



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**Civil Case 747 of 2003**

**LANGATA LINKS LIMITED .....PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNCIL ..... DEFENDANT**

**RULING**

The Applicant by its Chamber Summons of the 18.7.2003 seeks the following orders: -

(2) A Temporary injunction do issue restraining the Defendants, their servants or agents from trespassing, demolishing or interfering in any way whatsoever with L.R 24911 Langata pending the hearing and determination of this suit”

The Application is supported by the Affidavit of Heather Lawrence of the 18.7.2003. In it she depones that on the 3.11.2000 the 1st Respondent approved plans for development of the Applicant’s land at Langata. Annexed to the Affidavit is a copy of the said plan duly approved. This plan is of a commercial development on two sides of a square. A letter from the 1st Respondent of the 21.11.2000 is attached which shows the user approved was for Domestic Building Offices.

Subsequently, the Applicant wished to develop the property further by erecting further offices on the other two sides of the square. Plans were drawn and submitted by the Applicant’s architect in July, 2002. A copy of this further plan is annexed as an exhibit together with a copy of a receipt showing that a sum of Kshs.3,700/= was paid on the 25.7.2002 being a Plans Inspection Fee.

It is alleged in the affidavit that a Mr. Kivinda assured the Applicant that as the plans submitted were almost a mirror image of those previously approved, they would be approved.

No Approval was forthcoming and perhaps somewhat unwisely the Applicant started to build the further development relying on the assurance of Mr. Kivinda and also as the Applicant was paying heavy interest rates on finance from a bank.

The Applicant received a letter from the 1st Respondent dated the 11.7.2003 requiring the Applicant to demolish the further construction within seven (7) days where up the Applicant sought an interim injunction restraining the 1st Respondent from demolishing the structures, which is still in place.

Mr. Singh for the Applicant referred to By- law 7 of the Local Government (Adoptive By-Laws) Order 1968, which states as follows:-

“7 (1) Within thirty days of the receipt of a duly completed application form together with such particulars as are required by these By-laws the council shall notify the applicant in writing whether or not the application had been approved.”

He submitted that the 1st Respondent was obligated within 30 days of the receipt of the drawings to state in writing whether or not the application had been approved and that it had failed to do.

In reply Miss Kamau relied on the section 30 (1) and (2) of the Physical Planning Act, which states: -

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

She submitted that the Applicant had by carrying out the extension work on the building contravened the law and relying on the authority of **Kivuvani Versus City Council of Nairobi CC No.172** of 2003 the Applicant should be denied the relief it sought.

Miss Kamau also referred to section 33 of the Physical Planning Act which in sub-section (2) in a similar terms to Bye-law 7. Sub-section (3) a person aggrieved may appeal.

I agree with Miss Kamau's submission that anyone in default cannot expect the court to look favourably on an application for relief arising from the facts giving rise to the default.

In this case there are two defaults. In the first instance the Respondent was bound to either approve or reject the applicant's application for approval of its plans. These in fact followed the same design that the Respondent had earlier approved. The Respondent however should not have commenced building work without permission.

The jurisdiction to grant an injunction is equitable and the exercise of it must be in accordance with equitable principles.

I therefore make the following order that the application sought is granted but subject to the Respondent's right and duty to either approve or reject the Applicant's Application for approval of the plans submitted. If rejected then the Applicant has its rights under section 33 (4) & (5) of the Physical Planning Act.

As this is in the nature of a temporary order pending the outcome of the Application for approval of the plans of I reserve costs. Liberty to Apply.

Dated and delivered at Nairobi this 4th day of July,2005

**P.J. RANSLEY**

**JUDGE**