



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**

**Criminal Appeal 19 of 2004**

**PETER SEREM ..... APPELLANT**

**VERUSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

This is an appeal from the decision B. A. Ojoo RM Kericho dated 17<sup>th</sup> February, 2004. The appellant Peter Serem acting on behalf of the officials of Saptet House Company, the registered proprietors of plot no. LR 631/294 has filed this appeal against the decision of the Learned Resident Magistrate. The facts that gave rise to that decision can be summarized as follows:

On the 26<sup>th</sup> September, 2003, the appellant was served with a demolition order pursuant to the powers vested the Kericho Municipality under the public health Act section 9(5) of cap 242 Laws of Kenya. It was the prosecution's case that the appellant's premises on plot number 631/294 Saptet Company was a dilapidated building which was causing a danger to the health of the members of public. The matter came up in court on 12<sup>th</sup> April, 2004 the Learned Magistrate ordered the Public Works Engineers to assess the building and file a report in court within 30 days pursuant to the order for demolition.

The proceedings show that on the 28<sup>th</sup> January, 2004 the report was filed by Mr. D. M Odingo the District Architect who gave the following recommendations:

- 1. *Ground and Mezzanine Floors are structurally sound. There are no major structural defects that can endanger the users. There are a number of minor repairs to be carried out on the canopy and the general surfaces of walls.***
- 2. *The Flat Concrete Roof to the First floor is in a deplorable state as a result of heavy leakage. The finishes have come off; the Reinforcements have rusted due to the water sippage and as a result expanded thereby forcing the Reinforcement cover to come off; these Reinforcement can no longer be relied on to safely support the Roof. However, the main Beams still remain intact and they are still sound and can still be used to support the new Roof.***

**Recommendations: *Based on the above observations, the following recommendations are made:***

- 1. *The Roof Slab is condemned, hence it has to be removed and a new Roof should be put in place, preferably a timber-structure with G.C.I Sheets as Cladding to minimize the dead loading.***
- 2. *Toilet systems are completely non-functional, hence a new layout possibly based on the type of users should be done (new planning based on the functions being accommodated).***

The decision of the court is by way of the order dated 17<sup>th</sup> February, 2004 where the court ordered that:

***“The condemned development on plot number LR 631/294 be demolished and a new building be constructed with the approval of the planning development of the District Works Office, Kericho.”***

Arising from that judgment, the appellant has raised one principle ground of appeal based on the fact that the order by the magistrate was contrary to the recommendation by the District Works Officer. Thus the

order was not based on evidence before the court by way of the report by the District Works Office and for that reason the appellants submitted that the same should be quashed and set aside.

This appeal was not opposed by Mr. Koech the Learned State Counsel who left the matter to the courts discretion. I have evaluated and reconsidered the evidence as is the duty of the first appellants court to come up with its own independent findings on the matter.

It is clear that the court placed some reliance on the assessment by the District Public Works Engineers, who were ordered to file the report on the 12<sup>th</sup> April, 2004. There are no reasons given by the Learned Magistrate why she ignored that report which she had requested to be filed in court.

Furthermore the one sentence judgment does not give any reasons why the court arrived at the decision that the building be demolished and a new building be constructed. In the circumstances, I am satisfied that the decision should be interfered with and be substituted with the recommendations by the Ministry of Public Works whose recommendations were that the roof's slab on plot number LR 631/294 be and is hereby condemned to be removed and a new roof be put in place. Similarly, the toilet systems should and to be replaced within a period of 60 days from the date hereof. The same be supervised by the Kericho Municipal Health Department and the Public Works Officers and a report be filed in court within 90 days before the lower court.

**JUDGMENT READ AND SIGNED ON 16<sup>TH</sup> MARCH, 2006.**

**M. KOOME**

**JUDGE**