



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO 52 OF 2008**

**IN THE MATTER OF THE PHYSICAL PLANNING ACT**

**CHAPTER 286 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF LOCAL GOVERNMENT ACT CHAPTER 265 OF THE LAWS OF  
KENYA**

**REPUBLIC .....PLAINTIFF**

**VERSUS**

**MUNICIPAL COUNCIL OF NAIVASHA.....1<sup>ST</sup> RESPONDENT**

**DIRECTOR, PHYSICAL PLANNING .....2<sup>ND</sup> RESPONDENT**

**AND**

**SUSAN WANJIRU WANG'OMBE .....INTERESTED PARTY**

**EX-PARTE**

**ESTHER WANJIRU**

**RULING**

***(Application for judicial review; applicant having been allotted land through a physical development plan of 1990; proposed plan of 1991 which has the effect of affecting her land not approved; respondent proceeding to implement the unapproved plan and allowing developments to the detriment of the applicant; whether in such instance prerogative orders may issue; no basis upon which to implement a development plan that has not been approved; obligation on authorities only to implement what is approved; application allowed)***

**A. INTRODUCTION AND PLEADINGS**

1. On 23 October 2006, the ex-parte applicant, Esther Wanjiru, was granted leave to commence judicial review proceedings against the respondents to institute proceedings seeking orders for :-

(i) *An order of certiorari to remove to the High Court for purposes of quashing the two respondents' decision to permit development of relocated plot number 199 pursuant to the altered and unapproved Development Plan DRG R59/90/3.*

(ii) *An order of Certiorari to remove to the High Court for purposes of quashing the two Respondents' decision to implement the altered and unapproved Development Plan No. DRG R 59/90/3 and also to allow development of the new plots created pursuant to the altered and unapproved development plan No. DRG R 59/90/3.*

(iii) *An order prohibiting relocation of Plot No. 199 from the location in approved plan No. 78 to the location between Plot No. 87 and 86 as proposed in the altered and unapproved plan No. R59/90/3.*

(iv) *An order prohibiting the respondents from implementing the unapproved Development Plan No. DRG R 59/90/3.*

(v) *An order of mandamus to compel the Respondents to cause the demolition of development carried out on the new plot No. 199 and pursuant to the implementation of the altered and unapproved Development Plan No. DRG R 59/90/3.*

2. Pursuant to that leave, on the 1st November 2006, the ex-parte applicant filed the substantive motion for judicial review whereupon she sought the above orders.

3. The respondents filed their respective replies to the Motion, and probably because of the response of the 1st respondent, which I will soon go into detail, the ex-parte applicant applied to amend the main Motion. The application was not opposed by the respondents and it was allowed. On 19 February 2007, the ex-parte applicant filed the amended motion which added what was termed to be an "unapproved Development Plan No. R 59/91/2" and now sought the following orders which are the subject of this ruling:-

(i) *An order of certiorari to remove to the High Court for purposes of quashing the two Respondents' decision to permit development of relocated Plot No. 199 pursuant to the altered and unapproved Development Plan DRG R59/90/3 and unapproved Development Plan Number R59/ 91/2.*

(ii) *An order of Certiorari to remove to the High Court for purposes of quashing the two Respondents' decision to implement the altered and unapproved Development Plan No. DRG R 59/90/3 and also to allow development of the new plots created pursuant to the altered and unapproved development plan No. DRG R 59/90/3 and unapproved Development Plan Number R59/91/2.*

(iii) *An order prohibiting relocation of Plot No. 199 from the location in approved plan No. 78 to the location between Plot No. 87 and 86 as proposed in the altered and unapproved plan No. R59/90/3 and unapproved Development Plan Number R59/91/2 and any other superceding unapproved development plans.*

(iv) *An order prohibiting the respondents from implementing the unapproved Development Plan No. DRG R59/90/3 and unapproved Development Plan Number R59/91/2 and any other superceding unapproved development plans.*

(v) *An order of mandamus to compel the Respondents to cause the demolition of development carried out on the new plot No. 199 and pursuant to the implementation of the altered and unapproved Development Plan No. DRG R 59/90/3 and unapproved Development Plan Number R 59/91/2 and any other superceding unapproved development plan.*

4. According to the ex-parte applicant, in the years 1980, 1981 and 1982, the Ministry of Lands and Housing, Physical Planning Department, came up with a development plan for Naivasha town. The said plans entailed the development of 142 tenant purchase houses, 38 mortgage houses, 4 senior staff houses for Kenya Posts and Telecommunications (KP & T), and a house for Agriculture Finance Corporation (AFC). She stated that the plans proposed were plan numbers DRG R59/82/1 and DRG R59/82/8 which were unapproved. In the year 1990, she averred that the Physical Planning Department came up with Development Plan R59/90/3 which superseded the earlier development plans and which plan was approved by the Commissioner of Lands and the Director of Physical Planning. In the approved plan (termed as plan No. 78) the plots were categorized with those plots in category 1 being 0.02 hectares and the plots in category 2 being 0.033 hectares. The plots in issue in these proceedings are No. 199 and No. 86 were placed in category 1 and 2 respectively and in different parts of the scheme. The plot No. 86 was originally allocated to one John Mromojo Eragai who in the year 1992 sold it to the ex-parte applicant. According to the applicant, the plot No. 86 lies between plots No. 85 and 87. However, on 23 August 2006, the Interested Party deposited construction materials on what the ex-parte applicant considers to be her plot No. 86, and claimed it to be Plot No. 199.

5. She then filed suit against the interested party, who is the owner of Plot No. 199, the suit being Naivasha PMCC No. 638 of 2006. She withdrew that suit prior to the filing of these proceedings. In the course of the proceedings before the subordinate court, she discovered that the 2nd respondent has altered the plan R59/90/3 to supersede the approved plans of 1982. According to the 1990 plan, the plot No. 199 has been introduced and placed between the plot No. 87 and 86 causing the size to plot No. 86 to be substantially reduced on the ground. It is her view that the interested party is therefore developing on part of Plot No. 86. It is her position that the interested party is developing on the basis of the plans of 1990 which are unapproved and therefore the relocation of Plot No. 199 is irregular. She has averred that unless the development of Plot No. 199 is prohibited, she stands to suffer irreparably.

6. The Interested Party filed a Replying Affidavit. She agreed that there were plans proposed in the years 1980, 1981 and 1982, which culminated in an approved plan R59/82/1 made in the year 1982. She contended that the Naivasha Municipal Council was unable to implement this plan and drew new plans in the year 1990 the same being the plan No. R 59/90/3 which according to her, has not been approved, but has superseded the plan of 1982. The said plan created both the plots No. 86 and 199. She has averred that in the year 1991, another plan DRG R59/91/2 revised the plan of 1990, and through this plan, the location of the plot No. 199 was changed as where it was originally situated was an area set aside for public utility. According to the Interested Party, this 1992 plan has also not been approved. The new location of Plot No. 199 was between the plots No. 86 and 87. She has stated that she never deposited building materials on Plot No. 86 but on Plot No. 199. This was pursuant to building proposals that she made, and which were approved on 21 July 2006 by the Physical Planning Officer, and on 10 August 2006, by the Municipal Engineer. She commenced construction before she was stopped by an order of injunction issued in the case Naivasha PMCC No. 638 of 2006. It is her view that the withdrawal of the case was made in bad faith.

7. She has stated that the orders sought herein cannot be granted because it would not now be possible to implement the Plan of 1982 as 90% of the area has been developed in accordance with the 1991 plan. She averred that approval for her proposed building was made pursuant to the development plan DRG R59/91/2 and not DRG R 59/90/3 as alleged by the ex-parte applicant. It is her position that approval for her plans is not unlawful as the respondents have a right to replan and repossess areas within its jurisdiction where development plans have not been presented within 3 months. She has averred that this is not a proper case to grant the orders sought since the decisions sought to be quashed have not been annexed and that the orders sought will affect 90% of occupants of the area.

8. The 1st respondent filed a Replying Affidavit sworn by Joseph Mutua Malinda the then Town Clerk of the Naivasha Municipal Council. The version therein is different from the versions presented by the ex-parte applicant and the Interested Party. According to the 1st respondent, the original development plan was made in the year 1980 and is referred to as R59/81/8 (the 1980 plan). The plan consisted of 124 tenant purchase houses, 30 mortgage houses, 4 senior staff houses for KP & T and a house for AFC. The area was later replanned and another development plan made in the year 1982 being plan R59/82/1

(approved Plan No. 78). This plan consisted of 142 plots, 38 mortgage houses, 4 senior staff houses for KP&T and a house for AFC. The contentious plots No. 86 and 199 did not exist then. The area was again replanned in the year 1990 through Plan No. R59/90/3 of 27 August 1990. According to the 1st respondent, this plan was approved on 22 October 1996. It is through this plan that 115 more plots were created including the plots No. 86 and 199. The plan was submitted in the year 1990 but as approval was being awaited, the 1st respondent issued letters of allotment. The plot No. 86 was allotted to John Mromojo Eragai on 18 May 1990, who later sold it to the ex-parte applicant, and the plot No. 199 was allotted to one Anne Waithera on 17 May 1991. Anne later sold the plot to the Interested Party. It is averred that the various allottees took possession way before the plan was approved in the year 1996, and in effect, the approval merely formalized the replanning process.

9. In the year 1991, a new development plan was prepared, being Plan R59/91/2. This plan was necessitated by the realization that plots No. 198 and 199 lay on a sewer line. The plan of 1991, created 8 more plots, plot Nos. 219-226 which were allocated, and also relocated the position of plot No. 199 from the sewer line to a space between plots No. 86 and 87. The Town Council approved the relocation of the plot in a meeting held on 19 March 1991. He has averred that the relocation of the plot did not in any way alter the location, size and shape of the plot No. 86. He stated that this plan of 1991 has however not been approved but has been submitted to the office of the 1st respondent. He stated that all plots appearing in the 1991 plan have been allocated although approval of the plans has not yet been given. It is his view that the said plots were legally allotted and that a majority of the beneficiaries have constructed permanent dwellings.

10. He clarified that the 2nd respondent has been implementing the 1991 plan and not the 1990 plan. He stated that the ex-parte applicant does not appear to know the boundaries of her plot No. 86 and that the decision to relocate the plot No. 199 was made in good faith to free the public utility area. He has deposed that if the orders sought are granted, it will invite a floodgate of litigation by other plot owners.

11. The State Law Office entered appearance for the 2nd respondent but I have not seen any response filed by them to the substantive motion.

## **B. SUBMISSIONS OF COUNSEL**

12. Directions were given for parties to file written submissions. The then counsels for the ex-parte applicant, M/s King'oo-Wanjau & Company Advocates, submitted that the plots No. 86 and 199 were allocated pursuant to the approved plan of 1990 and that from the said plan the locations of the two plots shows that the two plots are far apart. It was submitted that there is no other approved plan and that Sections 16 and 26 of the Physical Planning Act CAP 286, were never followed before implementing the latter plans. Four cases were cited as authorities, being, ***Kenya Bankers Association & Others v Minister for Finance & Another (No.4)***; ***Welamondi vs The Chairman, Electoral Commission of Kenya***; ***Lake Flowers Ltd vs The Commissioner of Lands***; and ***Kadamas vs Municipality of Kisumu***. None of them were however annexed.

13. For the 1st respondent, it was submitted by M/s S.M. Chege & Company Advocates, for the 1st respondent, that Section 166 of the Local Government Act (CAP 265) (now repealed) made the 1st respondent, the planning authority and in exercise of those powers it was found necessary to alter the development plans. It was further submitted that physical planning is a dynamic process. He submitted that the act of implementing the 1990 plan, prior to its approval was legal, and pointed out that it was by virtue of that plan that the ex-parte applicant obtained her plot, and she had no complaint, in as much as she was obtained her plot before the plans of 1990 were approved. It was submitted that the ex-parte applicant cannot now complain about the action of the 1st respondent to implement the changes to the plan of 1990 prior to their approval. It was submitted that it was proper to relocate the plot No. 199 as the original area was zoned for public utility. It was submitted that in line with what happened to the 1990 plan, the 1991 plan has been implemented, and only awaits an approval which will merely rubber-stamp what has been transacted on the ground.

14. It was further submitted that the Physical Planning Act (CAP 286) is not available to the ex-parte

applicant since it commenced on 29 October 1998 way after the matters complained of and the statute cannot operate retrospectively. It was also contended that nowhere has the ex-parte applicant cited violations of the Local Government Act. As to the orders of prohibition, it was argued that one cannot prohibit that which has already taken place and the implementation of the unapproved Development Plan No. R59/91/2 cannot be reversed. It was submitted that the decision to permit development in the relocated plot No. 199 was lawful and that in any event the ex-parte applicant has not been adversely affected by that decision and will suffer no prejudice. It was argued that mandamus can only compel a public duty and that it has not been shown that demolition would be a public duty placed on the 1st respondent. Counsel relied on the cases of *Peter Bogonko vs NEMA (2006) eKLR*; *Commissioner of Lands v Kunste Hotel Ltd EALR (1995-1998) 1 EA 1*; *Council of Civil Service Unions & Others vs Minister for the Civil Service (1984) 3 All ER 935*.

15. For the Interested Party, the law firm of M/s Kamunye Gichigi & Burugu, then appearing for the Interested Party, submitted that the ex-parte applicant has not tendered any evidence to show that the respondents acted without proper mandate or in excess of their powers. It was submitted that it was not shown that the respondents ignored proper procedures or that the applicant was denied a fair hearing. It was argued that if the court grants the orders, the ex-parte applicant will have no plot, since we will revert to the plan of 1982. It was also argued that it has not been shown that the action of the respondent is detrimental to her proprietary interests in Plot No. 86; that no evidence has been tendered that the plot was shown to her; and that prohibition can only be given if the 1st respondent had not acted on their decision; that it has not been shown that the respondents are under a statutory duty to demolish the building now under construction and that the application is made in bad faith.

No submissions were filed by the 2nd respondent and neither did counsel for the 2nd respondent appear at the hearing of the motion. None of the other counsels made any oral submissions.

### C. DECISION

16. Before I go far, it will be noted that the parties presented facts which were at variance. On my part, after analyzing the various documents tabled, I have come to the following conclusion on the pertinent facts.

- (a) That there were plans earlier approved in the year 1982 for the area in issue being development plan No. R59/ 82/1 (the 1982 plan).
- (b) That through the plan No. R59/90/3(the 1990 plan), the plan of 1982 was superseded.
- (c) That the plan of 1990 was approved on 22 October 1996.
- (d) That it is through this plan of 1990, that the two plots in issue, being plots No. 86 and Plot No. 199 were created. The two plots were sold by their original allottees to the ex-parte applicant and the interested party respectively.
- (e) That another plan, being physical plan No. R59/91/2 (the 1991 plan), was proposed by the 1st respondent. This plan has never been approved to date. It is this plan that relocates the plot No. 199 to the present site, that is ,between the plot No. 86 and Plot No. 87.
- (f) The interested party tabled building plans for approval. The said plans were approved on 21 July 2006 by the public health officer and on 10 August 2006 by the Municipal Engineer.
- (g) That pursuant to those plans, the interested party started developing on the plot No. 199.
- (h) That the ex-parte applicant filed suit in the Naivasha Magistrates' Court to stop the

development but withdrew the suit and opted to file this motion.

In my opinion, the following issues are up for determination.

- (i) What is the existing development plan for the area?
- (ii) Could the respondents implement the development plan of 1991 before approval ?
- (iii) Could the respondents approve the building plans of the interested party ?
- (iv) Is the ex-parte applicant entitled to the prayers sought ?

*Issue I - What is the existing development plan for the area ?*

17. On the first issue, it is not in contention that the existing development plan is the 1990 plan. That is the current approved plan of the area. The plan was proposed in the year 1990 and approved in the year 1996. I have not been shown any other approved plan that has superseded the plan of 1990. The plan of 1991 is only a proposal to amend the plan of 1990 but this has not yet been approved. It follows that all the developments within the area in issue can only follow the plan of 1990 and no other plan. That plan shows the plots No. 86 and 199 as being plots that are far apart and the two plots do not abut each other. What is between the plot No. 86 is plot No. 85 and plot No. 87, not plot No. 199.

*Issue ii - Could the respondents implement the development plan of 1991 before approval ?*

18. The short answer to that is "No". Pursuant to the Physical Planning Act (CAP 286), authorities can only implement an approved plan. Section 21 of the Physical Planning Act, (CAP 286) indeed provides that no development shall take place on any land unless it is in conformity with the approved plan. There is a very elaborate procedure outlined in the Physical Planning Act on how plans are supposed to be approved. Generally, such plans are supposed to be drawn and published for comments before approval. It is only after approval that such plan can be implemented. It was argued that the physical planning Act does not apply here but it does. It came into force in 1996 and the matters complained of took place in the year 2006.

19. It was submitted by counsels for the 1st respondent and interested party, that the plan of 1991 superseded the plan of 1990. I find that argument tenuous to the extreme. Such plan could only supersede the 1990 plan after its approval and coming into force. Before that, it cannot be said to be a plan at all; it can at best be a proposed plan or proposed amendment to an existing plan.

20. It was argued that the 1st respondent was perfectly entitled to implement the proposed 1991 plan as it awaited its "rubberstamp" of approval. Again, that argument is callous. As I stated earlier, an entity can only implement that which has been approved. It is wrong for any entity to implement a plan that has not been approved, on the argument that, it is only awaiting a "rubberstamp" approval. Who said that such plan must be approved ? It can in fact be rejected. There is no question of a "rubberstamp" or routine approval and an authority is not entitled to implement a plan on the assumption that it will be approved as a matter of course. Approval of any plan must follow due process and until that process is complete, it cannot be permissible for the authorities to implement a plan that does not exist.

21. Support to the above argument was made by referring to the previous conduct of the respondents particularly on the plan of 1990. It was argued that the plan was drawn in 1990 and approved in the year 1996, yet in between, the plan was implemented on the ground. But two wrongs do not make a right. If that was the practice then, I can only say that this was very wrong practice, which ought never to happen. In fact, I reprimand the personnel involved in the strongest terms possible. Plots were allocated on the basis of a plan that has not been approved, which was improper. As I posed earlier, what if a proposed plan is not approved? There will be severe inconvenience to the persons who will have acted on the plan. The fact that the respondents got lucky

with the plan of 1990, which plan was later approved without amendment, did not give them a licence to snub approved plans and amend them at their whims and caprice without following due process. It is no wonder that planning has gone to the dogs, where plans for areas are ignored with impunity ! Neither can the respondents try to find shelter in pleading that any adjustments will affect 90% of the people within the area and open up the floodgates of litigation. I am not moved by such arguments. I cannot condone illegality and impunity on the excuse that many people stand to be affected or that there is a possibility that this can open up the floodgates of litigation. The respondents made their own bed, and if litigation comes, then they will have to lie in it. I in fact have no sympathy for them.

22. It was further argued that the amendment did not affect the plot No. 86. I do not buy that argument. If on the approved plan of 1990, the sequence of the plots was 85,86,87... without there being a free space between them, then it needs no genius to tell you that if you insert a plot in between those plots, then you must affect the acreage of one or all of the plots. Or how else would the plot be inserted without affecting the ground ? Was it a plot, similar to that proposed in the folk tale *Abunuwasi* , which was to hang in the air without being anchored on the ground ? The ex-parte applicant was obviously going to be affected by reduced acreage.

23. It follows that the respondents could not implement the proposed plan of 1991 without approval. The existing plan remained the plan of 1990, and unless and until any amendments to it were approved, it is the only plan that could be implemented by the respondents.

*Issue iii - Could the respondents approve the building plans of the interested party ?*

24. I have already stated that it is only the plan of 1990 that could be lawfully implemented. The respondents could not purport to approve building plans for a development plan that does not exist. It goes without saying that the respondents could not approve building plans for the plot No. 199 at the new site proposed in the plan of 1991 because such plan had not been approved in the first place. The approval of the building plans on 21 July 2006 and 10 August 2006 were therefore unlawful and cannot be upheld.

*Issue (iv) - Is the ex-parte applicant entitled to the prayers sought ?*

25. The last issue I need to address is whether the applicant is entitled to the prayers sought. I note that the prayers as drawn were premised on the wrong assumption that the development plan of 1990 is unapproved. I have already held that the plan of 1990 was approved but that it is the plan of 1991 which remains unapproved. To give effect to the orders sought, I will deem the prayers sought as being prayers directed only at the unapproved development plan of 1991. On this point, I will make utility of the provisions of Article 159 of the Constitution which obligates the court to do justice to the parties without undue regard to technicalities.

26. The first prayer sought is an order of certiorari to quash the decision to permit that development of relocated plot No. 199. I see no reason why I cannot quash this decision which was clearly made when there was no approved plan for the relocation of the plot No. 199. I grant that prayer and quash the decision of the respondents to permit the development of the plot No. 199 in the site proposed in the development plan of 1991 when such plan has not been approved.

27. The second prayer is for certiorari to quash the decision of the respondents to implement the altered and unapproved plan of 1991. It is not clear when the decision to implement the altered plan was made, but it is not in doubt, that the respondents, at least through the evidence tendered of the approval of the building plan of the interested party, has attempted to implement the said proposed plan. The implementation of that proposed plan, as I have argued earlier, is illegal. I see no reason why I should not quash any decision to implement a plan that has never been approved. I grant prayer 2 of the motion.

28. The third prayer is for an order to prohibit the relocation of plot No. 199 from its approved location to that which is in the unapproved plan. Again, I see no reason why I should deny this prayer. I grant it, and prohibit the respondents from adjusting the ground position of the plot No. 199 without there being an amendment to the existing development plan which is the plan of 1990.

29. The fourth prayer is to prohibit the implementation of the unapproved development plan of 1991. With the utility of the same reasoning, I allow this prayer. The respondents indeed cannot purport to implement that which has not been approved. Section 32 (3) of the Physical Planning Act provides that the local authority is bound by any approved physical development plan. It provides as follows :-

*S.32 (3) The Local Authority shall, when considering a development application submitted to it under subsection (1)—*

*(a) be bound by any relevant regional or local physical development plan approved by the Minister;*

*(b) have regard to the health, amenities and conveniences of the community generally and to the proper planning and density of development and land use in th the area;*

*(c) have regard to any comments received from the Director, officers or authorities referred to in subsections (1) and (2);  
in the case of a leasehold, have regard to any special conditions stipulated in the lease.*

30. The 1st respondent was all along bound and obligated by law to follow the approved plan and nothing else. If I decline to issue the order of prohibition sought, then, I will in essence be giving a licence to the respondents, or their successors in title, to implement that which the law does not permit. I grant this prayer.

31. The last prayer is for mandamus to compel the respondents to cause the demolition of development carried out on the new plot No. 199. It was argued that there is no statutory duty on the part of the respondents to be compelled to do so. I do not agree, and I will refer to Sections 29 and 30 of the Physical Planning Act, which make the following provisions :-

*S. 29 Powers of local authorities*

*Subject to the provisions of this Act, each local authority shall have the power—*

*(a) To prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;*

*(b) To control or prohibit the subdivision of land or existing plots into smaller areas;*

*(c) To consider and approve all development applications and grant all development permissions;*

*(d) To ensure the proper execution and implementation of approved physical development plans;*

*(e) To formulate by-laws to regulate zoning in respect of use and density of development; and*

*(f) To reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan.*

30. Development permission

*(1) No person shall carry out development within the area of a local authority without a development permission granted by the local authority under section 33.*

*(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment not exceeding five years or to both.*

*(3) Any dealing in connection with any development in respect of which an offence is committed under this section shall be null and void and such development shall be discontinued.*

*(4) Notwithstanding the provisions of subsection (2)—*

*(a) The local authority concerned shall require the developer to restore the land on which such development has taken place to its original condition within a period of not more than ninety days;*

*(b) If on the expiry of the ninety days notice given to the developer such restoration has not been effected, the concerned local authority shall restore the site to its original condition and recover the cost incurred thereto from the developer.*

*(5) Subject to subsection (7) no licensing authority shall grant, under any written law, a licence for commercial or industrial use or occupation of any building, or in respect of any premises or land, for which no development permission had been granted by the respective local authority.*

*(6) For the purposes of subsection (5)—*

*(a) Commercial use includes shops, offices, hotels, restaurants, bars, kiosks, markets and similar business enterprises and trade but does not include petroleum filling stations;*

*(b) Industrial use includes manufacturing, processing, distilling and brewing, warehousing and storage, workshops and garages, mining and quarrying and other similar industrial activities including petroleum filling stations.*

*(7) No local authority shall grant a development permission for any of the purposes mentioned in subsection (5) without a certificate of compliance issued to the applicant by the Director or an officer authorized by him in that behalf.*

*(8) Any person who contravenes subsection (5), or (7), shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment not exceeding twelve months or to both.*

32. It will be seen that under Section 29 (3), local authorities (whose functions have now been taken over by County Governments) had power to control developments within their jurisdiction. Under Section 30 (4) the local authorities could compel a person to restore the land back to its original position and if this is not done, the local authority could do it themselves. It cannot therefore be argued that there is no statutory obligation to demolish a building which is not in conformity with the Physical Planning Act. The development in the purported plot No. 199 is in clear contravention of the Physical Planning Act as I have demonstrated earlier. There is a duty imposed upon the 1st respondent, and now its successor in title, to enforce these provisions.

33. So as to give effect to these provisions, and having held that the plot No. 199 cannot be allowed to exist in the new site, I give the interested party 90 days, which ought to be deemed as the requisite notice under Section 30 (4) (a) of the Physical Planning Act, to demolish the structures that she had built therein and restore the land to the original position. If she does not do so, then I issue an order of mandamus compelling the County Government of Nakuru, the successor of the 1st respondent, to proceed and demolish the structures and restore the land to its original state and recover the costs thereof from the interested party.

34. The only issue left is costs. In my view, the mess herein was created by the 1st respondent. The costs shall therefore be shouldered by the County Government of Nakuru, who are the successors of the 1st respondent.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 22<sup>nd</sup> APRIL 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In presence of: -**

Mr Karanja Mbugua for the ex-parte applicant

Mr Muchemi holding brief for Ms Kagucia for 2<sup>nd</sup> respondent

Mr Waiganjo for interested party.

No appearance on the part of M/s S M Chege & Co advocates for 1<sup>st</sup> respondent.

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**