



Dennis Pritt Residents’ Association & 4 others v Nairobi City County Government & 6 others (Petition E037 of 2024) [2025] KEELC 6830 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6830 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
PETITION E037 OF 2024
AA OMOLLO, J
OCTOBER 9, 2025**

BETWEEN

**DENNIS PRIT’T RESIDENTS’ ASSOCIATION 1ST PETITIONER
LAVENDER NAMDIERO 2ND PETITIONER
IRUNGU HOUGHTON 3RD PETITIONER
MOSES WAIHARO 4TH PETITIONER
YUSUF AHMED 5TH PETITIONER**

AND

**NAIROBI CITY COUNTY GOVERNMENT 1ST RESPONDENT
GODFREY AKUMALI 2ND RESPONDENT
PATRICK ANALO AKIVAGA 3RD RESPONDENT
PATRICK MBOGO 4TH RESPONDENT
GIRINI COMPANY LIMITED 5TH RESPONDENT
NATIONAL ENVIRONT MGT AUTHORITY 6TH RESPONDENT
NATIONAL CONSTRUCTION AUTHORITY 7TH RESPONDENT**

RULING

1. The application dated 30th April, 2025, for determination is by the Petitioners pleaded to be brought under the provisions of Order 11 and 14 of the Civil Procedure Rules and section 69 of the [Evidence Act](#) and all enabling provisions of the law. The Applicants are seeking for an order that the 1st, 2nd, 3rd and 4th Respondents do provide the etitioners/Applicants with Further Particulars and/or Copies of



Documents in respect to the alleged approvals of Application/s for Development Permission of the property known as Nairobi/Block 19/696 (the suit property).

2. They set out the particulars of the documents they want produced under paragraphs (a) to (eee) and under order 2 paragraphs (a) to (jj). The grant of the orders was objected to vide the preliminary objections by the 1st and 4th Respondents dated 5th June 2025 and by the 7th Respondent dated 23rd June 2025.
3. The Respondents pleaded that the cited orders 11, 14 and 16 and or the provisions of the Civil Procedure Rules and the *Evidence Act* do not apply to Constitutional Petitions. It is their case that constitutional petitions are governed by the Mutunga Rules, which at paragraph 3(1) of the Rules state thus;

“These Rules shall apply to all proceedings made under article 22 of *the Constitution*.”

4. I have considered the grounds upon which the application was premised vis-à-vis the preliminary objection raised, together with the case law cited. The Petitioner moved the court for production of documents premised on averments contained in the replying affidavits sworn in opposition to the Petition. For instance, ground c pleads thus;

“The 1st to 4th Respondents have averred and alleged at various paragraphs of their Replying Affidavit sworn on 14th March 2025, including at paragraphs 9, 10, 12, 13, 14, 15, 16, 17, 18 and 26 that the 7th Respondent had, 'on 21st March 2024 submitted an application for development approval for construction of the proposed residential building apartments on the subject property' and that 'the development approval process included a comprehensive review by the 1st Respondent'S technical experts to ensure compliance with the *Physical and Land use Planning Act* 2019 and the National Building Code'. Further, 'that on 27th June 2024, the Nairobi City County granted approval after confirming that all legal and procedural requirements had been satisfied', and that 'it is imperative to note that the development permission was issued SUBJECT to the 7th Respondent fulfilling the listed conditions which require approvals and licences from other statutory bodies such as National Construction Authority (MCA), Nairobi Water & Sewerage Company (NWSC), Water Resources Authority (WRA), Kenya Power and Lighting Company (KPLC) and the National Environment Management Authority (NEMA).”

5. In addition, the Applicants stated that;

“The documents annexed to the 1st to 4th and also the 7th Respondents Replying Affidavits are not copies of documents in Prescribed Forms as required under Section 58 Of the PI-UPA 2019 and also as mandated under the Physical and Land Use (Development Permission and Control) (General) Regulations 2021.”

6. From a holistic reading of the application, the Petitioners want to interrogate the defence of the Respondents before the matter proceeds to trial. They want the Respondents to answer to allegations or averments made in the replying affidavit without the deponents of those affidavits taking the stand to defend what they have stated on oath.
7. It is my considered view that if the documents referred to in the replying affidavits have not been annexed, the Petitioners can use the omission to counter the defence case during the prosecution of their Petition. Since Kenya applies an adversarial system in civil litigation, the court cannot force a party



to supply documents to support their case. Each party is at liberty to present its case in the manner it deems appropriate.

8. Consequently, I hold that granting the orders as sought in the application amounts to a trial within a trial. Even the provisions of orders 11, 14, and 16 of the Civil Procedure cited do not anticipate the mode of discovery adopted by the Petitioner.
9. On the preliminary objection raised concerning the application of the Civil Procedure Rules, I have read the Mutunga Rules, which clearly do not exclude the case management procedure envisaged under Order 11. I confirm order 14 is inapplicable as it refers to endorsement of documents that have been admitted in evidence before court. Order 16 refers to summoning of witnesses which provision the Applicants can invoke during the hearing of the Petition. In this application, they sought for documents and not summoning witnesses to appear in court thus invoking order 16 prematurely.
10. On the jurisdiction of the court, where the 7th Respondent argued that the Petitioners bypassed the Liaison Committee, it is in the public domain that the Nairobi County Liaison Committee is not sitting, having served notice to the public of their strike. Thus, there is no forum where the Petitioners would have been able to ventilate their case other than before this court.
11. Hence, the P.O succeeds partially about the inapplicability of order 14 and 16 of the Civil Procedure Rules. Despite this finding, the application is dismissed on the grounds of want of merit, rather than the preliminary objections raised by the Respondents. I order that each party shall bear their respective costs of the application and the preliminary objections.

DATED, SIGNED AND DELIVERED AT NAIROBI, THE 9TH DAY OF OCTOBER, 2025.

A. OMOLLO

JUDGE

