



**International Commission of Jurists (Kenya Chapter) v Nairobi City County  
& another; Nairobi City County Public Service Board (Interested Party)  
(Petition 36 of 2019) [2022] KEELC 3047 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3047 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**PETITION 36 OF 2019**

**LC KOMINGOI, J**

**JUNE 30, 2022**

**IN THE MATTER OF ARTICLE 10, 22(1) & 23(30, 40(1) & (2), 159(2),  
162(2B) 165(3), 176 & 232 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTIONS 55 (D), 60(A), & (B), 63 &102  
OF THE COUNTY GOVERNMENTS ACT, NO 17 OF 2021**

**AND**

**IN THE MATTER OF SECTIONS 7, 8, 13 & 38 OF  
THE PHYSICAL PLANNING ACT, NO 96 OF 1996**

**IN THE MATTE ROF ENFORCEMENT NOTICE DATED 10TH JULY, 2019**

**BETWEEN**

**INTERNATIONAL COMMISSION OF JURISTS (KENYA  
CHAPTER) ..... PETITIONER**

**AND**

**NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR, PLANNING, COMPLIANCE & ENFORCEMENT, NAIROBI CITY  
COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**NAIROBI CITY COUNTY PUBLIC SERVICE BOARD ..... INTERESTED PARTY**

**JUDGMENT**

1. This is the petition dated July 15, 2019. The petitioner prays for the following orders;



- a. An order of prohibition against the Respondents from enforcement and or the undertaking of any further steps or actions in furtherance of the Enforcement Notice dated July 10, 2019 until such a time as the Nairobi Physical Planning Liaison Committee shall be set up and the general public made aware of its being set up and its discharging of its duties under the Act.
  - b. The petitioner is further seeking for an order compelling the respondents and the interested party to set up the Nairobi Physical Liaison Committee and make the general public aware of its being set up and its duties as provided for under the Act.
  - c. Any other order that the court may deem necessary for the ends of justice.
  - d. This honourable court do order that costs of this petition be borne by the respondents.
2. The Petition was supported by the verifying affidavit of the petitioner's Chairperson. He deponed that the petitioner is the registered owner of all that parcel of land known as Title No. IR 97594 (LR No. 2259/1) measuring 0.0200ha situate off Silanga Road, Karen within Nairobi City County. He further deponed that sometime in 2017, the petitioner commenced constructing premises on the suit property upon approval of architectural plans by the 1<sup>st</sup> respondent and upon completion, it was issued with a certificate of occupation of building by the 1<sup>st</sup> respondent on June 26, 2018.
  3. He deponed that the petitioner moved its offices to the suit property from its rented offices in Kileleshwa but on or about July 10, 2019, it was served with an Enforcement Notice by the 2<sup>nd</sup> respondent stating that the petitioner had illegally developed and occupied the suit premises without the 1<sup>st</sup> respondent's permission. He added that the petitioner is aggrieved by the 1<sup>st</sup> respondent's decision since it is the 1<sup>st</sup> respondent who sanctioned its occupancy of the premises.
  4. He also deponed that without prejudice to the foregoing, the petitioner had commenced the process of change and or extension of user by publishing an advertisement dated July 4, 2019 in the Daily Nation and the Standard Newspapers proposing to extend the use of the residential single dwelling property to include multiple use (office) subject to the 1<sup>st</sup> Respondent's approval.
  5. He deponed that the petitioner has drafted an appeal against the decision of the Director, Physical planning and Enforcement, Nairobi City County to the Nairobi County Liaison Committee pursuant to section 38(4) of the *Physical Planning Act* (PPA), against the terms of the enforcement notice but the said committee is not yet in place since the promulgation of the *Constitution* in 2010 thus the petitioner is bereft of a forum.
  6. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a notice of appointment of Advocates dated August 7, 2019 filed by M/S Musyoki Mogaka & company Advocates. They did not file a reply to the petition. They also failed to file written submissions.
  7. The interested party did not participate.
  8. On the July 22, 2021, the court with the consent of the parties directed that the petition be canvassed by way of written submissions.

### **The Petitioner's submissions**

9. They are dated March 22, 2022. Counsel for the Petitioner raised the following issues for determination: -
  - a. Whether the petition is rightfully before this court.
  - b. Whether the petitioner is entitled to the orders sought in the petition.



10. Counsel submitted that the Petitioner is aware of the procedure at section 38 of the [Physical Planning Act](#) which provides that a person aggrieved by an enforcement Notice shall appeal to the relevant liaison committee under section 13 of the Act and was bound to strictly follow the procedure in the Act as held in the case of [Speaker of the National Assembly v James Njenga Karume](#) [1992] e KLR.
11. He argued that Nairobi Physical Planning Liaison Committee does not exist, therefore the petitioner's next port of call must be this court. He relied on the case of [Immaculate Gichuku Mugo v Kaimbu County Government](#) [2021] e KLR, the case of [Republic v Nairobi City County, Director of Planning Nairobi City County & Engineer of Roads, Nairobi City County, Ex parte: Suad Salim Abubakar t/a Saab Royale Hotel](#) [2018] e KLR as well as ELC judicial Review application No.51 of 2018 the case of [Kenafric properties Limited & another v Nairobi City County and another](#).
12. On whether the Petitioner is entitled to the orders sought, he submitted that the petition is uncontroverted. He put forward the case of [Peter Ngigi Kuria & another \(Suing as the legal representatives of the Estate of Wambui Ngigi v Thomas Ondili Oduol & another](#) [2019] e KLR. He added that though uncontroverted, the petitioner had the burden of proving its case on a balance of probability as held in the case of [Kenya Power & Lighting Company Limited v Nathan Karanja Gachoka & another](#) [2016]e KLR. He pointed out that the petitioner had led evidence showing ownership of the suit land and a copy of approval issued by the 1<sup>st</sup> respondent on December 1, 2017 of its architectural plans/designs as well as a certificate of occupation dated June 26, 2019.
13. It was his submission that the petitioner has the right to property and had a legitimate expectation that the petitioner will upon receiving approvals from the 1<sup>st</sup> respondent, would enjoy peaceful occupancy of the premises and continue its operations without unnecessary interruption from the 1<sup>st</sup> Respondent. He relied on the case of [Republic v Nairobi City County & 2 others](#) [2016] e KLR.
14. He also submitted that this court should compel the interested party to set up the Nairobi Physical Planning Liaison Committee since it has power to intervene when a public body such as the 1<sup>st</sup> respondent seeks to interfere with the rights of an individual /an organization.
15. I have considered the petition and the affidavit in support. I have also considered the written submissions and the authorities cited. The issues for determination are:-
  - i. Whether the Petition is properly before this court.
  - ii. Whether the petitioner is entitled to the orders sought.
  - iii. Who should bear costs of this Petition?
16. This Petition was triggered by the Enforcement Notice dated July 10, 2019 served on the Petitioner by the 2<sup>nd</sup> respondent. The dispute should have been adjudicated within the framework provided under section 38 as read with section 13(1) of the [Physical Planning Act](#). The petitioner admits so but argues that the relevant Physical and Land use Liaison Committee contemplated by the Act does not exist.
17. Pursuant to the Deed of Transfer of Functions from the Nairobi City County Government to the National Government published vide Gazette Notice No. 1609 of 2020, some functions offered by the County Government of Nairobi were transferred to Nairobi Metropolitan Services.
18. Functions under the Physical and Land Use Planning Act were transferred. Vide the Gazette Notice dated March 26, 2020, The Director-General, Nairobi Metropolitan Services notified the public that Nairobi Metropolitan Services would operationalize and provide secretariat services to the County Physical and Land Use Planning Consultative Forum and County Physical and Land Use Planning Liaison Committee.



19. It appears that the Physical Land Use Planning Committee has been operationalized. There are no reliable sources notifying the public of the operationalization save for media reports. However, litigants have stated before court that they have been before the aforementioned committee. In *Eric Kiprotich Soi & another v Director General Nairobi Metropolitan Services* [2022] eKLR, the court stated, “The petitioners in their petition aver that on October 14, 2021, they were served with an enforcement notice by officers working under the office of the Respondent requiring them to avail the development permission for verification and to remove an alleged illegal road barrier. The petitioners state that they were aggrieved by the said enforcement notice and therefore lodged an appeal before the Nairobi County Physical and Land Use Planning Liaison Committee. This appeal is still pending before that Committee.”
20. There certainly is a functioning Physical and Land use Planning Liaison committee thus prayer (b) is spent. General information surrounding its functions, committee members, sittings should be made available to the general public so that members of the public can access it in the interest of justice. As it stands; its operations appear to be shrouded with secrecy.
21. The petitioner has annexed a Certificate of Occupation dated 26<sup>th</sup> June 2019. The same was issued by the 1<sup>st</sup> Respondent. This means that its officers had inspected the Petitioner’s building and found that it met all the requirements and/or conditions.
22. I therefore find that the Enforcement Notice dated July 16, 2019 requiring the Petitioner to stop occupation of its premises was an infringement of its right to property under article 40 of the *Constitution*. The enforcement notice was issued in bad faith, since the 1<sup>st</sup> and 2<sup>nd</sup> respondents were aware if the construction and approved the architectural plans. It later issued a certificate of occupation.
23. In conclusion, I find merit in this Petition and grant the orders sought namely:-
  - a. That an order of prohibition is hereby issued against the Respondent from enforcement and/ or undertaking of any further steps or actions in furtherance of the Enforcement Notice dated July 10, 2019, until such a time as the Nairobi Physical Planning Liaison Committee shall be set up and the general public made aware of its being set up and its discharge of its utilities under the Act. And if it has been set up, the order of prohibition shall be in force until the dispute is heard and determined by the said Liaison Committee.
  - b. That each party do bear own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2022.**

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**L. KOMINGOI**

**JUDGE**

In the presence of:-

Mr. Ochieng advocate for the Petitioner

No appearance for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

No appearance for the Interested Party

Steve - Court Assistant

