Kilonzo t/a Kokomo Beach Bar and Restaurant & another v County Executive Committee Member for Lands, Physical Planning, Housing and Urbanization & another; Lion Beach Resort (Interested Party) (Environment and Land Petition E013 of 2024) [2025] KEELC 6025 (KLR) (16 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6025 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ENVIRONMENT AND LAND PETITION E013 OF 2024

FM NJOROGE, J

SEPTEMBER 16, 2025

BETWEEN

AGNES NTHENYA KILONZO T/A KOKOMO BEACH BAR AND RESTAURANT ..... 1ST PETITIONER

KOKOMO BEACH BAR AND RESTAURANT LIMITED ..... 2ND PETITIONER

AND

COUNTY EXECUTIVE COMMITTEE MEMBER FOR LANDS, PHYSICAL PLANNING, HOUSING AND URBANIZATION ..... 1ST RESPONDENT

COUNTY GOVERNMENTS OF KILIFI ..... 2ND RESPONDENT

AND

LION BEACH RESORT ..... INTERESTED PARTY

JUDGMENT

1. The petitioners filed the petition dated 2/9/2024 and sought the following orders:

    a. A declaration does issue confirming that indeed there has been violation or infringement of the petitioner's rights and freedoms the consequence of which there should be an order for permanent injunction against the respondents restraining them from enforcing the demolition orders issued by the respondents on 9th October 2023;

    b. A mandatory injunctive order directing the respondents to issue them with a business permit or renewal of the same as they received the requisite fees for the same;

c. Punitive and/ or exemplary and/or general damages for the mental torture and or anguish and/ or psychological injuries suffered by the petitioners as a result of the respondent's actions herein and for the loss of computer accessories and other items taken away by the respondents during the aborted unlawful and or illegal demolition of the suit premises;

d. Any other relief and/or remedy the honorable Court may deem fit and just to grant in the circumstances;

e. Costs of the petition.

2. The claim of the petitioners is that their business premises known as Kokomo Beach Bar and Restaurant situate on a riparian reserve are at risk of demolition on the strength of demolition orders issued by the respondents. Those premises were authorized by the Kenya Wildlife Services and the petitioners put up temporary structures for the purposes of running a bar and restaurant whose establishment cost them Kenya Shillings 185,477, 108/-. The business is said to employ 31 employees and to be of benefit to over 200 families within the neighbourhood.

3. Upon securing authority from the KWS the petitioners sought and obtained a business permit from the respondents in the year 2023. The petitioners were issued with a single business permit dated 3rd January 2023. The petitioners concluded that the issuance of that permit to them meant that the respondents equally permitted and/or authorized the existence of the petitioners' business on the portion of land.

4. However, before the expiry of the permit the respondents colluded with Lion Beach Resort Limited the interested party herein, leading to the issuance of an enforcement notice on 21st September 2023 for the demolition of the petitioners' temporary structure.

5. It is alleged that the enforcement notice was not served upon the petitioners. The petitioners claim that failure to serve the enforcement notice was a gross violation of the constitutional provisions of Article 47 which requires a hearing before any administrative action is taken.

6. It is alleged that on 22nd January 2024, the respondents partially demolished the suit premises in the middle of the night; that they failed to wholly achieve their mission; that in the process computer accessories and other items were removed from the premises.

7. The respondents, being unsuccessful, then gave a copy of the order to the interested party who moved this court through the aforesaid Miscellaneous Application Number 1 Of 2024 for enforcement and or implementation of the demolition orders.

8. It is also alleged that the interested party had earlier on filed an application in Malindi ELC Number 046 Of 2023 seeking injunctive orders which were refused by the court; that having failed to achieve those injunctive orders, the interested party, through one Ignace Mchana Nyambu, moved court through a Miscellaneous Application Number 1 Of 2024 for enforcement and/or implementation of the demolition orders issued by the respondents.

9. It is stated that the petitioners came to know of the demolition orders in July 2024 when they were mentioned in the proceedings in Malindi ELC E046 of 2023 which suit is still pending. However, there is a status quo order in that suit. The petitioners are apprehensive that the demolition orders issued in the miscellaneous application may be executed despite the existence of the status quo order in the suit Malindi ELC E046 of 2023.

10. The petitioners aver that they have paid a sum of Kenya shillings 98,000/= for the renewal of their permit but the respondents have not issued them with a permit. They also claim that there are

conflicting reports coming from the despondence offices indicating that the demolition orders may have been issued corruptly by junior staff.

11. They alleged that:

    a. The respondent unlawfully, illegally or unprocedurally issued a purported enforcement notice regarding the construction of the suit premises on riparian land without serving the same on the petitioners which was in contravention of *the Constitution* and Section 72 or the *Physical and Land Use Planning Act*.

    b. The respondents handed over the notice to the interested party for the latter's own benefit for use in a suit;

    c. The respondents' unlawfully and illegally or unprocedurally issued a purported demolition notice for the demolition of the petitioners' business premises without any prior notice as required in *the Constitution* and Section 72 of the *Physical and Land Use Planning Act* (hereinafter also referred to as "PLUPA");

    d. That having issued such demolition notice in that manner the respondents handed it to the Interested party for the latter's own benefit for use in a suit;

    e. That the respondents acted violation of Article 40 of *the Constitution* since their actions prevented the petitioners from owning and operating their business premises notwithstanding the fact that they had licensed the petitioners to operate and had received the requisite permit fees.

    f. The respondents violated the provisions of Article 47 of *the Constitution* providing for fair administrative action by failure to issue the petitioners with the purported enforcement notice and demolition order and instead handing the same to the interested party for use in a court case with a sole intention of aiding the interested party in their attempts to evict the petitioners from the suit premises.

12. The petition is supported by them who sworn affidavit of Agnes Nthenya Kilonzo dated 2nd September 2024. The petitioners therefore sought the orders set out here in before in this judgment. This court issued a conservatory order in favour of the petitioners pending the hearing and determination of the petition.

The 1st Respondent's Response To Petition.

13. The 1st respondent filed an affidavit sworn by Hon. Jane M. Kamto the County Executive Committee Member in charge of Lands Physical Planning Housing and Urban Development in Kilifi County. She wholly adopted the contents of the affidavit of the 2nd respondent sworn by Henry Faraji Chipinde on 10th March 2025. She also stated that the 1st respondent is mandated to monitor compliance with development control requirements and to issue enforcement notices where there is illegal or unapproved development as per Section 52 and Section57 of the *Physical and Land Use Planning Act* 2019, and that the enforcement action taken by the respondent was proper and justified. She further stated that upon receiving a complaint regarding an unauthorized development on riparian reserve land adjacent to the Watamu Marine Protected Area and after a site visit assessment, her department issued enforcement notices dated 21st September 2023 and a demolition order dated 9th October 2023. She stated that the petitioners were issued with a written invitation to a consultative meeting on 19th September 2023 but failed to attend the said meeting or comply with directives issued thereafter; that the land on which the offending structure is constructed is classified as riparian reserve and constitutes

public land under Article 62(1) (c) of *the Constitution* of Kenya. She further avers that the petitioners never obtained any development permission from the 1st respondent as required by Section 57(1) of the *Physical and Land Use Planning Act* 2019. She dismissed the reliance on a business permit as insufficient to authorize such construction on public land. She denied bias or collusion and averred that her office was acting on behalf of the interested party and maintained that her office took strictly administrative and legal actions which were not influenced by any private individual or entity.

14. Further she stated that the 1st respondent only engaged in demolition within the law of process outlined in the enforcement and demolition orders and those actions were done under the supervision of the relevant enforcement officers of the county government. The petitioners were granted ample opportunity to be heard through a written notice and invitation to a Planning Committee meeting and their failure to attend or appeal against the enforcement notices negates their allegations of violation of Article 47 regarding fair administrative action. She advanced that Article 40(6) of *the Constitution* the protection of property rights does not extend to unlawfully acquired property. She stated that the structures by the petitioners fell afoul of Constitutional, statutory and environmental requirements and that the petition is brought in bad faith in order to sanitize the unlawful developments on environmentally sensitive public land. She denied violation of any constitutional rights or freedoms of the petitioners.

2nd Respondent's Response To Petition.

15. The 2nd respondent opposed the petition by way of the affidavit of Henry Faraji Chipinde sworn on 10th March 2025.

16. The affidavit of Henry Faraji Chipinde states that he is the County Solicitor of the 2nd respondent conversant with the matters in issue. He avers that the second respondent was approached by the interested party through the Department Of Land Energy Housing Physical Planning and Urban Development with a complaint that the petitioners herein had without color of right erected permanent structures on the face of the interested party's first row beach property; that the same structure obstructed the natural view of the Indian Ocean as well as annoyed the interested party's visitors and in general the users of its resort; upon investigations it was found that the structure erected by the petitioners was constructed without approval from the second respondent and on riparian land; vide a letter dated 19th September 2023, the second respondent therefore invited the owners of the said structures to a meeting at the 2nd respondent's Lands Headquarters boardroom. The second respondent was acting in the discharge of its mandate. The petitioners failed to produce the necessary approvals issued by the second respondent permitting the erection of the structures and the second respondent was constrained to issue the petitioners with an enforcement notice on 21st September 2023. That notice was served upon the petitioners by both the second respondent and the interested party but the petitioners neglected to comply with the said notice thereby constraining the 2nd respondent to issue the demolition order dated 9th October 2023. The deponent added that issuance of a business permit by the second respondent does not in any way exempt the holder of the said permit from compliance with the second respondent's legislations or other written law and that a warning to that effect is indicated in every permit. Further, a business permit is for the purpose of allowing one to carry out a business and not to construct any structures without the required approvals. The deponent added that the petitioners in the application for a business permit conveniently failed to disclose the location of their business as being riparian land. The alleged influence of the interested party over the second respondent was denied, as was the claim that the second respondent had violated the fundamental rights and freedoms of the petitioners as particularized in the petition.

The Petitioner's Submissions On the Petition

17. The petitioners filed submissions dated 14th May 2025. They stated that they constructed their premises with authority from the Kenya Wildlife Services (KWS). KWS had granted permission to Watamu Youth Development Group to use the said area, and that group proceeded to lease the said area to the first petitioner with the permission of the KWS. The petitioners' developments on the land were worth 185,457,108/-. The respondents issued the petitioners with a single business permit and 9 months later they issued them with an enforcement notice. They have evidence of payment of the requisite fees to the respondents. The Petitioners wonder on what basis the permit was issued if the respondents did not recognize the operations of the petitioners. The interested party applied for mandatory injunctive orders in ELC Case Number 46 Of 2023 and failed to get them and therefore obtained ex parte demolition orders on 9th October 2023 in ELC Miscellaneous Number 1 Of 2024.

18. The petitioners emphasize that the respondents and the interested parties are colluding to defeat the ends of justice and to support this claim they point to the fact that the enforcement notice and demolition orders were issued by the respondents and handed to the interested party for it to seek to have the court sanction the demolition in Malindi Miscellaneous Application Number 1 Of 2024.

19. The petitioners state that the second respondent has not disputed the issue of non-service of the enforcement notice and the demolition order. They maintain that the invitation to a meeting at the respondents' office was extended to one Abudi Shoshi Abudi and not the petitioners. They also state that the enforcement notice dated 21st September 2023 was addressed to the said Abudi though there was a copy addressed to the first petitioner, but no service of the intended recipients was effected and that thus the demolition order was made in violation of *the Constitution* with regard to the right to a hearing.

20. They also maintained that the second respondent also failed to provide evidence of service of the enforcement notice and the demolition order.

21. The petitioners aver that the contents of the interested parties' response to the petition which is an affidavit sworn by its manager, as well as the attachment of the enforcement notice and demolition order in the interested parties filings in court in its attempts to get sanction of the court to have the suit property demolished, confirms the existence of collusion between the respondent and the interested party.

22. Consequently, the petitioners state that their fundamental rights and freedoms have been violated through the issuance and non-service of the enforcement notice and the demolition order.

23. The petitioners rely on Section 72(1) of the Physical and Land Use Act of 2019. The argue that the contents of the enforcement notice did not conform to the mandatory provisions of Section 72 (2).

24. The petitioners also aver that the respondents had no power to issue the demolition order as the law provides for prosecution of any person refusing to comply with an enforcement notice. To support this averment, they refer to Section 57 to of the *Physical and Land Use Planning Act*. They maintained that for demolition orders to be issued by the respondents, there should have been a prosecution of the offender and a conviction.

25. Regarding whether the option of appeal was open to the petitioners they point out that non-service was unchallenged hence the issue of exercise of right of appeal does not arise.

26. The petitioners maintain that the present suit is not res judicata as claimed by the interested party and they base this argument on the fact that the previous proceedings referred to by the interested party

were in the form of a Notice of Motion application and not a suit, and that no suit raising the same issues has been heard on the merits. They cite the case of James Mukura Chacha & another versus Orbit Chemical Industries Limited & Another Nairobi ELC Miscellaneous E003 of 2023 2024 KEELC 3278 (KLR)

27. It is urged by the petitioners that the respondents violated articles 25(c), 40, 47 and 50 through the issuance of the enforcement notice; that they violated Article 27 when they issued an enforcement notice and a demolition order and handed them over to the interested party; that under Article 27 (2) they violated the right to equality and freedom from discrimination since they appeared to be biased in favor of the interested party; also, they violated Section 72 of the *Physical and Land Use Planning Act* and Article 25C of *the Constitution* on the right to a fair trial.

28. In addition, it is stated that the respondents also violated Articles 40 and 43 of *the Constitution* with regards to protection of rights to property and economic and or social rights since the orders they issued were not intended to secure such rights in favour of the petitioners.

29. It is averred that since the respondents were acting as a quasi-judicial organ they ought to have complied with Article 47(1) and 2 with regard to fair administrative action but they never did so.

30. On the foregoing grounds it is submitted that the petitioners risk danger of suffering serious prejudice due to the intended and enforcement of the demolition order. The petitioner cite Joseph Maina Muigana and 16 Others Versus the County Government of Nyandarua, Petition Number E007 of 2023 for the proposition that persons to be affected by any administrative action should be notified of such action as provided for under Article 47 of *the Constitution*.

31. The petitioners also averred that giving the enforcement notice meant for the petitioners to the interested party did not amount to fair and equal treatment under Article 27. They cited Peter O. Nyakundi & 68 Others Versus the Principal Secretary State Department of Planning Ministry of Devolution and Planning and Another Petition Number 24 Of 2015 Nakuru for the proposition that persons ought to be accorded fair and equal treatment and Article 27 of *the Constitution*.

Submissions of the 1st Respondent

32. The first respondent filed submissions on the petition dated 2nd May 2025. The first respondent raised 4 issues for determination as follows:

    a. Whether the petitioners acquired valid approvals for the development of the impugned structures;

    b. Whether the enforcement and demolition action was lawful and procedurally fair;

    c. Whether the petitioners' constitutional rights were violated;

    d. whether the petitioners are entitled to the reliefs sought.

33. Regarding the first issue, it was stated that the petitioners had admitted that they erected a temporary structure for the purposes of operating a beach bar and restaurant on riparian land and authorization was from KWS and not from the statutory land use regulators; that Section 72 of the *Physical and Land Use Planning Act* requires the development of public land to be preceded by written development permission; that under Article 62(1)(c) of *the Constitution* public land is to be managed and administered by the National Land Commission on behalf the National and County Governments; that under Section 57(1) of the *Physical and Land Use Planning Act* a person shall not carry out developments within the jurisdiction of a county government without a development permission granted by the respective County Executive Committee Member. As in the reply, it was reiterated

that the business permit granted by the respondents did not authorize construction on riparian land and that such permit did not substitute the need for valid development permission; that notices were issued warning the petitioners of the want of compliance with statutory planning requirements but the petitioners never complied with or appealed against those notice; that the demolition order dated 9th of October 2023 was issued lawfully and in compliance with the planning regulatory framework and not arbitrarily; that the structures of the petitioners were illegal and subject to lawful enforcement.

34. Citing Sections 57 and 72 of the Physical Land Use Planning Act, Kenya National Highways Authority V Shalien Masood Mughal and Five others 2017 eKLR, save Lamu and 8 others versus National Environment Management Authority (NEMA) and another 2019 eKLR, the 1st respondent maintained that the enforcement and demolition actions were lawful procedural fair and carried out in strict compliance with the *Physical and Land Use Planning Act* and due process.

35. The first respondent cited Samuel Kamau Macharia Versus Kenya Commercial Bank & 2 Others 2012 eKLR (Supreme Court), Suchan Investments Limited V Ministry of National Heritage and Culture & 3 Others 2016 eKLR, Dry Associates Limited Versus Capital Markets Authority and Another 2012 eKLR, and maintained that under Article 40 (6) the right to protection of property do not extend to any property that has been unlawfully acquired.

36. Citing Article 47 of *the Constitution*, the 1st respondent stated that the actions of the respondent were preceded by a clear process of site inspection, followed by issuance of an enforcement notice and demolition order and that no violation of rights under Article 47 is discernible.

37. The first respondent concluded that the petitioners are not entitled to the reliefs sought.

Submissions of the 2nd Respondent.

38. On 15th May 2025 when the parties appeared before Court Mr Makori appearing for the 2nd respondent on behalf of Mr Abwao informed the court that the second respondent would associate itself with the submissions of the 1st respondent.

Submissions of the Interested Party.

39. The interested party filed submissions dated 4th April 2025. It is stated that the petitioners have admitted to have built a massive structure which obstructs the ocean view of the interested party who owns title to the first row beach properties known as C R 11735/1 and 11736/1. The Interested party avers that it has pursued all lawful avenues including action from the respondent, the latter who successfully issued the demolition orders in question as well as the filing of Malindi Miscellaneous Application Number 1 Of 2024 in which an order was issued by this court; that in the event it was KWS that permitted the petitioners to construct the suit premises, the same was in violation of Article 63(2) which specifies who should administer public land. Power or authority could only be obtained from the National Land Commission in line with Article 63(2) and (3) and not from the Kenya Wildlife Service, and any permission by the latter was therefore hollow, especially because it referred to a different property is land Portion Number 23.

40. The Interested party also submitted that the petitioners have violated the Environmental Management and Coordination Act as read with Article 62 (1) and (2) considering that all rivers, lakes and other water bodies and the land between their high and low water marks are public land whose cultivation or development is prohibited.

41. It is urged, citing Section 7 CPA and Kennedy Mokua Ondiri Versus John Nyasende Mosioma & Another [2022] eKLR, that the petition is res judicata Malindi ELC Miscellaneous Number 1 Of 2024.

Analysis and Determination

42. I have considered the petition, the responses and the submissions of the parties. The issues arising for determination in expectation are as follows:

    a. Whether the petition is res judicata;

    b. Whether the petitioners' constitutional rights were violated;

    c. What orders should issue?

43. By reason of the disclosures made in this suit, it would appear that there was much material that never came to light in Miscellaneous Application Number 1 Of 2024. Non-participation of the petitioners herein in that matter after service led to the issuance of the orders therein. Both the petitioners herein and the interested party contributed to that state of affairs in their own way as is seen from those proceedings. No issues of violation of constitutional rights of the petitioners was involved in the earlier proceeding. Now this is a weighty constitutional petition that has overtaken that proceeding (Miscellaneous Application Number 1 Of 2024) to substantively resolve the issues inter partes. It suffices to state herein that it is the present petition that determines the issues in question between the parties in substance.

44. Before I delve into a discussion of the issues for determination I find it necessary to outline a brief history of this dispute, and it is as follows:

45. Kenya Wildlife Services is said to have permitted Watamu Youth Development Group, a local self-help group to maintain the marine ecosystem in the area alongside undertaking other activities aimed at keeping the beach secure. Vide a letter dated 11th November 2021, Kenya Wildlife Service wrote to the Chairman Watamu Youth Development Group permitting them to put up a temporary banda in the Watamu Marine Protected Area on condition that only temporary materials shall be used and that all Watamu Marine Protected Area rules and the regulations in the *Wildlife Conservation and Management Act* are observed. Other conditions were that the group would support KWS conservation initiatives such as beach cleanups, education and awareness, and keeping the beach secure at all times. The structure was prescribed to measure not more than 10 metres in length width and height. KWS also reserved the right to remove the structure unconditionally.

46. Vide an agreement dated 30th June 2021 and a letter dated 25th October 2021, Watamu Youth Development Group purportedly leased some land to the 1st petitioner who then built a structure thereon in which they are operating the business of bar and restaurant going by the name Kokomo Beach Bar and Restaurant. Payable to the group by the 1st petitioner as consideration for building and operating a restaurant on the site and for utilization of the land, was to be Kenya shillings 100,000/- annually which was referred to as the conservation fee, and Kenya shillings 30,000/= only monthly during the high season, and Kenya shillings 15,000/ monthly during the low season. The first petitioner was to have the premises for 6 years with effect from 1st November 2021 to 1st October 2027, but the agreement was to renewable annually. The first petitioner was given a freehand in that agreement to operate the business on the said premises and to absorb in the profits or losses arising therefrom. The agreement was executed by the chairman, the vice chairman and 4 members of the Watamu Youth Development Group.

47. From the facts disclosed by the parties, the petitioners are aware that their restaurant stands on riparian reserve within Watamu Marine Protected Area, and that it also falls within the jurisdiction of the County Government of Kilifi. The petitioners, aware of these facts, applied for a business permit and upon payment of permit fee of Kenya shillings 9, 000/-, food hygiene licence fee as well as other fees

which were receipted, the Kilifi County Government granted them a single business permit running from 3rd January 2023 to 31st December 2023 for their young business. However, before the expiry of that business permit period, the respondents issued and enforcement notice on 21st September 2023 for the demolition of the petitioners' structure. It is alleged that the notice was not served upon the petitioners. The respondents subsequently issued a demolition order on 9th October 2023 and proceeded to partially demolish the suit premises in the middle of the night.

48. On 24th November 2023 the interested party filed ELC 046 of 2023 Malindi seeking an injunction against the petitioners but an injunctive order was refused in the first instance.

49. Despite the attempted demolition of their premises by the respondents, on 17th January 2024 the petitioners paid Kenya Shillings 98,000/= for renewal of their business permit but they were not issued with a renewed business permit by the respondents.

50. Subsequently in January 2024, the interested party, using the name of its manager ostensibly to conceal its identity, and while ELC Number 46 of 2023 was pending a ruling on an injunction application, filed Malindi Miscellaneous Application Number 1 Of 2024 for enforcement of the demolition orders, that is, seeking sanction of the court for the demolition ordered by the respondents; that application was granted on 20th February 2024. On 28th February 2024 the 1st petitioner applied to have the said orders made in Miscellaneous Number 1 Of 2024 set aside which application was dismissed on 29th May 2024.

51. In July 2024, the interested party applied in ELC E046 of 2023 to have a ruling arrested on account of the ex parte the order issued in Miscellaneous Application Number 1 of 2024 Malindi and that is when the petitioners allege they got to know of the existence of demolition orders issued by the respondents. On 2nd September 2024 the present petition was filed and on 2nd October 2024 this court issued a temporary conservative orders pending the hearing and determination of the application which orders were later confirmed in a substantive ruling dated 25th February 2025. Malindi ELC 046 of 2023 is said to have been withdrawn on 2nd October 2024 when it came up before the Hon Justice Makori.

Whether this petition is res judicata malindi miscellaneous number 1 of 2024.

52. The contention that the application for conservative orders in the present petition was res judicata Miscellaneous Application Number 1 Of 2024 was dealt with in the ruling delivered in this matter on 25th February 2025 at paragraphs 11 - 15 wherein it was dismissed. On the basis of the same reasoning in those paragraphs, I find that the present petition itself is not res judicata.

Whether the petitioners' constitutional rights were violated

53. The Petitioners alleged that their rights under *the Constitution* have been violated by the actions the respondents taken against their business as well as some procedural omissions. The respondents on their part contend that all they did was within the law and that it was prompted by the petitioners' breach of the law.

54. I will first examine whether the petitioners have, as alleged by the respondents, acted in contravention of the law before addressing the propriety of the respondents' actions and omissions.

55. The main dispute in this suit is whether it was proper for the petitioners to construct the subject business premises on riparian land and whether it was proper to do so without any authority from the County Government and the National Land Commission. All answers to the other subsequent questions or issues arising in this suit as to violation of the petitioners' Constitutional rights around the answer to those two questions.

56. There is no doubt that the County Government of Kilifi, the 2nd respondent herein, is the planning authority within Kilifi County charged by the law with preparing development plans for the County. Section 36 of PLUPA provides as follows:

> " 36. County Physical and Land Use Development Plan
>
> (1) Once in every ten years, a county government shall prepare a county physical and land use development plan for that county.
>
> (2) Each county physical and land use development plan shall be in conformity with the National Physical and Land Use Development Plan and any relevant Inter-County Physical and Land Use Development Plan.
>
> (3) The county executive committee member shall ensure the county physical and land use development plan is prepared and published within a period of eighteen months from the time notice of intention to prepare the plan is published."

57. Part of its mandate under the law is to designate where certain developments are to be effected. Section 37 of PLUPA provides as follows:

> " 37. Purpose and objects of a county physical and land use development plan
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> The objects of a county physical and land use development plan shall be—
>
> (a) to provide an overall physical and land use development framework for the county;
>
> (b) to guide rural development and settlement;
>
> (c) to provide a basis for infrastructure and services delivery;
>
> (d) to guide the use and management of natural resources;
>
> (e) to enhance environmental protection and conservation;
>
> (f) to identify the proper zones for industrial, commercial, residential and social developments;
>
> (g) to improve transport and communication networks and linkages;
>
> (h) to promote the safeguarding of national security; and
>
> (i) any other purposes that may be determined by the planning authority."

58. Under Section 47 PLUPA, the preparation of a local physical and land use development plan may be initiated by the county executive committee member, in this case the 1st respondent.

59. Besides creating the county development plan, a county government exercises the power of development control within its jurisdiction. According to Section 2 of PLUPA, "development control" means the process of managing or regulating the carrying out of any works on land or making of any material change in the use of any land or structures and ensuring that operations on land conform to spatial development plans as well as policy guidelines, regulations and standards issued by the planning

authority from time to time in order to achieve a purposeful utilization of land in the interest of the general welfare of the public. Under Section 56 of PLUPA, subject to the provisions of PLUPA, the *Urban Areas and Cities Act* (Cap. 275) and the *County Governments Act* (Cap. 265) the county governments shall have the power within their areas of jurisdiction to inter alia, consider and approve all development applications and grant all development permissions.

60. Section 57 of PLUPA provides that a person shall not carry out development within a county without a development permission granted by the respective county executive committee member.

61. According to Section 58 PLUPA, a person shall obtain development permission from the respective county executive committee member by applying for development permission from that county executive committee member in the prescribed form and after paying the prescribed fees. Section 58 PLUPA also requires that an applicant for development permission shall provide documents, plans and particulars as may be required by the respective county executive committee member to indicate the purposes of the proposed development. Also, where an applicant is not the registered owner of the land for which development permission is being sought, that applicant shall obtain the written consent of the registered owner of that land and the applicant shall provide that written consent to the respective county executive committee member at the time of applying for development permission. Prior to issuance of development permission, the application is circulated to other offices for their comments in accordance with Section 60 PLUPA which provides thus:

> "Within seven days of receiving an application for development permission, the county executive committee member shall give a copy of the application to the relevant authorities or agencies to review and comment and the relevant authorities or agencies shall comment on all relevant matters including—
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> (a) land survey;
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> (b) roads and transport;
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> (c) agriculture and livestock;
>
> (d) health;
>
> (e) public works and utilities;
>
> (f) environment and natural resources;
>
> (g) urban development;
>
> (h) national security in respect of land adjoining or within reasonable vicinity of safeguarding areas; and
>
> (i) any other relevant authority.
>
> (2) Within fourteen days of receiving the copy of the development permission from a county executive committee member, the relevant authorities or agencies shall submit their comments to the respective county executive committee member."

62. It is clear from Section 60(2) that in the present case, had an application for development permission been lodged by the petitioners, then KFS or the line ministry under the National Government under which it falls, could have, among other agencies, had an opportunity to submit their comments to the county executive committee member for consideration.

63. It is clear that if a proposed development is to be allowed under PLUPA, then the development permission granted by a county executive committee member must be subject to compliance with the provisions of any other written law.

64. In this case, the only document that gives the petitioners authority to construct their bar and restaurant is the agreement between them and Watamu Youth Development Group dated 30th June 2021. However, the group does not have title to the land on which the premises are constructed. Apparently the group relied on the letter dated 11th November 2021 to enter into that agreement with the petitioners to empower the latter to build the business premises on the land.

65. It is admitted by the petitioners that their structure stands on a riparian reserve; the petitioners also do not deny that they never sought planning permission from the respondents to construct the premises. They alleged that they obtained authority from KWS, which is also a doubtful assertion, because no documents from KWS have been exhibited to show such authority. The only letter written by KWS is dated 11th November 2021 and it was addressed to Watamu Beach Development Group. It also injuncted the said group from constructing anything bigger than 10 metres in length, width and height.

66. Even assuming that the KWS letter and the agreement with the group could legally empower the petitioners to develop the riparian land, which is not the case, what they appear to have built is far larger than the structure that the KWS letter authorized.

67. Besides, the land being within the jurisdiction of the County Government of Kilifi, it is indisputable that they were obliged to obtain development permission from the respondents, which they never did. This court finds that the petitioners were in violation of the provisions of Section 57 (1) of the *Physical and Land Use Planning Act*.

68. Secondly, it is undisputed that the petitioners constructed their bar and restaurant on riparian land which is under the care of the Kenya Wildlife Services. It is public land. Article 62 of *the Constitution* of Kenya provides as follows:

> "62. Public land
>
> (1) Public land is—
>
> (a) .....
>
> (l) all land between the high and low water marks;
>
> .....
>
> (2) Public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under—
>
> (a) clause (1)(a), (c), (d) or (e); and
>
> (b) clause (1)(b), other than land held, used or occupied by a national State organ.
>
> (3) Public land classified under clause (1) (f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.

(4) Public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use."

69. There is no doubt therefore that for the petitioners to be able to deal with the land as they did, besides any sanction from the KWS and development permission issued by the respondents, they also required authority from the National Land Commission. Indeed, such consent is required considering the provisions of Section 58(4) PLUPA which states thus:

> "(4) Where an applicant is not the registered owner of the land for which development permission is being sought, that applicant shall obtain the written consent of the registered owner of that land and the applicant shall provide that written consent to the respective county executive committee member at the time of applying for development permission."

70. The omission to secure consent or authority from the National Land Commission is therefore fatal to their development of the land.

71. Thirdly, the bar and restaurant business was built on riparian area and thus on public land and from the costs cited by the petitioners, that is if they are correct, it is a massive project that defeats the very definition of "temporary". It is doubtful that a temporary structure of 10 metres width, length and height as authorized by the KWS in their letter dated 11th November 2023 could utilize Kenya shillings 185, 477,108/-.

72. It must be reiterated that the development permission, even where it has been granted by a county executive committee member, is subject to compliance with the provisions of any other written law. In the present case whether or not permission was given, there are certain legal provisions that the petitioners should have adhered to.

73. It being a development on riparian land, the petitioner's structure is clearly a development out of character with the surroundings and it or to have been subjected to an environmental impact assessment as provided for under Section 58 of the Environmental Management and Coordination Act (EMCA). That section provides as follows:

> "58. Application for an Environmental Impact Assessment Licence
>
> (1) Notwithstanding any approval, permit or license granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall before for an financing, commencing, proceeding with, carrying out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the Second Schedule to this Act, submit a project report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee."

74. From the foregoing analysis, it is therefore clear that the petitioners not only breached the law and *the Constitution* by constructing their bar and restaurant business on riparian land and did so without the necessary development permission from both the County Government of Kilifi and a National Land

Commission, but they also did so without conducting and Environmental Impact Assessment under the supervision of the National Environment Management Authority (NEMA).

75. It would also appear that the violation of the law and *the Constitution* by the petitioners took place under the gaze of the three institutions charged either with management, protection, or development control of the land concerned. These were the KWS the National Land Commission and the County Government of Kilifi respectively. However, the provisions of the law in Section 57 of the *Physical and Land Use Planning Act* and Section 57 of the Environmental Management and Coordination Act squarely place the burden of seeking development approvals upon project proponents who in this case were the petitioners.

76. There are mechanisms set out in the *Physical and Land Use Planning Act* for dealing with unauthorized developments such as the petitioner's. Section 57 (3) - (6) provides as follows:

> (3) A county executive committee member shall require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as near to its original condition as is possible and that such restoration shall take place within ninety days.
>
> (4) Where a person who is required to do so fails to comply with the provisions of subsection (3), the relevant county executive committee member may undertake to restore the land as required and shall recover the cost of the restoration from the person required to undertake the restoration.
>
> (5) A county executive committee member may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause.
>
> (6) A county executive committee member may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause."

77. Owing to the breach on the part of the petitioners, this court agrees that the respondents were therefore entitled under the law to apply those provisions of PLUPA that set out those mechanisms in order to deal with the unauthorized development of the petitioners. Ordinarily, the application of the law in Section 57(3) - (6) PLUPA by the respondents in the proper fashion and in the discharge of the legal mandate ought not occasion the petitioners any room for grievance against the former. Despite admission that they never secured the respondent's development permission for their structure, the petitioners are now aggrieved by the manner in which the respondent swooped down upon their illegal structure to enforce the law.

78. They appear not to understand why an enforcement notice was issued against them despite the respondent having issued a single business permit to them. They appeared to think that the issuance of a business permit to their business was a recognition of the existence and legality of their structure and the business operated therein by the respondents, and that the enforcement notice was therefore not proper.

79. The petitioners are also discontented with what they term to be non-service of the enforcement notice against them. They maintain that such non-service was a gross violation of the constitutional provisions in Article 47 which requires in mandatory terms a hearing before any administrative action is taken. And what is the response of the respondents to this allegation?

80. The respondents aver that they received a complaint by the interested party herein regarding an authorized development on riparian land adjustment to the Watamu Marine Protected Area,

conducted a site visit assessment and ascertained that the said structure was actually illegally built on riparian land and without prior approvals from the 2nd respondent. They therefore issued enforcement notices dated 25th September 2023 and subsequently issued a demolition order dated 9th October 2023. However before issuing the demolition order they invited the petitioners in writing to a consultative meeting scheduled for 21st September 2023 vide a letter dated 19th September 2023, but they allege that the petitioners never attended that meeting. Not only that, the petitioners allegedly also failed to comply with the respondents' directives, hence the issuance of the demolition order in October 2023.

81. Notably the letter dated 19th September 2023 invites one Abudi Shosi Abudi to a meeting with the County Planning Committee at the Lands headquarters boardroom on Thursday 21st September 2023 to discuss the structure along the beach at Watamu. There is no doubt that the letter referred to the suit premises. The question that arises is who Abudi Shosi Abudi was, and his involvement in the matter, and whether that letter was sufficient invitation to the petitioners herein to attend for that meeting. I have not seen any substantive explanation by the petitioners or the respondents stating who the said Abudi was, or the role he was playing in the dispute. What the first petitioner merely states at paragraph 4 of the supplementary affidavit is that the letter to the said Abudi has no relevance to the case and that it is clear that the respondent did not engage the petitioners prior to the issuance of the enforcement notice.

82. In assessing the liability of the respondents in this matter, this court will not place excessive premium into non-service of a letter to the petitioners for the reason that from inception, the petitioners knew or ought to have had the knowledge that they were doing the wrong thing by failing to secure the development permission of the respondents prior to construction of their bar and restaurant on riparian land. The petitioners began the concealment game when they failed engage the County Government for approval of the construction of their structure despite the clear provisions of the law compelling them to do so.

83. I agree with the respondent's argument that the issuance of a business permit is no substitute for development permission. Nevertheless, the respondents are deemed to know of all the developments that happen within their area of jurisdiction. It is incredible that the respondents blame the petitioners for conveniently failing to disclose the location of their business as being riparian land in their application for a business permit. It would be a serious dereliction of their duty for the County Government to have solely relied on the factually economical disclosures of the petitioners as to where their bar and restaurant business was located, and to do so only at the licensing stage without demanding of the petitioners proof of planning permission for those premises, yet the County Government had the duty under the *Public Health Act* of inspecting that business physically before issuing a business permit in order to ascertain the hygiene and integrity of the enterprise they were about to licence. If the process of inspection prior to licensing had been conducted, the respondents would have quite easily realized that the petitioners' structure was not only located on a riparian area but also that it had been built without planning permission. The respondents are not meant to blindly license business without knowing where they are located or whether they have been built with their permission. On that premise, this court, wanting to have full faith in the abilities of the respondents to discharge their duties as per the law, finds that the mere action of licensing the petitioners' business implied that the respondents knew where that business was located. A business permit issued was a recognition that the petitioners were undertaking some commercial activity in a structure built on riparian land and it also implied that the respondents condoned the petitioners acts on the riparian area. Their very action of licensing the petitioners' business being operated in unauthorized structure was in itself illegal and contrary to good planning. It should not have been the case. They should therefore, having been woken up by the interested party to the fact that they had being condoning an illegality, have adopted a softer approach and thus engaged their partners in illegality, the petitioners, for

discussions over the structure and the business before issuing the enforcement notice and demolition order. Therefore, a letter similar to that written to Abudi ought to have been written and served upon at least the first petitioner if not both petitioners. That is what should have amounted to fair administrative action in accordance with Article 47 of *the Constitution* since there had being some kind of recognition that the petitioners were operating on the suit premises.

84. There is no evidence of service of such a letter upon the respondents. Proper evidence of such service could have been brought to the attention of the Court by way of a sworn affidavit of service by the server, or at least a credible acknowledgment of receipt by the petitioners on the face of a copy of such a letter. None was provided and the conclusion of this court is that no such letter was ever served on the petitioners. The petitioners were thus not heard prior to the issuance of the offending enforcement and demolition notices. The respondents maintain that it was because they absented themselves despite service of an invitation letter on them. However, service of such a letter is a matter of proof and the respondents have failed to provide any. In any event, not even a copy of such letter endorsed with any marks evidencing receipt, has been exhibited by the respondents and the court is unable to find that service was effected by the respondents upon the petitioners as claimed.

85. I have already stated from inception the petitioners knew or ought to have had knowledge that they were doing the wrong thing by failing to secure the development permission from the respondents. That notwithstanding it was clear from the state of affairs that a dispute was brewing over the legality of their structure. The provisions of Article 47 and 50 do not assume any guilt on the part of any person or discriminate against any person. All persons must be accorded a hearing and fair administrative action. Article 47(1) emphasizes application of fair administrative action to a citizen. Article 50 emphasizes that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or if appropriate before another independent and impartial tribunal or body. There was clearly no room for the respondents to sidestep the requirements of natural justice and both Articles 47 and 50 of *the Constitution*. Consequently, despite the grievous omissions of the petitioners, failure by the respondents to serve such a letter and consequent failure to involve the petitioners in a discussion over the matter prior to issuance of the enforcement notice and demolition order was clearly in violation of their right to a fair administrative action and natural justice. The result was that contrary to the situation envisioned by Article 50 regarding the need to have disputes resolved at law, the petitioners, despite being in the wrong side of the law, were finally caught unawares by the two documents.

86. Section 72(1) of the *Physical and Land Use Planning Act* 2019 provides as follows:

> "72. Enforcement notice
>
> (1) A county executive committee member shall serve the owner, occupier, agent or developer of property or land with an enforcement notice if it comes to the notice of that county executive committee member that—
>
> (a) a developer commences development on any land after the commencement of this Act without the required development permission having been obtained; or
>
> (b) any condition of a development permission granted under this Act has not been complied with."

87. Section 72(2) provides for the contents of the notice as follows:

(2) An enforcement notice shall—

(a) specify the development alleged to have been carried out without development permission or the conditions of the development permission alleged to have been contravened;

(b) specify measures the developer shall take, the date on which the notice shall take effect, the period within which the measures shall be complied; and

(c) require within a specified period 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."

88. It is clear that service of a notice framed within the terms of Section 72(2) would put the petitioners within knowledge of what they had done and which was considered in the eyes of the respondents to be in breach of planning laws.

89. The service of the notice would have enabled the petitioners to consider whether to appeal against the intended enforcement action therein because Section 72(3) and (4) provide as follows:

"(3) Where a person on whom an enforcement notice has been served is aggrieved by that notice, that person may appeal to the relevant County Physical and Land Use Planning Liaison Committee within fourteen days of being served with the notice and the committee shall hear and determine the appeal within thirty days of the appeal being filed.

(4) Any party aggrieved with the determination of the county physical and land use planning liaison committee may appeal to the court only on a matter of law and the court shall hear and determine the appeal within thirty days."

90. On the basis of the same argument regarding the absence of evidence of service of a letter inviting the petitioners to a consultative meeting with respondent I find that the enforcement notice and the demolition order were not served upon the petitioners.

91. Failure to serve the enforcement notice left the petitioner in the dark as to what was required of him and thus resulted in denial of the legally available avenue of redress available to the petitioners before demolition of their premises as set out in Section 72(3) and (4). This court also agrees with the petitioners that without service of the enforcement notice,issuance of a demolition order was incompetent.

92. Natural justice requires that a person be not condemned unheard. The petitioners ought to have been engaged by the respondents for the latter to hear their side of the story regarding their development prior to the issuance of the demolition notice, and they should have been notified of the issuance of the enforcement notice prior to the issuance of the demolition order. (See the case of Joseph Maina Muigana & 16 Others V County Government of Nyandarua ELC Case Number E007 of 2023.) These actions on the part of the respondents would have satisfied the requirements of Article 47 of *the Constitution*.

93. However, I decline to agree with the petitioners that a demolition order could only issue after prosecution of an offender. Section 57 of the Physical Planning and Land Use Act only prohibits and criminalizes development effected without a development permission granted by the respective County Executive Committee Member and prescribes the alternative penalties arising therefrom but

does not compel the respondent in all circumstances to prosecute the offender. In this court's view it is for the respondents to assess the circumstances surrounding the illegal development and elect whether or not to prosecute the offender or to enforce the law by demolition. In this court's view, a demolition notice and subsequent demolition is the ideal recourse in a situation where all the mechanism set out by Section 72(3) PLUPA have been exhausted, and where the CEC is only left with the option of enforcing the provisions of Section 72(4) which demands restoration of the land and which may necessitate demolition.

94. Regarding whether the respondents violated any rights of the petitioners by allowing the interested party to have in their possession a copy of the enforcement notice or the demolition order, this court is of the view that the interested party herein is without doubt a real interested party in the dispute for the reason that the offending structure erected by the petitioners obstructs its clientele's view of the ocean yet its property is a first row beach plot entitled to such sea front view. The Interested party's anxiety over the respondents' apparent condonation of a violation of the law by the petitioners is palpable. It cannot therefore be faulted for having reported its complaint regarding the petitioners' illegal development to the respondents. As long as the petitioners structure and business were illegal, the interested party's report per se, made to the respondents for their necessary action, should not be taken as collusion or malice. Such an approach would be flawed and would only in future discourage ordinary citizens from playing their role in environmental conservation in an age where such conservation is consistently being mainstreamed into numerous laws and socio-economic strata.

95. Where a very well-endowed and legally mandated constitutional entity such as the second respondent has been unable to completely discharge its mandate, it is understandable and indeed excusable for a private citizen aggrieved by such failure to seek any avenue in court to enforce the law in so far as that effectuation of the law will benefit that entity directly and even where it does not stand to so benefit. In stating that I rely on Articles 69 and 70 of *the Constitution* and Section 3(4) of EMCA. *The Constitution* at Article 69(2) mandates any citizen to act to assist the state in the protection of the environment thus:

> "(2) Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources."

96. I interpret the term "state organs" in Article 69 to include the devolved level of government.

97. Article 70 expressly grants the interested party a right to approach court in respect of any actual or threatened violation of its environmental rights as follows:

> "70. Enforcement of environmental rights
>
> (1) If a person alleges that a right to a clean and healthy environment recognized and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.
>
> (2) On application under clause (1), the court may make any order, or give any directions, it considers appropriate—
>
> (a) to prevent, stop or discontinue any act or omission that is harmful to the environment;

(b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or

(c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.

(3) For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury."

98. The spirit of the provisions of the above clauses are fleshed out in Section 3(4) of EMCA as follows:

"(4) A person proceeding under subsection (3) of this section shall have the capacity to bring an action notwithstanding that such a person cannot show that the defendant's act or omission has caused or is likely to cause him any personal loss or injury provided that such action—

(a) is not frivolous or vexatious; or

(b) is not an abuse of the court process."

99. The interested party's right to approach court for redress in environmental matters is thus protected by *the Constitution*. It matters not whether any malice existed on its part, or is decipherable, as long as the action it took was in defence of the integrity of the ecosystem adjacent to its premises. Notwithstanding the foregoing, I must state that in this court's view, the petitioners have exhibited no evidence of malice or collusion whatsoever in their petition. In the present dispute the interested party is therefore absolved by virtue of the petitioner's default in providing evidence in support of the claim of collusion or malice, from any wrongdoing. The claim of violation of the petitioners' right to non-discrimination vis a vis the interested party is also lacking in basis due to lack of evidence.

100. This court also finds that under Article 50(1) with *the Constitution*, the petitioners' right to a fair trial of the dispute in accordance with the procedures set out in Section 72 (1), (2), (3), and (4) of the *Physical and Land Use Planning Act* was violated since they were not accorded the opportunity ventilate their dispute under those provisions before the demolition order issued.

101. Regarding the claim that the petitioners' rights under Article 40 have been violated, this court finds that the land on which the bar and restaurant stand does not belong to the petitioners. It is the petitioners who have encroached on public land. Article 45 of *the Constitution* provides that the protection of the right to own property does not extend to property that has been illegally acquired. In this case such protection does not extend to the petitioners' building which was illegally erected on riparian land simply because it is illegal. Therefore, no right to protection of property was violated in the circumstances of this case with regard to the petitioners.

102. In the final analysis this court finds that the petitioners' right to fair administrative action under Article 47 and right to a fair hearing under Article 50 of *the Constitution* were violated by the respondent.

103. The other question is whether a mandatory injunction order should issue directing the respondents to issue the petitioners with a business permit or renewal of the same.

104. This court has already found that erection of the business premises on riparian land was illegal in the first place. It thus cannot issue and order that will have the result of compelling the respondents to further the said illegality.

105. However, the further reason as to why this court is not inclined to grant that prayer is that it is tantamount to an order of mandamus in judicial review. An order of that nature can not be issued against a respondent where the action the respondent is likely to be compelled to perform is purely predicated upon the judgment or discretion of that respondent. That judgment or discretion has to be exercised having regard to many other factors that the respondents are obliged to consider in the process of renewal of permits.

106. Regarding the claim for punitive and or exemplary damages or general damages the petitioners, this court finds that the petitioners' action having been illegal in the first place, and the respondents' actions in violation of Articles 47 and 50 having been undertaken in an attempt to rectify the errors earlier committed, only nominal damages should be awarded to the petitioners. The petitioners contributed to their own misfortunes by acting contrary to law and so this court is of the view that Kenya Shillings 100,000/- (in words, Kenya shillings one hundred thousand only) is sufficient in terms of nominal damages.

107. As for damages for loss of computer accessories and other items allegedly taken away by the respondents during the demolition of the suit premises, it is the opinion of this court that the petitioners have not adduced sufficient evidence of such loss of items, or proved that they were carried away by the respondents so as to entitle them to such orders.

108. I also find that the petitioners, the respondents and the interested party shall each bear their own costs of the petition.

109. The petitioners are therefore partially successful in their claim.

110. For the avoidance of doubt the final orders of this court are as follows:

    a. The omissions on the part of the respondents to grant the petitioners a fair administrative action and a fair hearing prior to the issuance of a demolition notice and demolition amounted to a violation of the petitioners' rights under the provisions of Articles 47(1) and 50(1) of *the Constitution* Kenya 2010 respectively;

    b. The respondents shall pay to the petitioners Kenya Shillings 100,000/- (in words, Kenya shillings one hundred thousand only) being nominal damages for violation of their constitutional rights;

    c. The respondents shall upon submission of original receipts refund to the Petitioners the Kshs 98,000/= paid by the petitioners for the renewal of a business permit for which no permit was issued;

    d. No interest shall be payable on the decretal sums in (b) and (c) herein above;

    e. The respondents shall forthwith comply with the relevant laws and *the Constitution* in dealing with the petitioner's structure;

    f. The petitioners, the respondents and the interested party shall each bear their own costs of the present petition.

    It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI BY MS TEAMS ON THIS 16TH DAY OF SEPTEMBER 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

JUDGMENT DELIVERED AT 2:45 PM BY MS TEAMS IN THE PRESENCE OF:

Mr Kenga for the petitioners;

Mr Mogaka for the Interested party;

Mr Mutua for the 1st respondent.