of Development Permission was granted on 9th October 2013. The Application for change of user was duly publicized and there was no objection in respect thereof from the Respondents.

b) It sought approval for the amalgamation of the properties under the ***Physical Planning Act*** No. 6 of 1996 and the Notification of Approval of Development Permission was granted on 18th October 2013.

c) It Commissioned Greendime Consultants, a NEMA accredited Environmental Impact Assessment/ Audit Firm to conduct an Environmental Impact Assessment in respect of the proposed project.

d) The Environmental Expert held a meeting with the Applicant and the project Architects who explained the details of the proposed project. During this month of January, the Environmental Expert visited the proposed site, surveyed the proposed site and the general area of Riverside

e) It was informed by the Environmental Expert that the latter thereafter prepared the questionnaires which he, on or about the 24th of January 2014, circulated to ALL the residents of Riverside Gardens and other neighbouring homes with copies of the Title Documents, Amalgamation Plan and a copy of the Architectural designs which were shown to all parties before being given the questionnaire and where the owners were not present, the questionnaire was left with the available caretakers or security personnel with instructions to give the same to the owners. Contact details were left together with the questionnaires so that any questions raised could be forwarded to the Environmental Expert. The Treasurer and Chairman of the 2nd to 3rd Respondents through their officials were personally given the questionnaires and attendant documents but they informed the Environmental Experts that they could not respond to the questionnaire and would

await the decision of their Association on responding to the questionnaire.

f) The Environmental Expert further informed the applicant that this was followed by an e-mail to the Treasurer requesting for their opinion, objections or comments on the proposed development but no response was forthcoming from him.

g) The Applicant's request for the approval of the building plans was sought from the Nairobi City County for the proposed Domestic Building Proposed 72 No. Duplex Apartments which approval was granted on 30th April 2014.

h) The Environmental Expert informed the applicant that on or about the 1st of March 2014 while the Environmental Expert was visiting the area in a bid to get responses to the questionnaire, the Environmental Expert received a concern that the architectural drawings were not clear and thereafter he provided clearer architectural drawings to the 2nd Respondent through his son.

i) The Environmental Expert informed the applicant that the same were delivered to him on the 1st March, 2014. Upon receipt of the said Architectural drawings, the 2nd and 3rd Respondents then informed the Environmental Expert that they would not respond to the questionnaire without having sight of the approved Architectural designs.

j) When the Architectural drawings were approved by the Nairobi City County on 30th April 2014, on the first week of May, the same were furnished to the 2nd and 3rd Respondent's Chairman.

k) Having furnished the interested party, NEMA all the information that the Environmental Expert was seized of, and that the 2nd and 3rd Respondents having failed, refused and or neglected to respond to the questionnaire, NEMA allowed the submission of the EIA Report with the collected and available information from other neighbours and interested parties and issued the approval letter together with conditions for licensing the EIA to the Applicant via a letter dated 2nd July 2014 which approval was subject to the acceptance of the conditions set out in said letter by the Applicant which conditions the applicant duly accepted on 3rd July 2014.

l) It was during this period that the 2nd and 3rd Respondents finally sent their questionnaire to the Environmental Experts and NEMA.

m) The Environmental Impact Assessment License was thereafter granted on 9th July 2014.

n) The number of apartments and blocks were altered after the Applicant carried out a market research in 2015 on customer preference on the unit sizes and this informed a change in the design of the proposed project leading to a reduction of the number of Units from 72 units to 66 Units while the units per floor were reduced to one duplex unit per floor. These altered plans were submitted to the Nairobi City County and the Altered Plans were subsequently approved vide an approval letter dated 18th August 2015.

o) A NEMA License variation was sought from NEMA as per the Approved Architectural Plans which license was varied and is dated 1st December 2015.

4. According to the applicant, the 2nd and 3rd Respondents have made concerted efforts to stall the development on suit properties. As a result the applicant instituted Judicial Review Miscellaneous Appliction No. 337 of 2016 and in response thereto the 1st Respondent confirmed that it had in approving the applicant's plans followed the law to the letter and during the hearing of the said matterthe 1st Respondent did not object to the order maintaining the status quo and permitting the applicant to proceed with its developments.

5. It was however averred that on 18th October, 2016, the third Respondent herein, **Fred Ochanda**, purported to serve the ex parte applicant's contractor with an enforcement Notice alleging that the foundation of the development was being undertaken without statutory inspections yet despite the request by the applicant's contractor to the 1st Respondent to undertake the aforesaid inspection, the 1st Respondent has failed to do so. Despite this the said **Fred Ochanda**, the 1st Respondent's officer, on 29th November, 2016 in the presence of the 1st Respondent's officers went to the applicant's site and ordered the construction stopped based on a letter which was purportedly posted to the aplicant's but which letter was never received by the applicant. Accordng to the said letter, the approved development plan was subsequently disapproved by the Technical Committee on the basis of complaints from the neighbours.

6. It was the applicant's case that the 1st Respondent had no power to act in the manner it did hence its action was unlawful.

1st Respondent's Case.

7. The 1st Respondent opposed the application vide grounds of opposition. According to the Respondent, the said application is premature, misconceived and bad in law and the Respondent will raise a point of law, to be determined *in limine*, that the Applicants have not complied with section 13(1) of the ***Physical Planning Act*** Cap 286 Laws of Kenya which requires that any person aggrieved by a decision of the Director concerning any physical development plan or matters connected therewith, may within sixty days of receipt by him of notice of such decision, appeal to the respective liaison committee in writing against the decision in such manner as may be prescribed. In the Respondent's view, the Application is an abuse of Court process as the same matter is still pending before the Honourable Court pending for under another in HCC JR. No. 271 of 2016**.**

8. In the Respondent's view, the subject matter relates to a development which lacks approvals from the Respondent as required by the law. It was its view that the Applicant's suit is hopelessly misconceived, frivolous, totally devoid of merit and *mala fides* for the reason *inter alia*, that the Plaintiffs/Applicants followed the wrong procedure in that is should have instituted an appeal in the liaison Committee.

9. It was further contended that this court has no jurisdiction to grant the orders herein as this is a Land and Environment matter which ought to be tried in the Environment and Land Court.

10. The 1st Respondent averred that the applicant had constructed a foundation on the suit properties without statutory inspection as required by the law hence its actions were lawful and within its mandate. It was further contended that the grant of orders sought in the said Application would greatly prejudice the Respondent who is mandated by law to regulate any physical planning and developments within its jurisdiction pursuant to section 29 of the ***Physical Planning Act***. Further, the Respondent's approval is a mandatory requirement before any development is done within the jurisdiction of the Respondent. Consequently the said development was being done in absence of the approval hence the decision to issue the Enforcement Notice.

11. It was explained that though the plans had initially been approved, due to complaints the same was revoked in the public interest.

2nd Respondent's Case

12. The gist of the 2nd Respondents 'case was that following the illegal construction undertaken by the applicant, they lodged various complaints to the relevant authorities. As a result thereof the applicant was issued with an Enforcement Notice but instead of challenging he same, the applicant did not respond till after the expiry of the period stipulated for doing so.

13. It was the 2nd Respondents' case that the 1st Respondent's decision was not influenced by the 2nd Respondent and that the decision by the 1st Respondent was within the 1st Respondent's power.

Determinations

14. In my view the main issue for the determination by this Court is the procedural propriety or otherwise of the Respondent's action.

15. Section 38 of the ***Physical Planning Act***, Cap 286 Laws of Kenya provides as follows:

> ***(1) When it comes to the notice of a local authority that the development of land has been or is being carried out after the commencement of this Act without the required development permission having been obtained, or that any of the conditions of a development permission granted under this Act has not been complied with, the local authority may serve an enforcement notice on the owner, occupier or developer of the land.***
>
> ***(2) An enforcement notice shall specify the development alleged to have been carried out without development permission, or the conditions of the development permission alleged to have been contravened and such measures as may be required to be taken within the period specified in the notice to restore the land to its original condition before the development took place, or for securing compliance with those conditions, as the case may be, and in particular such enforcement notice may require the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities.***
>
> ***(3) Unless an appeal has been lodged under subsection (4) an enforcement notice shall take effect after the expiration of such period as may be specified in the notice.***
>
> ***(4) If a person on whom an enforcement notice has been served under subsection (1) is aggrieved by the notice the may within the period specified in the notice appeal to the relevant liaison committee under section 13.***

16. In my view the above provision contemplates the service of a valid notice. In this case the notice required that the applicant stops "further development forthwith" within "seven days". Clearly a notice crafted in such a manner can only be deemed as vague. Since under section 38(4) the right of appeal to the Liaison Committee only accrues upon service of the enforcement notice, which in my view must be a valid notice, where no such notice is served the alternative remedy of challenging the decision by the Respondent is non-existent and hence the applicant cannot be driven from the seat of justice on the basis of the existence of such alternative remedy. In **Republic vs. National Environment Management Authority [2011] eKLR**, the Court of Appeal had this to say at page 15 and 16 of its judgment:

> **"…in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it."**

17. Therefore, whereas the availability of an alternative remedy is a factor to be taken into consideration, the Court cannot deny an otherwise deserved remedy on the basis of an alternative remedy where such alternative remedy is a mere mirage or is less convenient, effective and beneficial. To send a litigant empty handed from the seat of justice when the Court has what it takes to do justice in cases where there is no dispute resolution mechanism covering the circumstances of the case, would be to abet injustice and a court of law has no jurisdiction to do injustice. Therefore where the purported alternative remedy leaves an aggrieved party with no effective remedy or at all, such remedy is no remedy at all and the Court ought not to not shirk from its Constitutional mandate to ensure that the provisions of Article 50(1) of the Constitution are attained with respect to ensuring that a person's right to have any dispute that can be resolved by the application of law is decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body, is achieved.

18. In this case I find that as the conditions necessary to be taken by the Respondent in order to trigger or provoke an appeal had not been fulfilled, the appellate avenue was not efficacious.

19. In this case, it is contended, that before the Enforcement Notice was issued, the applicant was never accorded an opportunity of beig heard. The 1st Respondent which ought to have proved that it accorded the applicant an opportunity of being heard has not sworn any affidavit. Accordingly any factual averments made in its grounds of opposition are of little evidential value.

20. In Judicial Review 337 of 2016 aforesaid, this Court expressed itself *inter alia* as follows:

> **"It was contended, which contention is not seriously disputed, that during the pendency of similar proceedings, the Respondent proceeded to issue the impugned notice in order to steal a match from this Court and the Applicant. In my view, where a party takes an action with the intention of removing the rug from the feet of the judicial seat, that action would be frowned upon by the Court as the same may be construed to have been intended to overreach in which event the same may constitute an abuse of power. It is therefore clear that power ought to be properly exercised and ought not to be misused or abused. According to Prof Sir William Wade in his book *Administrative Law*:**
>
> **"The powers of public authorities are…essentially different from those of private persons. A man making his will, may subject to any right of his dependants dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law, this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land…regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. The whole conception of unfettered discretion, is inappropriate to a public authority which possesses powers solely in order that it may use them for the public good. But for public bodies the rule is opposite and so of another character altogether. It is that any action to be taken must be justified by positive law. A public body has no heritage of legal rights which it enjoys for its own sake, at every turn, all of its dealings constitute the fulfilment of duties which it owes to others; indeed, it exists for no other purpose…But in every such instance and no doubt many others where a public body asserts claims or defences in court, it does so, if it acts in good faith, only to vindicate the better performances of the duties for whose merit it exists. It is in this sense that it has no rights of its own, no axe to grind beyond its public responsibility; a responsibility which define its purpose and justifies its existence, under our law, that is true of every public body. The rule is necessary in order to protect the people from arbitrary interference by those set in power over them…"**

21. The Court further relied on **Keroche Industries Limited vs. Kenya Revenue Authority & 5 Others Nairobi HCMA No. 743 of 2006 [2007] 2 KLR 240** where **Reg vs. Secretary of State for the Environment Ex Parte NottinghamShire Country Council [1986] AC** was cited with approval in holding that:

> **"A power which is abused should be treated as a power which has not been lawfully exercised…Thus the courts role cannot be put in a straight jacket. The courts task is not to interfere or impede executive activity or interfere with policy concerns, but to reconcile and keep in balance, in the interest of fairness, the public authorities need to initiate or respond to change with the legitimate interests or expectation of citizens or strangers who have relied, and have been justified in relying on a current policy or an extant promise. As held in *ex parte Unilever Plc* (*supra*) the Court is there to ensure that the power to make and alter policy is not abused by unfairly frustrating legitimate individual expectations...The change of policy on such an issue must a pass a much higher test than that of rationality from the standpoint of the public body...A public authority must not be allowed by the court to get away with illogical, immoral or an act with conspicuous unfairness as has happened in this matter, and in so acting abuse its powers. In this connection Lord Scarman put the need for the courts**

intervention beyond doubt in the *ex-parte Preston* where he stated the principle of intervention in these terms: "I must make clear my view that the principle of fairness has an important place in the law of judicial review: and that in an appropriate case, it is a ground upon which the court can intervene to quash a decision made by a public officer or authority in purported exercise of a power conferred by law." The same principle was affirmed by the same Judge in the House of Lords in *Reg vs. Inland Revenue Commissioners, ex-parte National Federation of Self Employed and Small Business Ltd [1982] AC 617* that a claim for judicial review may arise where the Commissioners have failed to discharge their statutory duty to an individual or have abused their powers or acted outside them and also that unfairness in the purported exercise of a power can be such that it is an abuse or excess of power. In other words it is unimportant whether the unfairness is analytically within or beyond the power conferred by law: on either view, judicial review must reach it. Lord Templeman reached the same decision in the same case in those helpful words: "Judicial review is available where a decision making authority exceeds its powers, commits an error of law commits a breach of natural justice reaches a decision which no reasonable tribunal could have reached or abuses its powers." Abuse of power includes the use of power for a collateral purpose, as set out in *ex-parte Preston,* reneging without adequate justification on an otherwise lawful decision, on a lawful promise or practice adopted towards a limited number of individuals. I further find as in the case of *R (Bibi) vs. Newham London Borough Council [2001] EWCA 607, [2002] WLR 237,* that failure to consider a legitimate expectation is a failure to consider a relevant consideration and this would in turn call for the courts intervention in assuming jurisdiction and giving the necessary relief."

22. As this Court held in JR 337 of 2016, it is now trite that there are circumstances under which the Court would be entitled to intervene even in the exercise of discretion. This Court is empowered to interfere with the exercise of discretion in the following situations: (1) where there is an abuse of discretion; (2) where the decision-maker exercises discretion for an improper purpose; (3) where the decision-maker is in breach of the duty to act fairly; (4) where the decision-maker has failed to exercise statutory discretion reasonably; (5) where the decision-maker acts in a manner to frustrate the purpose of the Act donating the power; (6) where the decision-maker fetters the discretion given; (7) where the decision-maker fails to exercise discretion; (8) where the decision-maker is irrational and unreasonable. See **Republic vs. Minister for Home Affairs and Others Ex Parte Sitamze Nairobi HCCC No. 1652 of 2004 [2008] 2 EA 323.**

23. The purview of judicial review was clearly set by **Lord Diplock** in the case of **Council for Civil Service Unions vs. Minister for Civil Service [1985] A.C. 374, at 401D** when he stated that:-

"Judicial review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'...By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By 'irrationality' I mean what can now be succinctly referred to as "Wednesbury unreasonableness'...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision."

24. Article 47 of the Constitution provides:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by

administrative action, the person has the right to be given written reasons for the action.

25. That the issuance of an Enforcement Notice is an administrative actions is not in dispute since section 2 of the ***Fair Administrative Action Act, 2015*** defines "administrative action" to include:

> ***(i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or***
>
> ***(ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;***

26. The same section defines 'administrator" as "a person who takes administrative action or who makes an administrative decision." Section 3 on the other hand provides:

> ***(1) This Act applies to all state and non-state agencies, including any person***
>
> ***(a) exercising administrative authority;***
>
> ***(b) performing a judicial or quasi-judicial function under the Constitution or any written law; or***
>
> ***(c) whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates***.

27. As was held in **Peter Okech Kadamas vs. Municipal Council of Kisumu Civil Appeal No. 109 of 1984 [1985] KLR 954; [1986-1989] EA 194** in which **O'reilly vs. Mackman [1982] 3 All ER 1129** was cited with approval:

> **"Wherever any person or body of persons has authority conferred by legislation to make decisions affecting the rights of the subjects, it is amenable to the remedy of an order to quash its decisions either for an error of law in reaching it, or for failure to act fairly towards the person who will be adversely affected if the decision maker fails to observe either one or other to the two fundamental rights accorded him of the rules of natural justice or fairness, viz: to have afforded to him a reasonable opportunity of learning what is alleged against him and of putting forward his own case in answer to it, and to the absence of personal bias against him on the part of the person by whom the decision falls to be made..."**

28. The Respondent was therefore under a duty to ensure that its action was expeditious, efficient, lawful, reasonable and procedurally fair. Procedural fairness necessarily requires that persons who are likely to be affected by the decision be afforded an opportunity of being heard before the decision is taken. Further, it is a Constitutional requirement that that person be given written reasons for the action.

29. Before the Respondent can determine whether a person in whose favour a development plan has been approved has not complied with the conditions for the said approval or has breached the terms thereof, it is my view and I so hold that the Respondent ought first to afford the person concerned an opportunity of addressing the issue before revoking the same. There is no such evidence on record.

30. Where a party has not been heard, to contend that the applicant could appeal the decision of the respondent is to miss the point by a wide margin. This must be so since a decision made in breach of the rules of natural justice is null and void *ab initio*. In addition it is the body making the adverse decision which is obliged to afford the party to be affected an opportunity of being heard and not the appellate body.

31. In this case section 38(2) of the Act mandated that the enforcement notice specifies the conditions of the development permission alleged to have been contravened and such measures as may be required to be taken within the period specified in the notice for securing compliance with those conditions. It is clear that the enforcement notice did not allude to breach of any conditions. Instead the same simply stopped developments. In the premises one cannot therefore rule out the possibility that the said notice was issued

with the intention of achieving collateral purposes. If that was the intention then it would as well amount to abuse of power and constitute a ground for quashing the Respondent's decision.

32. As I found in the said case, it is similarly my finding in the instant case that the 1st Respondent's action was in bad faith and amounted to abuse of power. Further the said action was tainted with procedural impropriety in that the applicant was never accorded an opportunity of being heard before the Enforcement Notice was issued. Whereas the 1st Respondent's action may well have been merited, the due process had to be followed in arriving thereat and once the due process is not adhered to it matters not whether the same decision would have been arrived at had the process been complied with. In **Onyango Oloo vs. Attorney General [1986-1989] EA 456** the Court of Appeal expressed itself as follows:

> **"The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...There is a presumption in the interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principle of natural justice...*A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right since if the principle of natural justice is violated, it matters not that the same decision would have been arrived at*...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided...In the course of decision making, the rules of natural justice may require an inquiry, with the person accused or to be punished, present, and able to understand the charge or accusation against him, and able to give his defence. In other cases it is sufficient if there is an investigation by responsible officers, the conclusions of which are sent to the decision-making body or person, who, having given the person affected a chance to put his side of the matter, and offer whatever mitigation he considers fit to put forward, may take the decision in the absence of the person affected. The extent to which the rules apply depends on the particular nature of the proceedings...It is not to be implied that the rules of natural justice are excluded unless Parliament expressly so provides and that involves following the rules of natural justice to the degree indicated...Courts are not to abdicate jurisdiction merely because the proceedings are of an administrative nature or of an internal disciplinary character. It is a loan, which the Courts in Kenya would do well to follow, in carrying out their tasks of balancing the interests of the executive and the citizen. It is to everyone's advantage if the executive exercises its discretion in a manner, which is fair to both sides, and is seen to be fair...*Denial of the right to be heard renders any decision made null and void ab initio*."** [Emphasis mine].

33. This was a restatement of **Lord Wright's** decision in **General Medical Council vs. Spackman [1943] 2 All ER 337** cited with approval in **R vs. Vice Chancellor JKUAT Misc. Appl. No. 30 of 2007** that:

> **"If the principles of natural justice are violated in respect of any decision, it is, indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principles of justice. The decision must be declared as no decision."**

34. In **Ridge vs. Baldwin [1963] 2 All ER 66** at 81, **Lord Reid** expressed himself as follows:

> **"Time and again in the cases I have cited it has been stated that a decision given without the principles of natural justice is void."**

35. It follows that as the rules of natural justice were flouted by the 1st Respondent, this application is merited.

Order

36. In the result the Notice of Motion dated 8th December, 2016, succeeds and I issue the following orders:

1) An order of Prohibition against the 1st Respondent prohibiting them by their servants, agents and or employees from stopping any developments on plot numbers 209/4904 and 209/40905/1 in Riverside Gardens by the Applicant without following the due process of the law.

2) An order of Certiorari removing to this Honourable Court and quashing the decision of the Respondent in the letter dated 1st November, 2016 ordering the ceasing of all developments by the applicant on 209/4904 and 209/40905/1 in Riverside Gardens and ordering for a cancellation of the approvals given on 18th August 2015.

3) An order of Prohibition against the Respondent prohibiting a review of approvals given on the 18th August, 2015 for developments on plot numbers 209/4904 and 209/40905/1 in Riverside Gardens by the Applicant without following the due process of the law.

4) An order of Mandamus directed at the Respondents and each of them compelling them to remove the illegal signage posted on plot numbers 209/4904 and 209/40905/1 in Riverside Gardens.

5) I decline to make award compensation as no basis was laid for such an award.

37. As the application was not properly intituled, there will be no order as to costs.

38. It is so ordered.

Dated at Nairobi this 16th day of May, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Miss Kamau for Mr Wandabwa for the Applicant

CA Mwangi