Sangahani & 2 others (For and on Behalf of Parklands Residents Association) v Nairobi City County Government & 5 others; 108 (Interested Party) (Petition E012 of 2025) [2025] KEELC 6985 (KLR) (14 October 2025) (Judgment)

Neutral citation: [2025] KEELC 6985 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

PETITION E012 OF 2025

OA ANGOTE, AA OMOLLO & CG MBOGO, JJ

OCTOBER 14, 2025

BETWEEN

KAMALKUMAR RAJINKANT SANGAHANI ..... 1ST PETITIONER

JAGS KAUR ..... 2ND PETITIONER

TEDDY OBIERO ..... 3RD PETITIONER

FOR AND ON BEHALF OF PARKLANDS RESIDENTS ASSOCIATION

AND

NAIROBI CITY COUNTY GOVERNMENT ..... 1ST RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER (CECM)BUILT ENVIRONMENT AND URBAN PLANNING SECTOR ..... 2ND RESPONDENT

COUNTY DIRECTOR OF PHYSICAL PLANNING AND LAND USE PLANNING, NAIROBI CITY COUNTY ..... 3RD RESPONDENT

PATRICK MBOGO ..... 4TH RESPONDENT

GODFREY AKUMALI ATIEL ..... 5TH RESPONDENT

PATRICK ANALO AKIVAGA ..... 6TH RESPONDENT

AND

108 ..... INTERESTED PARTY

JUDGMENT

A. Background

1. Vide the Petition dated 3rd March, 2025, the Petitioners seek the following reliefs:

a. A declaration that the Nairobi City County Government is yet to appoint and constitute a County Physical and Land Use Planning Consultative Forum as mandated under Section 14 of the *Physical and Land Use Planning Act*, 2019.

b. A declaration that the Nairobi City County Government is yet to prepare, develop and publish a County Physical and Land Use Development Plan for Nairobi City County as mandated under Sections 36, 37, 38, 39, 40 and 41 of the *Physical and Land Use Planning Act*, 2019(PLUPA).

c. A declaration that the Nairobi City County Government and the Chief Executive Committee Member (CECM)-Built Environment and Urban Planning Sector for Nairobi City County Government are yet to prepare, develop and publish a Local Physical and Land Use Development Plan for Local Areas within the jurisdiction of Nairobi City County, including for the Parklands Area as mandated under Sections 45, 46, 47, 48, 49 and 50 of the *Physical and Land Use Planning Act*, 2019(PLUPA).

d. A declaration that the 1st and 2nd Respondents did not and have not issued or granted any legal or genuine development permission to owners, developers or proposed developers of properties located within the Parklands Area of Nairobi City County including but not limited to the properties known as L.R No 1870/1/1470, Nairobi/Block 37/283(former 209/22334), 209/3422, 209/3423, 209/994/2, 209/51/14, Nairobi/Block 35/136, 209/4344/4, 209/107/5, 1870/1/54, 209/3438, Nairobi/Block 35/876, 209/3008/11, 209/19003, 209/1221/4, 209/10/9, 209/4/7, 209/3008/8, 209/1/9, 209/101/1, 209/101/3, 209/101/10, 209/101/11, 209/100/23, Nairobi/Block 35/231, 209/25/6, 209/871/11, 209/871/14, 209/9316, 209/5565/4, 209/1092/17, 209/11092/35, 209/11092/12, 209/11092/36, 209/11092/69, 11092/53, 1870/1/457, 1870/1/458, Nairobi/Block 34/90(formerly 209/90/20), Nairobi/Block 34/522(former 209/89/11), Nairobi/Block 34/526(former 209/89/7), Nairobi/Block 34/71(former 209/88/8), Nairobi/Block 34/540(former 209/90/25), 209/103/11, 209/526/6, 209/23/4, 209/7549, 209/3408, 209/5186, 209/22111, 209/3418, 209/5966, 209/871/15, 1870/1/340, 209/871/4, 1870/1/457, 1870/1/458, 209/4877/3, 7/202, 7/203, 1870/1/457, 1870/1/458, 209/4877/3, 209/14581, 1870/1/246, 1870/1/299, 1870/1/300, 1870/1/301, 209/8262, 209/3402, 209/3401, 209/7207, 1870/1/100, 1870/1/102(Old number), 209/110418 and 209/104/8 that were registered for application for development permission from August, 2019.

e. A declaration that ALL development permissions/certificate or documents issued or granted by the 1st and 2nd Respondent to owners and developers of properties in the Parklands Local Area of Nairobi City County from August, 2019 including but not limited to properties known as L.R No 1870/1/470, Nairobi/Block 37/283(formerly 209/22334), 209/3422, 209/3423, 209/994/2, 209/51/14, Nairobi/Block 35/136, 209/4344/4, 209/107/5, 1870/1/54, 209/3438, Nairobi/Block 35/876, 209/1192/11, 209/1192/10, 209/23/2, Nairobi/Block 35/876, 209/3008/11, 209/21520, 209/19003, 209/3438, 209/1221/4, 209/10/9, 209/4/7, 209/3008/8, 209/1/9, 209/101/1, 209/101/3, 209/101/10, 209/101/11, 209/100/23, Nairobi/Block 35/231, 209/25/6, 209/871/11, 209/871/14, 209/9316, 209/5665/4, 209/1092/17, 209/11092/35, 209/11092/12, 209/11092/36, 209/11092/69, 11092/53, 1870/1/457, 1870/1/458, Nairobi/Block 34/90(former 209/90/20), Nairobi/Block 34/522(former 209/89/11), Nairobi/Block 34/526(former 209/89/7), Nairobi/Block 34/71(former 209/88/8), Nairobi/Block 34/540(former 209/90/25), 209/103/11, 209/526/6, 209/23/4, 209/7549, 209/3408, 209/5186, 209/22111, 209/3418, 209/5966,

209/871/5, 1870/1/340, 209/871/4, 1870/1/457, 1870/1/458, 209/4877/3, 7/202, 7/203, 1870/1/457, 1870/1/458, 209/4877/3, 209/14581, 1870/1/246, 1870/1/299, 1870/1/100, 1870/1/301, 209/8262, 209/3402, 209/3401, 209/7207, 1870/1/100, 1870/1/102 (old number), 209/110418 and 209/104/8 are illegal, irregular, null and void.

f. A Declaration that ALL development undertaken on properties situate and located in the Parklands Area of Nairobi County by the respective owners and developers that were registered for application for development permission from August 2019, including but not limited to the properties known as L.R. No. 1870/1/470, Nairobi/Block 37/283 (former 209/22334), 209/3422, 209/3423, 209/994/2, 209/51/14, Nairobi/Block 35/136, 209/4344/4, 209/107/5, 1870/1/54, 209/3438, Nairobi/Block 35/876, 209/1192/11, 209/1192/10, 209/23/2, Nairobi/Block 35/876, 209/3008/11, 209/21520, 209/19003, 209/3438, 209/1221/4, 209/10/9, 209/4/7, 209/3008/8, 209/1/9, 209/101/1, 209/101/3, 209/101/10 209/101/11, 209/100/23, Nairobi/Block 35/231, 209/25/6, 209/871/11, 209/871/14, 209/9316, 209/5665/4, 209/1092/17, 209/11092/35, 209/11092/12, 209/11092/36, 209/11092/69, 11092/53, 1870/1/457, 1870/1/458, Nairobi/Block 34/90 (former 209/90/20), Nairobi/Block 34/522 (former 209/89/11), Nairobi/Block 34/526 (former 209/89/7), Nairobi/Block 34/71 (former 209/88/8), Nairobi/Block 34/540 (former 209/90/25), 209/103/11, 209/526/6, 209/23/4, 209/7549, 209/3408, 209/5186, 209/22111, 209/3418, 209/5966, 209/871/5, 1870/1/340, 209/871/4, 1870/1/457, 1870/1/458, 209/4877/3, 7/202, 7/203, 1870/1/457, 1870/1/458, 209/4877/3, 209/14581, 1870/1/246, 1870/1/299, 1870/1/300, 1870/1/301, 209/8262, 209/3402, 209/3401, 209/7207, 1870/1/100, 1870/1/102 (Old Number), 209/110418 and 209/104/8 were, and are in breach and in violation of the provisions of the *Physical and Land Use Planning Act* 2019 including Section 57 of the said Act.

g. A declaration that the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents' acts, omissions and conducts in respect to developments and development activities that have taken place in the Parklands Area of Nairobi City County from August, 2019 are in breach, denial, violation, infringement or threat to the Petitioners' and the general public's right to life as provided under Article 26 of *the Constitution*.

h. A declaration that the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents' acts, omissions and conducts in respect to developments and development activities that have taken place in the Parklands Area of Nairobi City County from August, 2019 are in breach, denial, violation, infringement or threat to the Petitioners and the general publics' rights to a clean and healthy environment as provided under Article 42 of *the Constitution*.

i. A declaration that the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents acts, omissions and conducts in respect to developments and development activities that have taken place in the Parklands Area of Nairobi City County from August 2019 are in breach, denial, violation, infringement or threat to the Petitioners and the general public's right to human dignity as provided under Article 28 of *the Constitution*.

j. A declaration that the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents are jointly, severally and /or singularly liable for the loss and damage suffered by the Petitioners and the general public arising from their breach, denial, violation and infringement of the Petitioners' rights and fundamental freedoms.

k. A mandatory order of injunction restraining, preventing, stopping, halting and discontinuing the 1st , 2nd , 3rd , 4th , 5th and 6th Respondents from receiving, considering, processing, granting

or issuing development permission for any development activities, projects or processes within the Parklands Area of Nairobi City County until and unless the 1st Respondent first prepares, develops and publishes a County Physical and Land Use Development Plan for Nairobi City County as mandated under the *Physical and Land Use Planning Act*, 2019.

l. A mandatory order of injunction restraining, preventing, stopping, halting and discontinuing the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents from receiving, considering, processing, granting or issuing development permissions for any development activities, projects or processes within the Parklands Area of Nairobi City County Government until and unless they first prepare, develop and publish Local Physical and Land Use Development Plans for the said Parklands Area as mandated under the Physical and Land Use Planning, 2019.

m. An order of permanent injunction compelling the 1st , 2nd, 3rd, 4th 5th and 6th Respondents to stop, halt and discontinue any and ALL development and development activities on properties situate and located in the Parklands Area of Nairobi County, including but limited to the properties known as L.R. No. 1870/1/470, Nairobi/Block 37/283 (former 209/22334), 209/3422, 209/3423, 209/994/2, 209/51/14, Nairobi/Block 35/136, 209/4344/4, 209/107/5, 1870/1/54, 209/3438, Nairobi/Block 35/876, 209/1192/11, 209/1192/10, 209/23/2, Nairobi/Block 35/876, 209/3008/11, 209/21520, 209/19003, 209/3438, 209/1221/4, 209/10/9, 209/4/7, 209/3008/8, 209/1/9, 209/101/1, 209/101/3, 209/101/10, 209/101/11, 209/100/23, Nairobi/Block 35/231, 209/25/6, 209/871/11, 209/871/14, 209/9316, 209/5665/4, 209/1092/17, 209/11092/35, 209/11092/12, 209/11092/36, 209/11092/69, 11092/53, 1870/1/457, 1870/1/458, Nairobi/Block 34/90 (former 209/90/20), Nairobi/Block 34/522 (former 209/89/11), Nairobi/Block 34/526 (former 209/89/7), Nairobi/Block 34/71 (former 209/88/8), Nairobi/Block 34/540 (former 209/90/25), 209/103/11, 209/526/6, 209/23/4, 209/7549, 209/3408, 209/5186, 209/22111, 209/3418, 209/5966, 209/871/5, 1870/1/340, 209/871/4, 1870/1/457, 1870/1/458, 209/4877/3, 7/202, 7/203, 1870/1/457, 1870/1/458, 209/4877/3, 209/14581, 1870/1/246, 1870/1/299, 1870/1/300, 1870/1/301, 209/8262, 209/3402, 209/3401, 209/7207, 1870/1/100, 1870/1/102 (Old Number), 209/110418 and 209/104/8 until and unless a Local Physical and Land Use Development Plan for Parklands Area has been prepared, developed and published in accordance with the provisions of PLUPA 2019 and the Regulations on Local Physical and Land Use Development Plan, 2021.

n. An order of permanent injunction compelling the 1st, 2nd, 3rd, 4th 5th and 6th Respondents to enforce restoration of ALL land in the Parklands Area of Nairobi City County where development commenced without development permission from the 2nd Respondent to their original condition, or as near to its original condition as is possible as at August 2019, including but not limited to the properties known as L.R. No. 1870/1/470, Nairobi/Block 37/283 (former 209/22334), 209/3422, 209/3423, 209/994/2, 209/51/14, Nairobi/Block 35/136, 209/4344/4, 209/107/5, 1870/1/54, 209/3438, Nairobi/Block 35/876, 209/1192/11, 209/1192/10, 209/23/2, Nairobi/Block 35/876, 209/3008/11, 209/21520, 209/19003, 209/3438, 209/1221/4, 209/10/9, 209/4/7, 209/3008/8, 209/1/9, 209/101/1, 209/101/3, 209/101/10, 209/101/11, 209/100/23, Nairobi/Block 35/231, 209/25/6, 209/871/11, 209/871/14, 209/9316, 209/5665/4, 209/1092/17, 209/11092/35, 209/11092/12, 209/11092/36, 209/11092/69, 11092/53, 1870/1/457, 1870/1/458, Nairobi/Block 34/90 (former 209/90/20), Nairobi/Block 34/522 (former 209/89/11), Nairobi/Block 34/526 (former 209/89/7), Nairobi/Block 34/71 (former 209/88/8), Nairobi/Block 34/540 (former 209/90/25), 209/103/11, 209/526/6, 209/23/4, 209/7549, 209/3408, 209/5186, 209/22111, 209/3418, 209/5966, 209/871/5, 1870/1/340,

209/871/4, 1870/1/457, 1870/1/458, 209/4877/3, 7/202, 7/203, 1870/1/457, 1870/1/458, 209/4877/3, 209/14581, 1870/1/246, 1870/1/299, 1870/1/300, 1870/1/301, 209/8262, 209/3402, 209/3401, 209/7207, 1870/1/100, 1870/1/102 (Old Number), 209/110418 and 209/104/8, within a period of ninety (90) days from the date of the order.

o. An order of mandatory injunction compelling the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents to constitute the County Physical and Land Use Consultative Forum for Nairobi City County within sixty (60) days or any other reasonable period, from the date of Order.

p. An Order of mandatory injunction compelling the 1st, 2nd 3rd 4th, 5th and 6th Respondents to initiate the process to prepare, develop and publish a County Physical and Land Use Development Plan for Nairobi City County within ninety (90) days or any other reasonable period, from the date of the Order.

q. An order of mandatory injunction compelling the 2nd Respondent to initiate the process to prepare, develop and publish a Local Physical and Land Use Development Plan for Parklands Local Area of Nairobi City County within sixty (60) days or any other reasonable period, after publication of the County Physical and Land Use Development Plan for Nairobi City County.

r. Costs of the Petition.

The Petitioners' case

2. The Petition has been brought by the 1st -3rd Petitioners for and on behalf of Parklands Residents Association. An association of a membership of more than 1300 persons who own, occupy and reside on properties within the Parklands Area, within the scope and geographical boundaries of Parklands Road, Ojijo Road, Prof Wangari Mathai Road, part of Murang'a Road, the edges of Mathare River past Limuru Road to the edges of Gitathuru River past Deep Sea Slum Area, Eldama Ravine Road, Ring Road Parklands (hereinafter the "Area").

3. The Petition is grounded on what the Petitioners describe as deliberate, intentional and conscious failure by the 1st -6th Respondents to observe, uphold, and defend the national values and principles of governance as provided under *the Constitution* of Kenya, 2010, the *Physical and Land Use Planning Act*, 2019 (hereinafter "PLUPA, 2019") and the Regulations thereunder, subjecting the Petitioners and the general public to denial, violation, infringement or threat to their rights and fundamental freedoms.

4. The Petitioners contend, inter alia, that their inherent right to human dignity protected under Article 28 of *the Constitution* has been infringed. They further assert violations of their right to access information under Article 35 of *the Constitution*, as well as their entitlement to a clean and healthy environment under Article 42 of *the Constitution*. They also cite Article 47 of *the Constitution* asserting that their right to fair administrative action, has been violated.

5. The Petition is supported by the Affidavit of Kamalkumar Rajinkat Sanghani, the Chairman of Parklands Residents Association on his own behalf, on behalf of his co-Petitioners and members of the Association (hereinafter "PRA Members").

6. According to Mr Sanghani, the PRA members are the owners, occupiers, and residents of properties developed and erected within the Area. He explained that the Area constitutes an expanded coverage falling within zones 3D, 3E, 3F, and 3G as designated under the existing, earlier, and proposed zoning regulations, by-laws, sessional papers, and development control policies of the 1st Respondent.

7. They deposed that the proposed zoning regulations, by-laws, development control policies, and sessional papers relied upon include: the National Spatial Plan (2015-2045); the Nairobi Integrated Urban Development Master Plan (hereinafter the "NIUPLAN"); the Nairobi City County Development Control Policy, 2021; the Nairobi City County Development Control Policy, 2022; the Nairobi City County Development Control Policy, 2023; Sessional Paper No 1 of 2023 on City County of Nairobi; and the Nairobi City County Regularization of Un-authorized Development Bill, 2022. These, they assert, have been clarified by the 1st Respondent's Governor as being mere policies.

8. According to the Petitioners, the Area's origins date back to the early 1900s, when the colonial government converted it from swampy wasteland into a modern hub. It became closely tied to the Asian community. Over time, this community established schools, temples, and other institutions, and the late Aga Khan spent part of his childhood there.

9. Today, it was averred, the Aga Khan's legacy is reflected in major institutions such as the Aga Khan schools, university, and hospital, as well as environmental conservation efforts, including the protection of City Park Forest and other public spaces through the Aga Khan Foundation.

10. It was deposed that the Area hosts prominent institutions such as M.P. Shah and Avenue Hospitals, alongside leading sports and recreational clubs including the Aga Khan Sports Club, Parklands Sports Club, Nairobi Gymkhana, and the Kenya Hockey Union and that a central feature is City Park Forest, valued for its biodiversity, recreational spaces, and cultural heritage, with landmarks such as the "Mtego wa Panya" maze, a Bowling Green, and a historic cemetery where figures like Pio Gama Pinto and Joseph Murumbi are buried.

11. Ecologically, the Area is linked to Karura Forest through the Mathare and Gitathuru Rivers, and has benefited from notable conservation efforts, including a major tree-planting initiative led by the late Hon. John Michuki (2003–2005) along the Mathare River's riparian corridor.

12. It is the Petitioners' case that the Area is traversed by the Kibagare River, conserved through efforts of the late Prof. Wangari Maathai and the Green Belt Movement, particularly after the demolition of the unlawfully built Ukay Nakumatt on its riparian reserve and that it is also distinguished by a rich architectural heritage shaped by religious traditions, with temples, mosques, and churches that embody both colonial and post-colonial styles and promote communal harmony.

13. Historically, it was averred, its infrastructure, covering water, sewerage, drainage, roads, transport, and social amenities was systematically planned, with certain sections, such as those adjacent to City Park Drive, being planned for single residential houses with a maximum built-up area of 40% of the plot.

14. Mr. Sanghani stated that these residences were not connected to the public sewer system but relied on private septic tanks and that property owners unwilling to use the private system could apply for permission to construct private sewer connections to link with the public sewer line, which is now managed by the 19th Interested Party.

15. It was deposed that poor management and maintenance of the public drainage and sewer systems have led to frequent blockages, causing effluents to discharge into the Kibagare and Mathare Rivers and other local streams and that over the past five years, the Area has experienced rapid, unregulated urbanization marked by a surge in housing, commercial, and office developments, resulting in the demolition of heritage structures and the erosion of the Area's historical character and visual integrity.

16. The Petitioners maintained that historically, property development in the Area was regulated under the provisions of the Local Government (Adoptive By-Laws) Building Order No. 15 of 1968, which

permitted the construction of buildings up to four storeys high on individual plots, provided that the structures did not occupy more than 50% of the land.

17. As advised by Counsel, it was deposed, the said Local Government (Adoptive By-laws) Building Order No 15 of 1968 was repealed with the gazettement of the National Building Code 2024 which commenced operation in March, 2025. As such, the aforesaid by-laws remain the fall-back regulation and by-law with regards to development of buildings and other structures in the area.

18. It was asserted that the proposed policies earlier referred to, and the resultant development approvals issued by the 1st -6th Respondents are based on outdated and illegal guidelines, precedence and discretions with majority being informed by planning justifications advanced by the developers, architects and engineers with no room, space or opportunity for public participation.

19. It was urged that the 1st -6th Respondents have acknowledged that due to the absence of legal and regular development controls, it is grappling with buildings without approvals, buildings developed contrary to approval conditions and developments whose existence is in conflict with dominant use.

20. According to the Petitioners, the Respondents are fully aware of the PLUPA, 2019 which commenced on 5th August, 2019 and stands as the principal and operative law governing planning, land use, regulation, development of land, and connected purposes and that they are equally cognizant of the Legal Notices issued thereunder.

21. The Respondents have nonetheless continued to rely on policies such as the Nairobi City Development Control Policy, 2021, on which public views were received during stakeholder meetings in February 2025. However, it was contended, such policies lack legal force under PLUPA, 2019, and reliance on them has resulted in developments that erode urban scale, historic and environmental quality, visual character, built heritage, and land-use compatibility.

22. It is the Petitioners' position that the 1st, 2nd and 5th Respondents have deliberately and knowingly refused and failed to constitute and appoint members to the County Physical and Land Use Consultative Forum as mandatorily required under Section 14(2) of PLUPA, 2019, and that in the absence of this forum, no consultations on County and Inter-County Physical and Land Use Development Plans have been undertaken since 2019, and if any have been undertaken, they are illegal, irregular, null and void.

23. Similarly, it was urged, the 1st to 6th Respondents are in breach of Sections 36 to 44 of PLUPA, 2019, and the Second Schedule thereto, as well as Legal Notice No. 240 of 2021 on the Physical and Land Use Planning (County Physical and Land Use Development Plan) Regulations, as well as Sections 45 to 54 of PLUPA, 2019, together with Legal Notice No. 248 of 2021 on the Physical and Land Use Planning (Local Physical and Land Use Development Plan) Regulations. Collectively, it was deposed, they provide for the preparation, processing, and publication of a County Physical and Land Use Development Plan and Local Physical and Land Use Development Plans respectively.

24. It is the Petitioners' case that the absence of these statutory plans has led to unplanned and uncontrolled development and urbanization in the Parklands area, which has adversely affected buildings, natural resources, including trees and other flora, infrastructure, transportation and communication systems, as well as drainage structures, including rainwater and sewerage systems.

25. According to the Petitioners, the Respondents have similarly failed to implement the Physical and Land Use (Development Permission and Control) (General) Regulations, 2021, and to prohibit or control the use and development of land and buildings in the interest of property and orderly development of the Parklands area as required by Section 56 of PLUPA, 2019.

26. The Petitioners allege that the Respondents have unlawfully issued development permissions in violation of Sections 58–71 of the *Physical and Land Use Planning Act* (PLUPA), 2019, and its 2021 subsidiary regulations. They contend that the Respondents failed to enforce Section 57 by neglecting to stop unauthorized developments, restore illegally developed land, or revoke irregular approvals.

27. They further assert that numerous developments in the Area lack valid approvals or were sanctioned under irregular permissions contrary to PLUPA, 2019, particularly concerning change of user, densification, subdivision, amalgamation, demolition, easements, and environmental impact assessments.

28. The Petitioners contended that the documents issued to developers were merely acknowledgments of receipt and not lawful development permissions, rendering all certificates of compliance and occupation issued by the 2nd and 4th Respondents irregular and unlawful, particularly for properties linked to the 26th–107th Interested Parties.

29. They further argued that, since Nairobi lacks duly prepared and gazatted County and Local Physical and Land Use Development Plans as required under PLUPA, 2019, all development permissions and related activities issued or undertaken after August 2019 are illegal, null, and void.

30. Apart from the non-compliance with the law, the Petitioners contended that developments in the Area have infringed on their rights to a clean and healthy environment, dignity, property, and fair administrative action and that City Park Forest has been severely diminished, jeopardizing over 600 plant species, while cemeteries and the remains of persons interred therein, including Pio Gama Pinto and Joseph Murumbi have been desecrated.

31. According to the Petitioners, the cemetery land itself risks subdivision and conversion for private residential and commercial development, with high-rise buildings already emerging under the guise of addressing housing shortages. Equally, there is no assurance that historic and cultural sites such as the Joseph Murumbi Peace Memorial, the Desai Memorial Hall and Library, temples, mosques, and churches will be preserved.

32. It was urged that the scale of environmental destruction was further highlighted along the riparian zones of Mathare River, where trees have been felled to make way for residential apartments and institutions such as the Baitul Hikma International Integrated School, which has erected facilities on Nairobi/Block/37/175 (formerly L.R. 209/7547) and that other parcels where developments are on the riparian reserve include L.R. 209/871/11, 209/871/5, 209/5966, and 209/872/4.

33. In addition, it was deponed that large tracts of land along Limuru Road near Mathare River, initially cleared under the pretext of road expansion, have been converted into dumping grounds and subsequently allocated to individuals for future development without replanting initiatives.

34. According to the Petitioners, construction continues "beacon to beacon" along numerous roads, including Jalaram Road, General Mathenge Road, Eldama Ravine Road, City Park Drive, Kusi Road, Wangapala Road, Suswa Road, Batu Batu Lane, Mpaka Road, Wambugu Road, and several avenues ignoring safety standards, building lines, access requirements, and urban design principles.

35. The Petitioners highlighted the alleged rampant unlawful demolitions, with debris dumped along 6th Parklands Avenue and Limuru Road, and illegal acquisition of open spaces near City Park Drive and Deep Sea slums. They cited blocked pedestrian walkways, damaged drainage systems, routine flooding, and pollution of the Kibagare and Mathare Rivers.

36. They further noted uncontrolled construction of high-rise buildings near schools, temples, and hospitals, leading to congestion, safety hazards, and public health risks. Many sites, they assert, lack required professional signage, and some buildings have collapsed. Additionally, heavy trucks have damaged roads, and an illegal cement plant along Ring Road Parklands continues to emit harmful dust and fumes.

37. The Petitioners lastly averred that developments near Deep Sea slums, including on L.R. Nos. 1870/1/16 and 209/9951, indicate ongoing land grabbing and potential forced evictions, with the 1st–6th Respondents failing to act despite acknowledging their illegality.

The 1st-6th Respondents' and 2nd -5th Interested Parties' responses

38. The fore cited Respondents and Interested Parties responded to the Petition vide a Replying Affidavit sworn by Patrick Analo Akivaga, the Chief Officer, Urban Development and Planning, Built Environment and Urban Planning Sector of the Nairobi City County on 3rd May, 2025.

39. Mr. Akivaga deponed that the Built Environment and Urban Planning Sector comprises three sub-sectors, namely lands, urban development and planning, and housing and urban renewal. In his role, he is responsible for county urban development planning and design, development control, planning compliance, and enforcement, among other functions.

40. It was his deposition that the allegations that they have abdicated their statutory responsibilities and obligations, and failed to observe the national values and principles of governance as enshrined in Article 10 of *the Constitution* are unwarranted and untrue. On the contrary, he deposed, they have diligently and progressively continued to discharge their mandates in accordance with the existing legal framework despite the limited County resources.

41. In this regard, he explained that the NIUPLAN was finalized in 2014 in response to the developmental issues affecting the County and became the foundational framework/master plan guiding the County's development from 2014 – 2030; that it proposes a vision for Nairobi as a regional hub by 2030, underpinned by a multi-core structure plan enhancing the Central Business District (CBD) and seven sub-centres which include Westlands Sub-County and that the Parklands area, the subject Area, falls in Westlands Sub-County.

42. According to the Respondents and the Interested Parties, the NIUPLAN, despite having been finalized under the repealed PLUPA, 1996, informs the County Physical and Land Use Development Plan under Section 36 of PLUPA, 2019. As it was set to run from 2014 – 2030, the County is in the process of updating it, with ongoing measures to formalize it under Sections 37 - 41 of PLUPA. It was urged that the formulation of NIUPLAN before enactment of PLUPA, 2019 does not not affect or diminish its vision and development objectives for the County.

43. Mr. Akivaga deponed that as mandated by Article 220(2) of *the Constitution* and Section 108 of the *County Governments Act* 2012, the County has prepared the 2023 – 2027 County Integrated Development Plan(hereinafter the "CIPD") (being the third since the establishment of the County as a devolved unit in 2011) and that together with NIUPLAN, it guides the framework for county planning, budgeting, funding, monitoring and evaluation of programmes and projects in the medium term in response to the County citizens' identified development issues.

44. According to Mr Akivaga, the CIDP review of the 2018–2022 plan highlights progress in the Built Environment and Urban Planning Sector, noting improved coordination of urban development through automated application and approval systems that cut processing time to 14 days, and

the formulation of three key policies: the Nairobi County Land Use Policy, the Nairobi County Development Control Policy, and the Property Address and Street Naming Policy.

45. He deposed that for 2023–2027, the Built Environment and Urban Planning Sector prioritizes strategies to enhance coordinated urban development, including: reviewing and formulating planning policies, preparing detailed local land use plans, strengthening building safety through multiagency audits, and enforcing compliance via regular inspections.

46. He deponed that additional strategies include regularizing unauthorized developments, conducting public awareness and planning clinics, operationalizing county consultative forums and liaison committees, and mainstreaming stakeholder engagement in planning processes.

47. Mr Akivaga stated that in a bid to constitute and operationalize the County Physical and Land Use Consultative Forum, the 2nd Respondent has prepared a draft Cabinet Memorandum which upon finalization, is to be submitted to the County Executive for review and approval, and that once approved, the Consultative Forum is expected to be launched within four (4) months of the approval date as per the proposed 12-month Implementation Roadmap.

48. As such, he stated, it is misleading for the Petitioners to allege that the Respondents have refused to initiate the relevant processes for the preparation of Local Physical and Land Use Development Plans including for the subject Area. As indicated, such local plans can only be formulated in line with the NIUPLAN and the current CIDP.

49. Mr. Akivaga noted that the Nairobi City County Annual Development Plan (2024/2025) (hereinafter the "ADP") serves as the implementation tool for the CIDP 2023–2027. Within it, the Built Environment & Urban Planning Sector identifies unauthorized and uncoordinated urban development as a key challenge, to be addressed through detailed local land use plans, operationalization of the County Physical and Land Use Consultative Forum, and enforcement against non-compliant developments.

50. It is the Respondents' case that the strategic matrix therein outlines specific action points with allocated budgets, including: full rollout of the Nairobi Planning and Development Management System (NPDMS) for efficient processing of development permissions; integration of all key reviewers under Section 60 of PLUPA, 2019 including the National Construction Authority(NCA), Kenya Civil Aviation Authority (KCAA), the Department of Defence (DoD) and National Environment Management Authority(NEMA); and preparation and publication of Local Physical and Land Use Development Plans in compliance with the law.

51. With respect to the Nairobi City County Land Use Policy, 2023, he noted that its formulation was pursuant to the mandate of the 2nd Respondent, in liaison with the 3rd Respondent, to formulate county polices on physical and land use planning under Sections 17 and 18 of PLUPA, 2019 and that the Policy, which is also founded on the development matrix envisioned in the NIUPLAN, was approved by the Nairobi City County Assembly on 6th June 2023 as required under Section 32 (f) of the *County Governments Act* and as such it is fully operational and not a proposal as suggested by the Petitioners.

52. He stated that the Policy aims to harmonize Nairobi County's land use framework, emphasizing the creation of a monitoring system to evaluate the effectiveness of land use plans, standards, and decisions, while promoting coordination among the multiple actors in the land sector and that a core objective is to align the County's land use management with statutory requirements, ensuring consistency and accountability in planning and regulation.

53. Mr. Akivaga deponed that key interventions include the formulation and implementation of physical and land use development Plans and responsive policies to address emerging urban challenges such as land subdivision, conversion, and informal activities and that the Policy further provides for adequate budgetary support for approved plans, including NIUPLAN, detailed sub-county land use planning, and development of proposed sub-centers.

54. The Respondents and the Interested Parties highlighted that the Policy introduces land use categorization across Nairobi County, dividing it into twenty zones as outlined in the Land Use Distribution Table. This zoning framework dictates permissible land uses within each zone and is intended to address inconsistencies and conflicts in land use across the County.

55. Mr. Akivaga explained that the Nairobi City County Development Control Policy 2021 was developed to replace the outdated 2004 Zoning Guidelines, which expired in 2016 and no longer met the current development needs; that approved by the County Assembly on 10th February, 2022, the Policy is fully operational and provides new zoning guidelines, contrary to the Petitioners' claims that it is a draft and that it also introduced a one-stop development approval process through the Urban Planning Technical Committee (hereinafter the "UPTC"), aligning with Section 60 of PLUPA, 2019 requirements.

56. According to Mr. Akivaga, the UPTC, which comprises all the relevant stakeholders, vets and approves development applications. Membership of the committee comprises of NEMA, Nuclear Regulatory Authority, Nairobi Water and Sewerage Company (NWSC), the Architects Association of Kenya (AAK), Kenya Institute of Planners (KIP), Town and County Planning Association of Kenya, Ministry of Defence, Institution of Engineers of Kenya (IEK), and County Departments of Urban Planning, Roads, Disaster Management and Public Health.

57. He deposed that to enhance public participation, the County introduced Sessional Paper No. 1 of 2023- Nairobi City County Development Control Policy, 2023 which is identical in content to the 2021 Policy and, once approved by the County Assembly, will simply replace it as the governing instrument on development control.

58. Alongside this, it was deposed, the County has prepared a legislative proposal, the Nairobi City County Regularization of Unauthorized Developments Bill, 2024, currently pending publication in the Kenya Gazette to invite public comments; that the Bill seeks to regulate developments initiated before the law's commencement, while excluding those on public land, and to ensure compliance with building set-off requirements and that it also proposes the creation of an Advisory Committee and a Regularization Technical Committee to oversee its implementation.

59. Mr Akivaga noted that should the bill be eventually passed into law, it will provide a legal basis to regularize unauthorized developments which meet the minimum requirements and facilitate the demolition/removal of those that do not meet such requirements or are incongruent with the now properly established physical and land use planning instruments.

60. In response to the allegations of breach of statutory duties and mandates under PLUPA, 2019 and *the Constitution*, he explained that the Nairobi City County Development Control Policy 2021 and the Nairobi City County Land Use Policy 2023 have been approved by the Nairobi City County Assembly (NCCA) as required under Section 30(2)(f) of the *County Governments Act* and are therefore fully operational, and that the face of the said Policy documents bears the NCCA stamp of approval.

61. He conceded that the 2nd and 3rd Respondents roles and responsibilities include the formulation of county physical and land use planning policies, guidelines and standards as provided for under Section 17(a) and 20(b) of PLUPA, and that the cited Nairobi City County Development Control Policy 2021

was therefore properly formulated as mandated under PLUPA, 2019. In any event, it was deposed, the Petitioners have not demonstrated how the said Policy is allegedly inconsistent with PLUPA, 2019.

62. The Respondents and Interested Parties explained that preparation of Local Physical and Land Use Development Plans began in 2021 under the Nairobi Metropolitan Services through consultancy invitations and that for the subject Area, preliminary surveys have started, with a Draft Plan expected by Quarter 3 of 2025.

63. They also noted that a draft framework for the County Physical Planning Consultative Forum is ready under a draft Cabinet Memorandum; that in line with PLUPA, 2019, development applications have been processed through the Urban Planning Technical Committee (UPTC), which integrates multiple statutory stakeholders as required by law and that the members of the UPTC are nominated annually, with the current team serving from July 2024 to July/August 2025.

64. On enforcement, he deposed, the County's officers under the Urban Development and Planning sub-sector have actively ensured compliance with development laws and that pursuant to the Physical and Land Use Planning (Development Control Enforcement) Regulations, 2021 and Section 72(1) of PLUPA, 2019 they have conducted site inspections, issued numerous stay orders and enforcement notices against unlawful developments, and prosecuted developers operating contrary to Section 57 of the Act.

65. It was noted that numerous criminal cases are pending against individuals involved in unlawful developments between 2019–2025, with the UPTC ensuring that even compliant projects undergo thorough vetting before occupation certificates are issued.

66. Further, it was urged, under the 2021 Development Control Enforcement Regulations, members of the public and residents' associations are empowered to lodge complaints against non-compliant developments; that the Petitioners failed to demonstrate having made such complaints and that their broad allegations lack evidence, since all current development applications are submitted in compliance with PLUPA regulations and prescribed forms.

67. With regard to the impugned developments, he stated that in most of them, the developers have applied for development permissions in compliance with Regulation 15 (g) of the (General Development Permission and Control) Regulations 2021, and notified the public of their applications through newspaper advertisements and onsite notices.

68. Further still, the development permissions/approvals issued have been as prescribed under the said Regulations, and in the prescribed Form PLUPA/DC/8; that the development permissions are always accompanied by a raft of conditions binding on the approval issued as can be seen in the sample annexed as "PAA - 16" and that failure to adhere to any of the conditions leads to a possible revocation of the approval.

69. On the issue of Occupational Certificates, he deposed that they are issued only upon confirmation that the development has been completed in line with the conditions for the approval granted and that through the UPTC, there has been an unprecedented level of efficiency in vetting and approving applications for development permission.

70. In response to the alleged environmental violations, it was asserted that apart from City Park which has been gazetted as a Site under Legal Notice No. 128 of 2008 (The Confirmation of Sites and Monuments), Parklands area, in general, is not a culturally protected site/heritage zone under the Nairobi City County Cultural Heritage Act, 2017 or any other law.

71. As such, the developments taking place in the Area can only be considered illegal if they do not comply with the various planning laws, regulations and policies. The allegations that trees have been illegally felled at City Park Forest and along the riparian reserves of the alleged rivers was denied.

72. In any event, and without prejudice to the foregoing, it was urged, there are well established mechanisms for redress under the Water Resources Management Authority (WRMA), The Environmental Management and Co-ordination (Wetlands, Riverbanks, Lake Shores and Sea Shore Management) Regulations (2009) as well as under the *Forest Conservation and Management Act*, 2016.

73. It was contended that the allegations that high-rise buildings in the Area have been constructed on riparian reserves, obstructed vehicular and pedestrian movement, damaged infrastructure, and encroached on both public and private land are framed in general and sweeping terms, and therefore do not provide a meaningful basis for a specific or targeted response.

74. It was urged that as provided for under Regulation 32 of the Physical and Land Use Planning (Building) Regulations (2021), demolition of buildings within the County can only be carried out with the prior written approval of the County's Planning Authority. Further, even where a demolition has been approved, the Planning Authority is mandated to impose any condition or requirement necessary for the safety, health and convenience of the public and for the safety of any other building or installation which in its opinion may be affected by the demolition.

75. It was asserted that the Petitioners have not demonstrated with any degree of specificity what demolitions aggrieve them, and that such demolitions have been conducted illegally or without the necessary approvals. It was conceded that Nairobi County has had many years of unplanned or poorly planned development due to lack of proper development control policies and plans.

76. These problems, it was stated, cannot be undone/resolved overnight but only in a progressive and realistic manner, and through a coordinated multisectoral engagement which the Respondents have demonstrated.

77. Presently, it was noted, the final budget for the Built Environment & Urban Planning Sector for FY 2025/2026 has been submitted to the County Assembly for approval. Among the key priorities for the Sector is the preparation of five (5) Local Physical Development Plans within the next financial year. This includes the local plan for the subject Area and that the cost for these plans has been estimated to be Kshs 600,000,000.

78. He urged that the Petitioners bear misconceptions that the Respondents and the 2nd - 5th Interested Parties have failed to perform their statutory duties and mandates under *the Constitution*, PLUPA and the Regulations thereunder. To the contrary, and as demonstrated, the journey towards correcting the 20 consequences of long years of poor or no physical land use planning and development control, including environmental degradation, traffic congestion, strained infrastructure, among others, begun in 2014 with the NIUPLAN, and significant strides have been made ever since. He deposed that the Petition is unmerited and is for dismissal.

The 7th Interested Party's response

79. The 7th Interested Party, through Mr Innocent Magaga Mukhale, its Assistant Director of Physical Planning, Ardhi House, swore a Replying Affidavit on the 12th July, 2025. He deponed that the functions of the 7th Interested Party, performed by the National Director of Physical Planning includes preparation of National Physical and Land Use Development Plan, advising the government on strategic physical and land use planning matters that impact the whole country, and formulating national physical and land use planning policies.

80. He deposed that Article 66 of *the Constitution* provides that the State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning and that the Fourth Schedule of *the Constitution* mandates the Nairobi City County to carry out county Planning and development in its area of jurisdiction.

81. He averred that pursuant to Section 104 (1) of the *County Governments Act*, the Nairobi City County is obligated to plan for the county and no public funds should be appropriated outside a planning framework developed by the County Executive Committee and approved by the County Assembly and that Section 104 (2) of the *County Governments Act* requires the county planning framework to integrate economic, physical, social, environmental and spatial planning.

82. According to Mr Mukhale, Section 61 (1) of the PLUPA, 2019, requires that when considering an application for development permission, a County Executive Committee Member in charge of physical and land use planning, who under the Act is the planning authority, shall be bound by the relevant approved national, county, local, city, urban, town and special areas plans.

83. It was the 7th Interested Party's case that pursuant to Sections 46 and 61(1) of the PLUPA, a Local Physical and Land Use Development Plan for Parklands prepared in conformity to the County Physical and Land Use Development Plan for Nairobi City County ought to be a reference instrument for Nairobi City County to guide processing and decision making on development applications made for Parklands area.

The 8th Interested Party's response

84. The 8th Interested Party, through its Registrar, Kelvin Ritho, swore a Replying Affidavit in support of the Petition on the 2nd May, 2025. He deponed that the Kenya Institute of Planners (KIP) is the premier professional body for physical planners in Kenya, registered in 1999 and formally recognized in 2001 by the Physical Planners Registration Board under Section 12(b) of the *Physical Planners Registration Act*.

85. It was his deposition that KIP plays a vital national role in physical and land use planning, with statutory representation in key planning institutions, including the National and County Physical and Land Use Planning Consultative Forums and the National and County Liaison Committees established under the PLUPA, 2019.

86. The 8th Interested Party argued that despite the express provisions of Section 14 of the PLUPA, 2019, the Respondents have never invited it to nominate a representative to the County Physical and Land Use Consultative Forum; that this omission demonstrates that the Forum has never been lawfully constituted, undermining the framework for participatory and professional planning and that this failure is substantive rather than procedural, as the Forum was intended to ensure expert input and public participation in planning processes, thereby preventing arbitrary or technically unsound decision-making.

87. As a result, it was contended, the County and Local Physical and Land Use Development Plans have not been prepared in accordance with statutory and professional standards, leading to irregular issuance of planning approvals lacking the required checks, balances, and legal foundation.

88. The 8th Interested Party emphasized that physical and land use plans are vital tools for realizing several constitutional rights, including the right to a clean and healthy environment, adequate housing, sanitation, and access to safe water; that such plans are central to ensuring sustainable development and environmental protection for present and future generations and that they form the legal and technical foundation upon which responsible urbanization and resource management are built.

89. Mr Ritho explained that Section 36 of PLUPA, 2019, mandates every County to prepare a County Physical and Land Use Development Plan at least once every ten years, in conformity with the National and any relevant Inter-County Plans and that the objectives of these county plans include providing an overarching physical and land use framework, guiding rural settlement and development, ensuring coordinated infrastructure and service delivery, and managing natural resources.

90. Additionally, it was deposed, such plans are meant to enhance environmental protection, define appropriate zoning for industrial, commercial, and residential uses, improve transport networks, and safeguard national security.

91. At the local level, it was deposed, Section 45 of PLUPA, 2019 require the preparation of Local Physical and Land Use Development Plans to guide zoning, urban renewal, infrastructure development, and environmental conservation. These plans, detailed in the Second Schedule of the Act, encompass analyses of population, housing, transportation, water and sewerage networks, education, and recreation facilities.

92. The 8th Interested Party argued that, under Section 61, development approvals can only be lawfully issued where such statutory plans exist and are duly adopted. Consequently, the Respondents' failure to formulate and implement these plans renders subsequent development permissions legally unsustainable.

93. It was noted that the existence of an approved plan is a statutory prerequisite for the lawful processing of development applications. As such, approval of developments outside the planning framework as provided in PLUPA, 2019 amounts to arbitrary decision-making, contrary to Article 10 of *the Constitution* of Kenya and that PLUPA, 2019 was not only repealed the previous Physical Planning Act, 1996 (No. 6 of 1996) but aligned the physical and land use planning statutory regime with *the Constitution* of Kenya 2010.

94. As advised by their Counsel, it was stated, the transitional provisions under Section 92 of PLUPA, 2019 are only limited to saving approvals for development made under the former statute provided such development has commenced within twenty-four months and that this section also saves applications for development approval made before the commencement of PLUPA, 2019.

95. According to Mr. Ritho, it is noteworthy that in its silence, Section 92 of PLUPA, 2019 is unequivocal with regard to existing development plans made prior to the commencement of the PLUPA, 2019 which means that such plans are consequently deemed ineffectual and the Respondents were therefore mandated to establish the plans as required in PLUPA, 2019, and in particular the County Physical and Land Use Development Plan and Local Physical and Land Use Development Plans.

96. Mr. Ritho stated that over five years since the enactment of PLUPA, 2019, Nairobi City County has failed to establish the County Physical and Land Use Consultative Forum under Section 14, prepare a County Physical and Land Use Development Plan under Section 36, or formulate Local Physical and Land Use Development Plans as required by Section 45.

97. He asserted that this persistent non-compliance reflects a disregard of mandatory statutory duties and the principles of good governance enshrined in Article 10 of *the Constitution*. Consequently, he urged the court to intervene by issuing appropriate declaratory and mandatory orders to compel compliance with the law.

The 19th Interested Party's response

98. The 19th Interested Party, through its Survey Co-ordinator, Stanley Keraya Kimani, filed a Replying Affidavit on 2nd July, 2025. He deponed that the Nairobi City Water and Sewerage Company Limited is incorporated under the *Companies Act* and wholly is owned by the 1st Respondent as a water service provider within the Nairobi County established in accordance with Section 77 (1) of the *Water Act*, 2016.

99. Mr. Kimani denied that the 19th Respondent is breach, violation, or contravention of its mandate with respect to development, planning, and approvals in the Parklands area of Nairobi County, and maintained that it operates strictly within the regulatory framework established under the relevant laws, including the *Water Act*, 2016.

100. He further contended that, in relation to the Petitioners' claims on sewerage developments, plans, and approvals, the 19th Interested Party acts in accordance with Sections 108 and 109 of the *Water Act*, 2016. He added that the Interested Party also undertakes inspections and approvals pursuant to Sections 107 and 111 of the Act to ensure compliance with water safety and environmental health standards.

101. The Interested Party conceded that certain developers in Nairobi were permitted to construct Privately Developed Sewer (PDS) systems, which were subsequently connected to the public sewerage infrastructure. In this regard, it duly approves, designs and supervises the construction of the PDS Systems and their integration into the public sewer-line and thereafter takes over their maintenance after a period of 12 months.

102. The 19th Interested Party, relying on Sections 91 and 108 of the *Water Act*, 2016, affirmed its mandate to ensure efficient provision of water and sewerage services and to regulate effluent discharged into public sewers. Mr. Kimani denied any failure on its part in enforcing environmental compliance, asserting that the agency fully implements Sections 22, 23, and 104 of the Act, which provide for the protection of water sources and catchment areas, including rivers, and enforcement against unauthorized sewage discharges.

103. According to Mr Kimani, if a private sewer has malfunctioned, the appropriate course of action is for the affected property owners to conduct repairs, and not to impute liability on it for infrastructure outside its regulatory jurisdiction and that septic tanks are managed by owners of buildings with the operations and maintenance of such sanitation facilities vested in private owners of facilities such as boreholes, exhausters and sewers and sanitation facilities.

104. It was stated that the 19th Interested Party works collaboratively with agencies such as the Nairobi City County Government, NEMA, and the Water Services Regulatory Board to promote sustainable urban development and protect water and sanitation infrastructure, as required under Section 4 of the *Water Act*.

105. In relation to developments in the Parklands area, it clarified that it does not issue building or construction approvals but only provides water and sewerage connections in coordination with relevant planning authorities.

106. Since its role is limited to verifying access to public water and sanitation services which are not in dispute in this Petition.It contended that it bears no liability for the alleged unauthorized developments.

107. The above notwithstanding, it was urged, the 19th Interested Party has been taking further steps to ensure proper maintenance of sewage systems in Nairobi County, and has come up with long-term solutions that are still in the process of implementation. These include, Integrated Sanitation Management Plan For Nairobi And Selected Satellite Towns, Kenya Contract No AWSB/WASSIP AF/COMP.1/CS-19/2013, that focuses on the future investment proposals for the years 2020-2040, which are covered in the Phased Investment Schedule of Integrated Sanitation Management Plan, Final, 30th August 2017 to eliminate obstacles and ensure proper oversight in managing sanitation infrastructure.

108. Relying on legal advice, Mr. Kimani argued that the court lacks jurisdiction to hear the Petition as the Petitioners failed to exhaust statutory dispute resolution mechanisms under Section 61(3)– (4) of PLUPA, 2019, and Section 9(2) of the *Fair Administrative Action Act*.

109. These provisions, it was urged, require aggrieved parties to first appeal planning decisions to the County Physical and Land Use Planning Liaison Committee. Similarly, under Section 82 of the *Water Act*, disputes concerning water and sewerage service provision must first be addressed by the 19th Interested Party, with appeals lying to the Water Services Regulatory Board and thereafter to the Water Tribunal.

110. He further stated that the 19th Interested Party has not received any formal complaints or appeals from developers, property owners, or the Petitioners regarding the alleged violations. While some concerns have been informally raised by residents of Taza Lane, he deposed, they were not submitted through the prescribed procedures required for formal action.

111. Consequently, Mr. Kimani contended that the Petition is premature, procedurally defective, and constitutes an abuse of the court process, warranting its dismissal.

The 20th Interested Party's response

112. The 20th Interested Party, through its Senior Surveyor, Survey Department, Directorate of Highway Design and Safety, Dr Anthony Kusimba swore a Replying Affidavit on 10th June, 2025. He deposed that the Petition does not disclose any cause of action against the 20th Interested Party.

113. He acknowledged that the 20th Interested Party, although not directly responsible for the issues in dispute, has a relevant role in these proceedings due to its mandate to provide technical advice and support to the Respondents. He explained that the 20th Interested Party is a State Corporation established under Section 3 of the *Kenya Roads Act*, with its responsibilities set out under Section 4.

114. He stated that within Westlands and the Parklands Areas, the Authority maintains the following road reserves, Nakuru-Nairobi(A8) Road, Nairobi-Museum Hill-Prof. Wangari Maathai (Bu)Road, Kipande (Bu) Road, part of Limuru (Bu)Road and Ojijo (Bu)Road, and that utilities such as the public sewer system and water supply systems are under the Nairobi City Water and Sewerage Company Limited, the 19th Interested Party herein.

115. Dr Kusimba stated that he is aware that the Nairobi City County Government, is mandated to prepare Special and Local Physical and Land Use Development Plans, which are then subjected to stakeholders for their input during the validation stage; that the Petitioners however failed to specify which developments allegedly lacked approval or affected national roads, and whether such developments were ever referred to it for comment and that its inclusion in the case stems from its statutory role under Section 60 of PLUPA, 2019 which requires it to provide technical input on developments impacting national roads.

116. The Authority affirmed that it has always given such input when consulted, is unaware of any unapproved developments within Parklands affecting its roads, and clarified that whereas the preparation of county development plans is the 1st Respondent's responsibility, its technical collaboration remains vital due to the integration of national road networks within the County as emphasized in its 2023–2027 Strategic Plan.

117. He maintained that no adverse claims have been raised against the 20th Respondent and its role in the Petition is limited and indirect. Consequently, it urged the court to award it costs.

The 61st Interested Party's response

118. The 61st Interested Party, through its Director, Abdulmunim Salim Bahannan, swore a Replying Affidavit on 25th July 2025. He deposed that the 61st Interested Party is the registered proprietor of L.R No. 209/5665/2, situated at Mwambao Lane, off Limuru Road, Parklands, Nairobi.

119. He averred that on 1st February 2023, the 2nd Respondent granted it a change of user approval in respect of the property, followed by a notification of approval from the 1st Respondent on 12th April 2023 for the construction of 108 apartments across 19 levels. Subsequently, on 15th June 2023, the National Environmental Management Authority (NEMA) issued an Environmental Impact Assessment (EIA) License No. NEMA/EIA/PSL/26369 authorizing the proposed construction on the property.

120. Mr. Bahannan explained that, according to Mr. Analo's Replying Affidavit, key policy documents governing development in Nairobi includes the NIUPLAN) 2014, the Nairobi City County Development Control Policy 2021, and Sessional Paper No. 1 of 2023 on the updated Development Control Policy 2023. He noted that the 2021 Policy, approved by the Nairobi County Assembly on 10th February 2022, acknowledged that the previous development control guidelines last reviewed in 2006 had expired in 2016, necessitating an updated framework to respond to contemporary urban realities.

121. The 2021 Policy, he stated, was formulated based on several planning parameters such as population growth, legal and policy frameworks, land market trends, infrastructure provision, and urbanization dynamics, and that it introduced zoning guidelines presented through zonal maps, under which the suit property falls within Zone 3D, permitting developments of up to 20 floors.

122. Accordingly, Mr. Bahannan asserted that the 61st Interested Party's project, comprising 19 levels, fully conforms to the prevailing policy and zoning standards. He further emphasized that the earlier 2004 zoning policy had lapsed in 2016 and was no longer applicable to the current development context.

123. He added that the Petitioners had failed to acknowledge the evolving urban character of the Parklands area, which has progressively transitioned into a high-density residential zone. Citing Article 60(1) of *the Constitution*, he argued that the 61st Interested Party is entitled to utilize its property in an equitable, efficient, productive, and sustainable manner. He also referred to NIUPLAN 2014, which observed that Nairobi's population growth rate (3.9% between 1999–2009) exceeded the national average of 3.0%, largely due to high in-migration, reinforcing the necessity of policies that support vertical residential development.

124. In concluding, Mr Bahannan noted that as advised by Counsel, the Petitioners have intentionally neglected to exhaust alternative remedies available to them. These alternative remedies, such as filing a complaint with the County Physical Land Use and Planning Liaison Committee, would have provided a suitable platform for addressing their concerns rather than pursuing litigation in this court.

The 107th Interested Party's response

125. The 107th Interested Party filed a Preliminary Objection as well as a Replying Affidavit. Vide the Preliminary Objection dated the 2nd May, 2025, it was stated that:

i. The Petitioners have no locus standi to institute the claim herein as they have not pleaded and given evidence of ownership of any property whose protection may be sought under Article 40 of *the Constitution* of Kenya.

ii. The Petitioner's claim does not disclose any cause of action for enforcement of a right or fundamental freedom under the Bill of Rights as their grievances are limited to alleged non-compliance with the provisions of the *Physical and Land Use Planning Act*, Cap 303 of the Laws of Kenya.

iii. The Petitioner's claim is bad and defective for want of particulars of identities of the parties' names as the 26th to 106th Interested Parties for the reason that the relief for enforcement of the Bill of Rights must be sough against persons and not properties of unidentified persons.

iv. The Petitioner's claim does not raise justiciable constitutional questions but seeks the ascertainment of facts based on a speculative premise, conceptualized by the Petitioners.

v. The Petitioners claim against the 1st Respondents' issuance of any impugned development permissions lie in an appeal to the 1st Respondent's County Physical and Land Use Planning Liaison Committee, to have been lodged within 14 days of the issuance any such impugned development permissions.

vi. It is only after a decision has been made by the 1st Respondent County Physical and Land Use Planning Liaison Committee that an aggrieved party may appeal to the Environment and Land Court.

vii. The Petitioners claim in respect to the impugned development permissions issued by the 1st Respondent in respect to the properties identified under paragraph 129 of the Petition has been instituted in the wrong forum and before the exhaustion of the statutory avenue provided for under Section 61(3) and (4) of the *Physical and Land Use Planning Act*, Cap 303 of the Laws of Kenya.

viii. The claim by the Petitioners is not instituted by persons acting in the public interest but for unknown ulterior proxy interests and is therefore an abuse of the process of the court.

126. The 107th Interested Party, through its Chairperson, Abdirahman Mohamed Abdi, swore a Replying Affidavit on the 2nd May, 2025. He deponed that the 107th Interested Party is a duly registered society under Section 10 of the *Societies Act*. It draws its membership from property developers across the entire Nairobi County including developers within Parklands.

127. According to Mr Abdi, some of the members of the Society own property and/or have active and complete developments within Parklands area and are thus affected by this court's orders. These include but are not limited to 1870/1/470; Nairobi/block 37/283 (former 209/22334); 209/3422; 209/3423; 209/994/2209/51/14; Nairobi/ block 35/136; 209/4344/4; 209/107/5; 209/3438; 209/1192/11; 209/1192/10; 209/23/2; Nairobi/block/35/876; 209/3008/11; 209/21520; 209/19003; 209/1221/4; 209/10/9; 209/4/7; 209/3008/8; 209/1/9; 209/101/1; 209/101/3; 209/101/10; 209/101/11; 209/100/23; 209/11092/17; 209/11092/36; 209/11092/53; 209/34/90; 209/3402; 209/104/8.

128. He noted that despite the Petitioners challenging the application, processing and issuance of the development permissions including those issued to some of its members, they have failed to set out with a reasonable degree of precision that which they complain of, the provision said to be infringed and the manner in which they have been infringed.

129. The 107th Interested Party contended that the Petitioners had merely cited constitutional provisions without demonstrating any specific violations or harm suffered. It argued that the alleged failure by the 1st–5th Respondents to establish the County Physical and Land Use Consultative Forum and to prepare Local Physical and Land Use Development Plans constitutes statutory non-compliance with PLUPA, 2019 rather than a violation of the Bill of Rights.

130. Mr. Abdi further maintained that the Petition is based on generalized and unsubstantiated allegations that do not warrant specific responses. He affirmed that members of the 107th Interested Party Society obtained development permissions through the lawful procedures set out in the existing legal and regulatory framework, fully complying with all statutory requirements. Consequently, there was no basis for the claims against them.

131. Mr. Abdi explained that the Nairobi City County Development Control Policy, 2021 establishes the parameters for evaluating and approving land use and development applications in line with sustainable urban development principles and that the policy aims to safeguard citizens' rights to dignity and a clean environment while advancing the objectives of PLUPA, 2019. It also aligns with the NIUPLAN, 2014, which informs its overall planning framework.

132. He further stated that the aforesaid 2021 Policy was developed based on key planning variables such as population growth, legal and policy frameworks, land market trends, technological advances, and urbanization dynamics. Mr. Abdi emphasized that the Local Government (Adoptive By-laws) Building Order No. 15 of 1968, relied on by the Petitioners, has long been overtaken by modern planning realities.

133. It was argued that continued reliance on the outdated 1968 By-laws, instead of the current NIUPLAN (2014–2030) and the Nairobi City County Development Control Policy 2021 Policy, would produce inequitable and impractical outcomes inconsistent with Nairobi's present-day urban development needs.

134. It was asserted that the NIUPLAN, made pursuant to the provisions of the County Government Act, and Nairobi City County Development Control Policy, 2021 is the operational planning document, which must guide the 1st Respondents in all the approvals it makes in respect of developments in the County, and that the development control guidelines in the policy have been annexed as "zonal maps", annexure 2. It was deposed that the suit properties fall under zone 3D, 3E, 3F and 3G which provides a skyline/levels and ground coverage as follows:

Zone	Ground Coverage	Skyline
3D	80	20
3E	75	20
3F	80	20
3G	75	15

135. Contrary to the Petitioners claim at paragraph 106 of the Petition, it was urged, it is evident that the permitted ground coverage is 75 and 80 (not 50) while the sky line/level ranges between 15 and 20 (not 4) and that as such, there is no legitimate claim and/or evidence before this court to the effect that approvals have been granted for developments beyond the permitted ground coverage and sky line.

136. In any event, it was deposed, should there be any, the complaint against that specific development should be made to the relevant authority under PLUPA, 2019.

137. Mr. Abdi affirmed that all members of the 107th Interested Party obtained the necessary statutory approvals before commencing any developments and have consistently complied with the conditions attached to those approvals. To illustrate this, he presented several examples of compliant developments within the Parklands area.

138. Mr. Abdi argued that many of the challenged developments are complete, occupied, and equipped with essential amenities, making it contrary to public interest to halt or interfere with them. He emphasized that the developers complied with all legal requirements and obtained necessary approvals, and that none of the projects contravene heritage protection laws such as the *National Museums and Heritage Act* or the Nairobi City County Cultural Heritage Act.

139. He further noted that members have invested significantly in infrastructure, including a functioning sewer system, and that their projects align with the national housing agenda by providing quality housing for the middle-upper income segment. The developments, he maintained, promote socio-economic growth and sustainable urban development. In conclusion, he contended that the Petition is without merit, constitutes an abuse of court process, and should be dismissed with costs.

The Petitioners response

140. Vide their Further and Supplementary Affidavits dated 16th May and 4th June 2025 respectively, the Petitioners, through Mr. Sanghani, reaffirmed their earlier claims, emphasizing that the Petition clearly identifies the alleged breaches and corresponding remedies sought. They argued that, as admitted by Mr. Analo, the NIUPLAN, 2014 was developed under the repealed 1996 Planning and Land Use framework and therefore does not comply with Section 36 of the PLUPA, 2019.

141. The Petitioners argued that NIUPLAN is a non-binding policy document that was never fully implemented; that it excluded key professional and stakeholder bodies such as the Institutes of Planners and Surveyors, the Architectural Association of Kenya, Kenya Private Sector Alliance, Kenya Alliance of Residents Association and the National Council for Persons with Disability.

142. They noted that it was formulated during the devolution transition period, when urban planning functions still lay with the national government, and relied on outdated 2004 zoning guidelines that permitted only four floors in areas like Westlands, Parklands, Woodley, Kilimani, and Kileleshwa.

143. They further contended that NIUPLAN 2014 was founded on earlier Spatial Planning Concepts for the Nairobi Metropolitan Region prepared in 2008 and 2013, neither of which were ever adopted or approved through any legislative process. These "umbrella plans," they argued, lack legal force and cannot form a lawful basis for Nairobi's development control framework.

144. The Petitioners maintained that the instruments relied upon by the Nairobi City County do not meet the statutory threshold under PLUPA, 2019; that they lack official authentication through seals or stamps, were never gazetted, and were prepared without issuing statutory notices or conducting public participation forums. Moreover, it was argued, they were neither submitted to the County Physical and Land Use Consultative Forum nor approved by the Governor, contrary to express provisions of PLUPA.

145. It was deposed that the documents fail to delineate the land use zones or categories required under PLUPA, such as housing, industry, recreation, conservation, commerce, infrastructure, or land banking. The Nairobi Development Control Policies of 2021 and 2023 were specifically faulted by the Petitioners for omitting the mandatory annexures, the Nairobi City County Property Matrix and Zonal Maps, and for referencing annexures, such as PAA-8, which the Petitioners claimed are not genuine or legally valid and that they also omit the prescribed development control templates (Forms PLUPA/DC/1–15).

146. They asserted that the documents do not satisfy the requirements of Local Physical and Land Use Development Plans under PLUPA, 2019; that their preparation was not initiated by the County Executive Committee Member as mandated; that no survey report was conducted for the Parklands area, and that no Gazette or newspaper notices were published.

147. Most critically, the Petitioners emphasized that the documents were never subjected to meaningful public participation, thereby violating both statutory and constitutional requirements.

148. Further still, it was urged, the impugned planning documents make only superficial reference to PLUPA, 2019 and fail to integrate its binding Regulations; that although they purport to guide development approvals, they lack coherent frameworks for implementation and enforcement, disqualifying them as statutory plans and that they also lack technical justification for key planning standards such as zoning, plot ratios, and land-use allocations.

149. According to Mr Sanghani, the policy formulators ignored the statutory planning institutions prescribed under PLUPA, 2019 including the County Physical and Land Use Planning Consultative Forum, the County Executive Committee Member, and the County Director of Physical and Land Use Planning. Their exclusion, he argued, contravened the structured process of consultation and oversight envisioned by the Act.

150. It was urged that this omission, coupled with the absence of meaningful public participation, undermined the procedural and constitutional legitimacy of the planning process and that by failing to adhere to Article 10 of *the Constitution* and relevant PLUPA Regulations, the County's policy-making process, violated the principles of transparency, accountability, and public involvement.

151. Finally, Mr. Sanghani dismissed the County's claim that Nairobi lacks a legal framework to address unauthorized developments. He pointed out that PLUPA, 2019, together with the Development Control Enforcement Regulations, 2021, already provides comprehensive enforcement mechanisms and that reliance on informal or unlegislated policies illustrates a fundamental failure by the County to align its planning instruments and practices with Kenya's prevailing statutory framework.

152. The Petitioners maintained that the property owners or developers in Parklands failed to apply for development permission using the prescribed Form PLUPA/DC/1 as required under Section 60 of PLUPA, 2019 and Regulation 15 of the 2021 Development Permission and Control Regulations and failed to provide mandatory documentation such as planning briefs and geotechnical reports.

153. The Petitioners also disputed the Respondents' assertion that all development applications were vetted by the Urban Planning Technical Committee (UPTC), arguing that the committee is non-existent or improperly constituted. They maintained that it lacks representation from key professional bodies such as the Architectural Association of Kenya, Kenya Institute of Planners, Town and County Planners Association of Kenya, Institute of Engineers of Kenya, Engineers Board of Kenya, and National Environment Management Authority, as required by law.

154. The Petitioners also noted that, despite acknowledging widespread unauthorized developments, the 1st–6th Respondents, particularly the 2nd, 4th, and 6th had failed to enforce the law under Section 57 of PLUPA, 2019 and the 2021 Development Control Enforcement Regulations. They observed that several enforcement notices and stay orders had been issued but were never acted upon, enabling continued violations in the Parklands area.

155. Finally, they contended that the development permissions displayed by property owners, including those of the 26th to 106th Interested Parties, were invalid and unlawful and that the "Notices of Approval" were allegedly issued before developers submitted applications in the prescribed form, contrary to Section 60 and Regulation 15.

156. It was asserted that City Park (forest land on L.R. 209/6559/6 measuring about 60 hectares) and Desai House with its surrounding 1.7 acres on L.R. 209/1916/6, were confirmed as protected Sites and Monuments under Gazette Notice No. 128 of 2008, and that despite this legal protection, large portions of these sites had been illegally acquired, with development activities undertaken, including the destruction of the historic "Mtego wa Panya" maze and the complete demolition of Desai House to pave the way for high-rise buildings.

157. The Petitioners stated that, as advised by Counsel, attempts by the Respondents to regularize these irregular developments through the Nairobi City County Regularization of Unauthorized Developments, Bill initiative is in itself illegal and irregular.

B. Submissions

The Petitioners' submissions

158. The Petitioners filed two sets of submissions on 19th June and 25th August 2025. It was submitted that all developments carried out in Parklands since August 2019 are illegal, irregular, and invalid, having been undertaken in violation of PLUPA, 2019, its accompanying Regulations, and related laws such as the *Sectional Properties Act*.

159. Counsel argued that numerous high-rise and mixed-use developments were approved without following the prescribed statutory procedures, a situation attributed to the 1st to 6th Respondents' failure to properly execute their planning and regulatory duties under PLUPA. This neglect, it was contended, has led to the unchecked proliferation of unauthorized changes of user, subdivisions, densification, and construction activities within the Parklands area.

160. It was emphasized that PLUPA was enacted to replace outdated instruments, provide a legally binding framework for planning and development control, and entrench transparency, public participation, and the rule of law.

161. It was urged that the Nairobi City County Physical and Land Use Planning Consultative Forum, required under PLUPA, 2019, is a mandatory body meant to guide and vet planning decisions. Counsel argued that its continued absence more than six years after the Act's enactment renders all development plans and approvals unlawful. In this regard, reliance was placed on the case of Khelef Khalifa & 2 Others v IEBC & Another [2017] KEHC 4303 (KLR).

162. Counsel further contended that no legitimate County or Local Physical and Land Use Development Plans for Nairobi or Parklands exist under Sections 36–50 of PLUPA. Instead, the Respondents continue to rely on instruments such as NIUPLAN 2014, the National Spatial Plan (2015–2045), and various development control policies and sessional papers from 2021 to 2023, all of which are either pre-PLUPA documents or drafts that have not undergone approval under the *Statutory Instruments Act*.

163. These documents, it was argued, lack legal force as they do not meet substantive requirements under PLUPA, 2019. The absence of proper planning instruments, coupled with non-compliance with Sections 40 and 41 requiring public participation, county assembly approval, and gazettement, was said to invalidate all development approvals issued in Parklands. Reliance was placed on the case of Anami & 2 Others v CECM Built Environment & 20 Others (Petition E030 of 2024).

164. It was argued that under Article 66 of *the Constitution*, regulation of land use must be based strictly on approved development plans and lawful instruments. The Petitioners contended that since August 2019, no valid development applications have been made using the prescribed statutory forms, and that developers instead relied on irregular approval letters lacking legal validity.

165. These purported approvals, were said to be procedurally defective and unlawful. Reliance was placed on Sosplashed Ltd & Another v Pwani Maoni Ltd & 3 Others (2023) and Tom Brown Ltd v CECM Planning [2023] KEELC 22487 (KLR), where courts confirmed that compliance with prescribed forms and public notice procedures is mandatory. Similarly, in Tiara Villas Management Ltd v Joe Mutambu (2018)eKLR, the court held that irregular approval letters could not validate development permissions.

166. Counsel maintained that the Respondents failed to consult relevant agencies as mandated under Section 60 of PLUPA, including national security, survey, environment, and public works. Reference was made to the case of Tom Brown Limited & Another v County Executive Committee Member in Charge of Planning and 2 Others, Attorney General & 4 Others (Interested Parties) KEELC 17853(KLR) where the court stressed that such consultations are not discretionary.

167. It was urged that the failure to comply with PLUPA, 2019 and its attendant regulations constituted both statutory breaches and constitutional violations. Similarly, it was submitted, the Respondents' actions, whether through active approvals or failure to enforce, violated *the Constitution*, the *Leadership and Integrity Act*, and the Public Officers Ethics Act, and constitute acts of collusion with developers, akin to findings in Supertech Ltd v Greater Chennai Corporation [2024] eKLR.

168. Counsel opined that the Respondents' refusal to engage the public in decisions on land use and environmental well-being violated Articles 10, 35, 43, 47, 69, and 70 of *the Constitution*. He emphasized that public participation, as affirmed by the Supreme Court in British American Tobacco Kenya PLC v CS Health [2021] eKLR, is a substantive constitutional imperative, not a procedural formality.

169. In his view, the lack of notice, consultations, or disclosure of planning documents breached both Article 10 and the *Access to Information Act*. Counsel also cited the case of Mwangi v Nairobi City

County (2022) eKLR, where it was held that failure to undertake participation vitiates planning decisions.

170. Counsel submitted that the unlawful developments have led to massive environmental degradation, including construction on riparian land, tree felling, sewage discharges, dumping into rivers, obstruction of stormwater and sewer systems, flooding, and deaths as evinced by the photo and video evidence. As stated in Peter K. Waweru v Republic [2006] KEHC 3202 (KLR), it was urged, the right to life includes the right to a clean environment.

171. The court was also referred to the case of Export Processing Zone Authority & 10 others (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe Area, Mombasa) v National Environment Management Authority & 3 others (Petition E021 of 2023) [2024] KESC 75 (KLR), where the Supreme Court emphasized the precautionary principle, requiring protection even where full scientific certainty is lacking.

172. Counsel also cited comparative jurisprudence such as Kaniz Ahmed v Sabuddin (2025, Supreme Court of India), where courts ordered demolition of unauthorized developments to uphold the rule of law.

173. It was further submitted that the Petitioners' rights to dignity under Article 28 and freedom from inhuman treatment under Article 29 have been violated through exposure to unsafe and degrading conditions. In Monica Wangu Wamwere v AG[2020]eKLR, it was submitted, the High Court held that deliberate exposure of citizens to harm may amount to cruel and degrading treatment. The denial of access to planning records was also raised as a violation of Article 35, with reliance in this regard placed on the case of Katiba Institute v Presidential Delivery Unit (2017) eKLR.

174. As regards the Preliminary Objection, Counsel argued that the same wrongly challenged their standing and the court's jurisdiction. They maintained that they act under Article 22 of *the Constitution* as members of a registered residents' association and in the public interest, and as affirmed in the Centre for Human Rights and Democracy & 2 others v The Judges and Magistrates Vetting Board & 2 others [2012] KEHC 5431 (KLR) they have the requisite standing. In any event, it was urged, the objection does not meet the threshold in Mukisa Biscuits v West End Distributors (1969) EA 696, as it raises contested facts.

175. On exhaustion, counsel submitted that the doctrine does not apply where remedies are inadequate or where constitutional violations are alleged.

176. Citing Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 Others (Interested Parties) (Petition E007 of 2023) [2023] KESC 113 (KLR) and William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] KEHC 10266 (KLR), he urged the court to adopt a purposive interpretation of PLUPA, 2019 consistent with Articles 20 and 259 of *the Constitution*, and invoked Lord Hoffman's principle of legality in Ex parte Simms to argue that fundamental rights cannot be curtailed without clear legislative intent.

177. In conclusion, the Petitioners submitted that the Respondents' failures have resulted in widespread illegal and environmentally harmful developments, and that their actions and omissions violate multiple constitutional provisions, statutory duties, and public trust. Counsel urged the court to declare the impugned developments unlawful, reject regularization attempts, and grant the reliefs sought.

The 1st -6th Respondents and 2nd -5th Interested Partys' submissions

178. The Respondents and Interested Parties' counsel filed submissions on the 23rd July, 2025. Counsel began by setting out a brief planning history of Nairobi County. He outlined the historical evolution of urban planning in Nairobi, noting that following independence, rapid urbanization and rural–urban migration transformed the city, replacing racial divisions with socio-economic segregation.

179. It was submitted that this led to planning efforts, including the Nairobi Metropolitan Growth Strategy (1973) and the Nairobi City Commission Development Plan (1984–1988). These were however poorly implemented, leading to continued unregulated development. The enactment of the Physical Planning Act in 1996, it was submitted, sought to address these gaps, and under its framework, the Nairobi Integrated Urban Development Master Plan (NIUPLAN) 2014–2030 was formulated after the expiry of the 2004 Zoning Policy, envisioning Nairobi as a regional hub by 2030 through a multi-core structure centred on the CBD and seven sub-centres, including Westlands Sub-County where Parklands is located.

180. Counsel submitted that to regularize unplanned developments, the Nairobi City County Regularisation of Developments Act, 2015 was passed but lasted only twelve months and achieved little. Currently, planning is guided by the PLUPA, 2019 supported by its attendant regulations operationalized in 2021. Despite PLUPA's elaborate provisions, it was submitted that Nairobi continues to grapple with the legacy of decades of poor planning.

181. It was submitted that the effective realization of the Act depends on adequate funding, intentional budgeting, technical competence, human resource capacity, and political goodwill, which often fluctuates with electoral cycles, thereby undermining consistent and sustainable implementation.

182. Counsel submitted that the question of whether the Respondents and Interested Parties have deliberately, intentionally and consciously failed to observe and uphold the national values and principles under Article 10 of *the Constitution*, including patriotism, national unity, democracy, participation of the people and human dignity, among others is a question of fact for which nothing has been adduced before the court in support thereof.

183. According to Counsel, even assuming there was indeed deliberate neglect of statutory and constitutional duties by the stated parties, the Petitioners have not demonstrated that they approached the relevant bodies with their complaints against the said officials. These include the County Public Service Board as per the Section 59(4)(f) of the *County Governments Act* 2012, the Commission on Administration of Justice, as per Section 29(1)(a) of the *Commission on Administrative Justice Act* 2011. Reliance in this regard was placed on the cases of James Gacheru Kariuki & 69 others v William Kabogo Gitau & 104 others [2019] eKLR.

184. It was submitted that the Respondents have adequately demonstrated that they are consistently performing their statutory obligations. Further, even where the performance of those obligations is highly dependent on the availability of limited resources, it has been demonstrated that plans are in place, and that it is simply a matter of time before full implementation can be achieved.

185. Speaking to the nature of the existing planning instruments/documents, Counsel asserted that the NIUPLAN, the Nairobi City County Development Control Policy 2021 and the Nairobi City County Land Use Policy 2023 are not only legal and valid, but have a proper basis for guiding the County in its development control, and that they are not in conflict with PLUPA, 2019 and its Regulations.

186. Counsel referenced the case of Millennium Gardens Management Limited v Metricon Home Nairobi Company Limited & 3 Others [2024] [2024] KEELC 6040 (KLR) where the court, after considering the applicability of NIUPLAN and the Nairobi City County Development Control Policy 2021, noted that the 2004 Zoning Policy relied upon by the Petitioners was outdated and incongruent with the realities of the day.

187. The case of Anami & 2 others (Suing as Officials of Rhapta Road Residents Association) v County Executive Committee Member(CECM) Built Environment and Urban Planning, Nairobi City County & 20 others [2025] KEELC 128 (KLR) was also referenced.

188. Further, it was submitted, the CIDP) 2023–2027 and the ADP 2024/2025 were said to have been prepared in compliance with Article 220(2) of *the Constitution* and Section 108 of the *County Governments Act*, 2012. In the interim, it was submitted, the NIUPLAN, Development Control Policy (2021), and Land Use Policy (2023), read together with PLUPA and its Regulations, continue to govern development control in Nairobi County.

189. Counsel argued that the Petitioners' claim that all developments in Parklands since 5th August 2019 are illegal or irregular is a broad and unsubstantiated generalization and that they failed to identify any specific non-compliant developments or produce supporting documents, whereas some Interested Parties had provided sample approvals for certain parcels.

190. Counsel urged that the doctrine of regularity should come into play as explained in Kassam & 13 others v Njoroge & 23 others [2025] KEELC 4860 (KLR). The court noted that this presumption is where a court presumes that official duties have been properly discharged and all procedures duly followed until the challenger presents clear evidence to the contrary.

191. Reliance in this regard was also placed on the case of Export Processing Zone Authority & 10 others (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe Area, Mombasa) v National Environment Management Authority & 3 others [2024] KESC 75 (KLR).

192. Counsel contended that the Petitioners have not established a specific link between the alleged rights violations and the actions complained of, noting that claims of riparian encroachment, obstruction, and land grabbing are vague and unsupported. Citing Mumo Matemu v Trusted Society of Human Rights Alliance & Others [2013] eKLR and Anarita Karimi Njeru (supra), it was argued that the Petition failed to meet the constitutional threshold of precision.

193. Counsel maintained that no development approvals had been shown to be unlawful, and halting or demolishing developments would contravene public interest given the County's active reform agenda. He added that courts have discretion to regularize non-compliant developments where demolition would cause disproportionate harm.

194. In support, Counsel cited the cases of Kenya Bankers Association v Nairobi City County Government & Another [2019] eKLR, where it was observed that demolitions ought to be a measure of last resort, and South Durban Community Environmental Alliance v Head of Department: Department of Agriculture and Environmental Affairs, KwaZulu-Natal & Another (2005) ZASCA, which underscored the principle of proportionality in environmental enforcement.

195. Counsel urged that the Respondents and Interested Parties are lawfully executing their mandates under PLUPA, 2019 and implementing reforms guided by the NIUPLAN, National Land Use Policy (2023), and Nairobi City County Development Control Policy (2021), with ongoing preparation of Local Physical and Land Use Development Plans.

196. Finally, Counsel drew comparative lessons from Ghana and India, where regularization frameworks have been legislated to manage widespread unauthorized developments. These models, it was urged, acknowledged that indiscriminate demolition inflicted undue hardship and undermined public interest unless the developments posed grave environmental, structural, or public land concerns.

197. On this basis, Counsel urged the court to find that the Petition lacked merit and to dismiss it with costs, as the Respondents were actively engaged in lawful, structured efforts to strengthen and regularize urban development controls.

The 7th, 14th, 21st and 25th Interested Parties' submissions

198. The Interested Parties filed two sets of submissions on 28th July, 2025 and 13th August, 2025. Counsel submitted that planning is a constitutional imperative under Article 69 of *the Constitution*; that PLUPA, 2019, comprehensively governs the preparation, approval, and enforcement of development plans and that pursuant thereto, Counties are required to formulate County and Local Physical Land Use Development Plans, although many face resource limitations affecting full compliance.

199. Institutional mechanisms, such as the County Liaison Committee and Consultative Forum, were cited as vital for stakeholder participation. On development control, Counsel noted that PLUPA, 2019 mandates prior approval for any development and empowers authorities to halt or demolish unauthorized works. Despite implementation delays, the Respondents were said to be progressively complying.

200. In addressing remedies, Counsel urged the court to support ongoing institutionalization of PLUPA, 2019 mechanisms, including the establishment of the County Physical and Land Use Planning Liaison Committee and the Consultative Forum.

201. Instead of halting approvals, Counsel proposed coordination and collaboration between national and county governments, citing the Supreme Court's decision in Re Interim Independent Electoral Commission [2011] eKLR, and that a joint committee comprising county and national planning institutions, professional associations, and NEMA should guide development applications under Section 60 of PLUPA, 2019.

202. It was submitted that while the County Integrated Development Plan (CIDP) is provided for under Section 107 of the *County Governments Act*, it does not itself constitute a spatial planning framework. Rather, it should be premised on the County Physical and Land Use Development Plan prepared under PLUPA, 2019 which remains the primary statutory instrument guiding planning at the county level.

203. According to Counsel, the County Spatial Planning Guidelines, 2018, expressly require counties to budget for, prepare, and approve these plans, with CIDPs then serving as operational tools aligned to sustainable urban development. Similarly, it was urged, Section 38 of the *Urban Areas and Cities Act* obligates counties to prepare Integrated City or Urban Development Plans, but PLUPA governs all such planning uniformly across Kenya.

204. In light of this framework, Counsel urged that the Respondents be granted twelve months to prepare valid County Physical and Land Use Development Plans, operationalize institutions, and file periodic compliance reports with the National Land Commission and the Director General. Drawing from comparative jurisprudence in India and Pakistan, they urged the court to adopt a model of periodic reporting to secure compliance.

The 9th Interested Party's submissions

205. The 9th Interested Party filed submissions in support of the Petition on 28th July 2025. Counsel submitted that Articles 10(2)(c)–(d) of *the Constitution* embed the principles of good governance, integrity, transparency, accountability, and sustainable development, while Article 66 empowers the State to regulate land use in the public interest, including for planning purposes.

206. It was submitted that under the *County Governments Act*, particularly Sections 104–115, counties are mandated to plan for their areas with full public participation; that the Act establishes a comprehensive framework for county planning, detailing processes for formulating plans (Sections 108–111) and requiring public involvement (Section 115).

207. Counsel explained that PLUPA, 2019 establishes the principles, procedures, and standards for preparing and implementing physical and land use development plans across all governance levels and that Sections 14 and 15 create the County Physical and Land Use Planning Consultative Forum, tasked with coordinating inter-sectoral planning, facilitating stakeholder consultations, and advising on resource mobilization for plan preparation and implementation.

208. On the other hand, it was submitted that pursuant to Section 36, Counties must prepare a County Physical and Land Use Development Plan every ten years, aligned with national and inter-county plans, while Section 46 requires the preparation of Local Physical and Land Use Development Plans to guide zoning, urban renewal, infrastructure coordination, and building standards.

209. Counsel argued that the Respondents' failure to constitute the County Consultative Forum and to prepare both County and Local Development Plans since 2019 contravenes PLUPA and Legal Notices Nos. 248 and 249 of 2021. This omission has led to unplanned and uncontrolled development in Nairobi and Parklands in particular, straining infrastructure, drainage, and sewer systems, and posing ongoing environmental and structural risks.

210. Counsel referenced the case of Moffat Kamau & 9 Others v Aelous Kenya Ltd & 9 Others [2016] eKLR, where the court was clear that where statutory procedures for the protection of the environment are disregarded, a presumption arises that the right to a clean and healthy environment is under threat.

211. Counsel asserted that unless this court intervenes, the unregulated developments in Parklands and the wider Nairobi will remain deleterious to the environment and contrary to constitutional guarantees. It was stated that in Adrian Kamotho Njenga v Council of Governors & 3 Others [2020] eKLR, the court affirmed that Article 42 of *the Constitution* guarantees every person the right to a clean and healthy environment for the benefit of both present and future generations. This right obliges strict adherence to Articles 69 and 70, and cannot be subordinated to irregular practices.

212. In conclusion, it was urged that in the wider public interest, and for the interests of posterity of planning of living spaces within the Nairobi City County and other Counties, the County Physical and Land Use Planning Consultative Forum should be in place, with the 9th Interested Party as one of its members. Similarly, a Land Use Development Plan for Nairobi City County be developed and published by the County Government. Counsel urged the court to allow the Petition.

The 19th Interested Party's submissions

213. The 19th Interested Party filed submissions on 28th July, 2025. Counsel, relying on the authority of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd. [1989] eKLR, emphasized that jurisdiction is foundational, and once absent, a court must immediately down its tools and that while Article 162(2)(b) of *the Constitution* established the Environment and Land Court (ELC) to handle

land and environment disputes, Counsel submitted that this jurisdiction is not absolute but subject to statutory exhaustion requirements.

214. It was submitted in this regard that the Petitioners had various dispute resolution mechanisms open to them, including the Water Tribunal, as envisaged by Section 82 of the *Water Act*, 2016, County Physical and Land Use Planning Liaison Committee as anticipated by Sections 61(3) and (4) and Section 40(4) of the *Physical and Land Use Planning Act*, 2019 or the National Environmental Complaints Committee as required under Section 32 of Environment Management and Co-ordination Act (EMCA).

215. Nonetheless, it was urged, the Petitioners have not discharged the legal burden of proof required under Article 22(1) and (2) of *the Constitution* and have failed to demonstrate, with precision, how the 19th Interested Party has directly infringed their right to accessible and adequate housing and to reasonable standards of sanitation.

216. Reliance in this regard was placed on the case of Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) (Petition 3 of 2018) [2021] KESC 34 (KLR) (11 January 2021) (Judgment).

217. Counsel acknowledged that Parklands is a rapidly developing urban area facing tensions between private development, public infrastructure, and constitutional duties on housing, planning, and sanitation. However, Article 21(2) obliges the State to take legislative and policy measures to achieve its gradual realization.

218. Counsel asserted that Parklands, while being a predominantly urban and high-density area, is subject to rapid development, with evident tensions arising between private development, public infrastructure and the fulfillment of constitutional obligations relating to housing, planning and sanitation.

219. However, it was submitted that Article 21(2) of *the Constitution*, mandates the State to implement legislative, policy, and other measures to ensure the progressive realization of the economic and social rights guaranteed under Article 43. Reliance in this regard was placed on the case of Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others (supra) and the High Court decision in Federation Of Women Lawyers Kenya (FIDA-K) & 5 Others v Attorney General & another [2011] KEHC 2099 (KLR).

220. Counsel asserted that allegations of environmental degradation under Article 42 of *the Constitution* remain vague, unsupported, and fail to identify responsible developers or instances of regulatory neglect. It was stressed that the Petitioners' allegations that buildings had collapsed, government vehicles were involved in illegal excavation, or that slum land was in danger of being grabbed were wholly speculative. It was submitted that no reports were filed, no particulars of vehicles or developers were supplied, and no credible threat to tenure was demonstrated.

221. Similarly, it was contended, the averments of waste dumping into the Mathare River or construction of illegal structures lacked particulars of perpetrators, complaints, or enforcement proceedings. At best, such allegations point to individual offences but cannot justify blanket constitutional orders.

222. It was further submitted that the Petitioners have failed to meet the evidentiary threshold required under Article 70 of *the Constitution*, since they rely on general assertions without proving specific harm or culpability. Shortcomings in administrative forums under PLUPA, 2019, it was urged, do not translate into constitutional violations, as the law contemplates the progressive realization of such mechanisms over time.

223. Counsel emphasized that the developments in question do not contravene PLUPA, 2019 or the NIUPLAN; that Section 14 of the PLUPA envisages County Planning Liaison Committees and forums but does not prescribe immediate implementation and that as the Supreme Court observed in In the Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012] KESC 5, socio-economic and environmental rights are subject to progressive realization, to be achieved within the limits of available resources and prevailing circumstances.

224. It was contended that the Petitioners have not demonstrated that any development violated zoning laws or lacked requisite approvals; that on the contrary, the approvals were issued after environmental impact assessments, publication in gazettes, and review by competent County organs and that these constituted legally sufficient participatory processes.

225. Public participation, Counsel added, is cumulative and not confined to a single mechanism such as development forums, as recognized by the South African Constitutional Court in Doctors for Life International v Speaker of the National Assembly.

226. Counsel urged that the reliefs sought by the Petitioners are disproportionate, unenforceable, and would unjustly disrupt lawful developments. If granted, such orders would prejudice innocent property owners and cause significant harm to the wider public.

227. It was argued that the Petitioners have failed to identify specific properties, developers, or unlawful acts attributable to the Respondents and Interested Parties and that they have not joined the lawful owners of the properties in question, nor have they provided technical reports, expert assessments, or statutory objections.

228. In conclusion, it was submitted that the Petitioners have failed to meet the evidentiary and procedural thresholds necessary for the grant of constitutional reliefs, and that the reliefs sought would occasion grave injustice and infringe the rights of numerous innocent parties. Counsel therefore urged the Court to dismiss the Petition in its entirety with costs.

The 20th Interested Party's submissions

229. The 20th Interested Party filed submissions on 28th July,2025. Counsel submitted that the Physical and Land Use Planning Development and Development) Control Regulations 2021 provide that no development permission shall be granted without considering the comments of relevant authorities. Nonetheless, it was stated, the role proffered by the regulations is to the end that such developments affect the roads under the mandate of Section 4 of the *Kenya Roads Act*.

230. It was urged that the 1st Respondent is well seized with the issues of the proposed review of zoning guidelines. As such, there has been no demonstration of how the Petition relates to the 20th Interested Parties. Reliance was placed on the case of Marigat Group Ranch & 3 Others v Wesley Chepkoiment & 19 Others[2014]eKLR and Trusted Society of Human Rights Alliance v Matemo & 5 Others[2014] KESC 32 (KLR).

231. According to Counsel, in as much as the Interested Party is entitled to submit its comments with regards to applications for development permission, the Petitioners have not particularized the alleged developments that they allege are progressing without the necessary approvals. Nor has it been shown that any developments in the Parklands area have been undertaken without proper input from them.

232. Counsel asserted that the 20th Interested Party has at all times provided requisite advise and technical support in the formulation of development policies. In particular, it has been instrumental in the formulation of the National Spatial Plan (2015-245); the Nairobi Integrated Urban Development

Master Plan (NIUPLAN); the Nairobi City County Development Control Policy, 2021, 2022 and 2023; Sessional Paper No 1 of 2022 on City County of Nairobi and Sessional paper no 1 of 2023 on Nairobi City County Development Policy.

The 61st Interested Party's submissions

233. The 61st Interested Party filed submissions on the 29th July, 2025. Counsel submitted that Article 159 (c) of *the Constitution* and the doctrine of exhaustion require parties to pursue statutory remedies before moving to court.

234. It was submitted that pursuant to the provisions of Section 78 of PLUPA, 2019 and Section 129 of EMCA, the Petitioners were obligated to approach the County Physical and Land Use Planning Liaison Committee or the National Environmental Tribunal for their grievances. Reliance was placed in the decision in Kibos Distillers Limited & 4 others v Benson Ambuti Adega & 3 others [2020] KECA 875 (KLR).

235. It was further submitted that the 61st Interested Party lawfully obtained approvals for a 19-storey, 108-apartment project on L.R. No. 209/5665/2, consistent with Articles 60(1) and 43(1)(b) of *the Constitution* on sustainable land use and the right to housing; that the development aligns with NIUPLAN's objectives and respond to Nairobi's housing needs, and that the absence of County or Local Development Plans does not, by itself, invalidate duly issued approvals.

236. Counsel urged that to invalidate all development permissions granted over the past six years solely due to the 1st Respondent's failure to finalize physical and land use development plans would, result in disproportionate mischief, massive financial losses, a housing crisis, and uncertainty in local authority decisions.

237. The court was pointed to the decision in Claire Kubochi Anami & 3 Others v County Executive Committee Member (CECM) Built Environment and Urban Planning, Nairobi City County & 19 Others, [2025] KEELC 128 (KLR) which recognized the 2021 draft Development Policy as the closest and most relevant guide for Nairobi City County in approving development plans. Further reliance was placed on Court of Appeal case of Co-operative Bank of Kenya Ltd v Patrick Kangethe Njuguna & 5 Others [2017] eKLR.

The 107th Interested Party's submissions

238. The 107th Interested Party's Counsel filed submissions on 28th July, 2025. Counsel submitted that this court has no original jurisdiction to entertain the matter.

239. He stated that pursuant to Section 61 (3) and (4) of PLUPA, 2019, as read with Sections 78 and 80 thereof, original jurisdiction with respect to complaints and claims made in respect to applications submitted to the planning authority and appeals against decisions made by the planning authority with respect to physical and land use development plans lay in the first instance to the County Physical and Land Use Planning Liaison Committee.

240. It was contended that as expressed in Samuel Kamau Macharia and another v Kenya Commercial Bank and 2 Others, Application No. 2 of 2011 and reiterated in Kibos Distillers Limited & 4 others v Benson Ambuti Adega & 3 others [2020] KECA 875 (KLR), a court cannot arrogate itself original jurisdiction.

241. Counsel submitted that the Petition as is does not meet the specificity threshold of a constitutional Petition as prescribed in the cases of Anarita Karimi Njeru v The Republic [and Mumo Matemu v Trusted Society for Human Rights Alliance & 5 other(supra).

242. Counsel also referenced the case of Sikalieh (Chairman) Suing on behalf of Karen Langata District Association v Nairobi County Government & 3 others (Environment & Land Petition E039 of 2022) [2022] KEELC 15120 (KLR) (24 November 2022) (Ruling), where the court held that even if a court has original jurisdiction, this does not operate to oust the jurisdiction of other competent organs, in this case the Nairobi City County Physical and Land Use Liaison Planning Committee, that has been legislatively mandated to hear and determine disputes relating to approvals of development plans by the 1st Respondent.

243. Counsel asserted that as held in Bernard Murage v Fine Serve Africa Ltd & 3 others [2015] eKLR and Japheth Ododa Origa v Vice Chancellor University of Nairobi & 2 others [2018] eKLR, not each and every violation of the law must be raised as a constitutional issue.

244. It was submitted that where there exists an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued first. It was urged that the alleged failure by the 1st and 5th Respondents to constitute the impugned Forum and Plans is a matter of non-compliance with statute, as opposed to enforcement of Bill of Rights.

245. Counsel argued that the Petition rests on broad, unsubstantiated allegations lacking credible evidence, making it impossible for the Respondents to give a focused response. They relied on the case of Karrim Sherali Kassam & 12 Others v Shantilal Raychand Shah & Others [2025] KEELC 5354 (KLR) where similar complaints, such as obstruction, encroachment, and pollution were dismissed for want of proof. In that case, it was submitted, the court held that photographs and videos were insufficient without expert reports establishing a causal link between the developments and the alleged harm.

246. Counsel submitted that the absence of County and Local Physical and Land Use Development Plans under PLUPA, 2019 does not create a legal vacuum and that Nairobi County continues to operate under an existing framework, namely the NIUPLAN, 2014 and the Nairobi City County Development Control Policy, 2021.

247. Reliance in this regard was placed on the case of Millennium Gardens Management Limited v Metricon Home Nairobi Company Limited; Nairobi City County Government & 2 others [2024] KEELC 6040 and Karrim Sherali Kassam & 12 Others v Shantilal Raychand Shah & Others(supra).

248. It was submitted that PLUPA, 2019 does not prescribe the period within which a County Physical and Land Use Development Plan is to be prepared, meaning that Parliament clearly anticipated that counties would not have such plans immediately upon the coming into force of the Act. If the legislative intent had been to halt all development and suspend issuance of approvals until such plans were in place, it was submitted, the law would have expressly provided for that.

249. Accordingly, Counsel argued that there is no legal basis for a blanket suspension of development permissions during the interim period before statutory plans are prepared and published. He urged that development approvals remain valid so long as they comply with the existing framework.

The 108th Interested Party's submissions

250. The 108th Interested Party's Counsel filed submissions on the 28th July, 2025. Counsel submitted that Article 42 of *the Constitution* guarantees every person the right to a clean and healthy environment. This is cemented by Article 69(1) of *the Constitution* which further imposes a duty on both the State and its citizens to protect and preserve the environment.

251. Counsel argued that since the enactment of PLUPA, 2019, no valid County or Local Physical and Land Use Development Plans have been prepared or published, contrary to the Act. Whereas Mr Analo

claimed in his affidavit that NIUPLAN (2014) serves as the guiding master plan, Counsel urged that it was formulated under the repealed legal regime and was superseded by PLUPA, 2019.

252. Consequently, it was submitted, it cannot validly serve as the statutory County plan. Counsel contented that in effect, any developments undertaken after 5th August 2019, lack a lawful planning basis, exposing the County to serious environmental and regulatory risks, as evidenced by the Petitioners' materials.

253. Counsel emphasized that PLUPA provides a comprehensive framework for sustainable and orderly land use, integrating environmental, social, and economic factors. It was submitted that the 108th Interested Party's participation in these proceedings is anchored in this framework, aimed at promoting lawful and sustainable urban development.

254. Counsel argued that PLUPA, 2019 mandates the establishment of a County Physical and Land Use Planning Consultative Forum to facilitate coordination, expert consultation, and public participation in the formulation and implementation of County and inter-county development plans.

255. Counsel maintained that the failure to constitute this Forum has created a governance vacuum in which crucial planning decisions are made without transparency or expert input, denying stakeholders such as the 109th Interested Party, an opportunity to contribute to sustainable development oversight.

256. Counsel submitted that their case rests on the doctrine of legality and the principle that all public power must be exercised strictly in accordance with the law. She emphasized that there can be no estoppel against the law, and that legality is a fundamental doctrine which binds all public institutions and officers.

257. Central to this dispute, she argued, is Section 61 of PLUPA, which requires that when considering development applications, the County must adhere to the hierarchy of plans recognized under the Act.

258. In conclusion, it was urged that it is evident that the Respondents have failed to undertake proper planning and have proceeded with developments in a manner that disregards both legal and procedural requirements.

259. The parties orally highlighted their submissions on 19th September, 2025. The said submissions mirrored the written submissions, which we have considered, and summarized above.

C. Analysis And Determination

260. Having considered the Petition, responses and submissions, the issues that arise for determination are:

i. Whether the Preliminary Objection is merited?

ii. Whether the 1st to 6th Respondents have complied with their statutory obligations under the *Physical and Land Use Planning Act*, 2019 (PLUPA) with respect to the establishment/ preparation of:

a. County Physical and Land Use Planning Consultative Forum?

b. Local Physical and Land Use Development Plans for Nairobi County and in particular Parklands Area?

c. County Physical and Land Use Development Plan for Nairobi City County, And if not? What are the consequences thereof?

iii. Whether the Petitioners have demonstrated the alleged constitutional breaches?

iv. What are the appropriate orders to issue?

I. Whether the Preliminary Objection is competent?

261. The threshold of a Preliminary Objection was set out by the Court of Appeal in the locus classicus case of Mukisa Biscuits Manufacturing Co. Ltd. v. West End Distributors (1969) EA 696 at 700 wherein Law, JA stated that:

> " ...a 'preliminary objection' consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."

262. Newbold, P further held:

> " A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop."

263. The Supreme Court in the case of Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others [2014] eKLR re-affirmed the principle as set out in the Mukhisa Case(supra) stating:

> " A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."

264. The 107th Interested Party's Objection is centered on four issues which are; the jurisdiction of this court, the Petitioners locus standi, whether the Petition has met the specificity test and joinder of the Interested Parties.

265. Upon consideration of these issues, the court harbours no doubts that these are jurisdictional questions. First, the question of jurisdiction of the court is always a threshold matter, since a court must satisfy itself that it has the constitutional and statutory authority to hear and determine a dispute before delving into the merits. Indeed, as expressed in the case of Owners of Motor Vessel "Lillian S." v Caltex Oil (K) Limited [1989] KLR 1, jurisdiction is everything, without which a court has no power to make one more step.

266. Second, the question of the Petitioners' locus standi goes to whether the Petitioners have the legal capacity to institute and sustain proceedings before the court; without locus, the court cannot be properly moved.

267. Third, the requirement that a Petition meet the specificity test as established in Anarita Karimi Njeru v Republic (1979) eKLR and reaffirmed in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR, is a constitutional threshold question since a Petition that fails to disclose with precision the constitutional violations complained of is incompetent ab initio.

268. Finally, the question of the propriety of listing suit properties as Interested Parties is equally an issue of preliminary determination because it touches on whether there are proper parties before whom the court can effectively exercise its jurisdiction and render a just and conclusive determination of the dispute.

269. Moving now to the competency of the objection, on the first issue on jurisdiction, the 107th Interested Party has argued that the Petitioners claim against the 1st Respondent's issuance of any impugned development permissions lie in an appeal to the 1st Respondent's County Physical and Land Use Planning Liaison Committee pursuant to Section 61(3) and (4) of PLUPA, 2019 and that it is only after a decision has been made by the aforesaid Committee that an aggrieved party may appeal to this court. As such, it is asserted, this court lacks first instance jurisdiction and the doctrine of exhaustion has been breached.

270. Albeit not vide a Preliminary Objection, but through their responses to the Petition, this position was also reiterated by the 19th Interested Party, which apart from referencing the County and Physical Liaison Committee, cited Section 82 of *Water Act*, 2016 which provides that disputes be taken to the Water Regulatory Board, and if a party is still aggrieved, appeal to the Water Tribunal. The 61st Interested Party also asserted that failure to refer the dispute to the County and Physical Liaison Committee breached the doctrine of exhaustion.

271. The principle of exhaustion has been upheld by courts with the Court of Appeal in Geoffrey Muthinja and Another v Samuel Muguna Henry & 1756 Others [2015] KECA 304 (KLR) addressing its mind to its rationale as follows:

> " It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution."

272. In the case of Anami & 2 others (Suing as Officials of Rhapta Road Residents Association) v County Executive Committee Member (CECM) Built Environment and Urban Planning, Nairobi City County & 20 others (Environment and Planning Petition E030 of 2024) [2025] KEELC 128 (KLR), the court stated that the doctrine of exhaustion prescribes that a party ought to exhaust a dispute resolution mechanism as prescribed under statute, before seeking redress before a court of law.

273. This decision was upheld by the Court of Appeal in Civil Appeal No. E160 of 2025 Claire Kubochi Anami(ChairLady) & 2 Others v County Executive Committee Member (CECM) Built Environment and Urban Planning, Nairobi City County & 20 others (Environment and Planning (Unreported):

> " 59. We agree with the appellants on this point. In our view, the doctrine of exhaustion serves an important constitutional function. It promotes

institutional comity by recognizing the legislature's intent that certain technical disputes be resolved in specialized fora. It enhances efficiency by allocating cases to bodies with subject-matter expertise. This Court has consistently reaffirmed that principle, most famously in Speaker v Karume (supra), Geoffrey Muthinja (supra) and Kibos Distillers Limited & 4 Others v Benson Ambuti Adega & 3 Others [2020] eKLR. We reaffirm the general principle: where Parliament has prescribed specialized fora and a clear path of review, parties must ordinarily exhaust those remedies. That discipline respects legislative design, leverages technical expertise, and refines records for judicial review.

60. However, our jurisprudence has equally recognised that exhaustion is not an inflexible rule. As the High Court observed in William Ramogi (supra), courts may intervene where statutory mechanisms are plainly inadequate to deal with constitutional claims, or where insistence on exhaustion would result in a denial of justice. Differently put, the exhaustion doctrine is not an iron cage. Courts retain a narrow gate for exceptions — where a dispute transcends routine merits review (for example, where it raises systemic constitutional issues); where the statutory path is ineffective; or where urgent structural relief is necessary and no practical alternative exists. 61.Applying those principles here, we are satisfied that the ELC did not err in assuming jurisdiction. The Petition raised systemic and constitutional questions about Nairobi City's planning governance — specifically, the County's admitted failure to finalize, approve, and gazette lawful zoning and development control instruments nearly two decades after the 2004 Zoning Guidelines had become obsolete. The reliefs sought were constitutional in character: declarations of invalidity, injunctions binding multiple State organs, and structural remedies to compel future compliance. These were not remedies within the remit of a Liaison Committee or the NET. The Petition did not merely assail isolated approvals; it impugned the City's planning posture writ large — alleging policy abdication, legislative vacuums, and the need for structural remedies to catalyze lawful planning instruments. The ELC confronted a multi-faceted controversy at the intersection of urban planning, environmental governance, fair administrative action, and socio-economic rights."

274. This principle of exhaustion has been held not to be absolute with the Supreme Court holding in the case of Benson Ambuti Adega & 2 Others v Kibos Distillers Limited & 5 Others [2020] eKLR that a case by case and nuanced approach ought to be adopted in evaluating whether a matter is to be exempted from the doctrine of exhaustion as follows:

> " 51. The trial Court, as did the appellate Court, correctly determined that the Petition was multifaceted, and presented issues in an omnibus manner. The point of divergence between the two Superior Courts was where the trial Court then went further to determine that these multifaceted issues could be determined by the Court "in the interests of justice." It would seem that the ELC had failed to appreciate that there were properly constituted institutions that were mandated to hear and determine the issues but instead chose to arrogate to itself the jurisdiction to hear and determine all the issues raised in the Petition. The Petitioners stated that the Superior Court correctly relied

on the doctrine of judicial abstention, and exercised it discretion to hear and determine the Petition.

52. Judicial abstention, as with judicial restraint, is a doctrine not founded in constitutional or statutory provisions, but one that has been established through common law practice. It provides that a Court, though it may be vested with the requisite and sweeping jurisdiction to hear and determine certain issues as may be presented before it for adjudication, should nonetheless exercise restraint or refrain itself from making such determination, if there would be other appropriate legislatively mandated institutions and mechanism..."

275. The court in William Odhiambo Ramogi & 3 Others v Attorney General & 4 Others: Muslims for Human Rights & 2 Others (Interested parties) [2020] eKLR pronounced the following exemptions to the doctrine of exhaustion:

> " As observed above, the first principle is that the High Court (read ELC) may, in exceptional circumstances consider and determine that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting the Court's jurisdiction must be construed restrictively."

276. The second principle is that the jurisdiction of the courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting the court's jurisdiction must be construed restrictively.

277. This was extensively elaborated by Mativo J in Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others [2018]eKLR as follows:

> " In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion...This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court."

278. This position was affirmed by the Supreme Court in the case of Nicholus v Attorney General & 7 Others; National Environmental Complaints Committee & 5 Others (Interested Parties) [2023] KESC 113 (KLR), which held thus:

> " Section 9(2) of the *Fair Administrative Action Act*, we must add, provides that where there exist internal mechanisms for the resolution of a dispute, the court will not review the administrative action until the internal dispute mechanism has been exhausted. As we had earlier stated, in our view, that fact notwithstanding, there is nothing that precludes the

adoption of a nuanced approach, that safeguards a litigant's right to access justice while also recognizing the efficiency and specificity that established alternative dispute resolution mechanisms can offer. That is also why Section 9(4) of the *Fair Administrative Action Act* creates the exception that exhaustion of administrative remedies may be exempted by a court in the interest of justice upon application by an aggrieved party..."

279. Vide the present Petition, the Petitioners seek several reliefs, including declarations that the Nairobi City County has failed to put in place a County Physical and Land Use Consultative Forum, and the requisite County and Local Physical and Land Use Plans, declarations that development permissions issued to the impugned properties are a nullity and all developments thereon in breach of the provisions of PLUPA, 2019 and violations of their rights including inter-alia rights to life, clean and healthy environment and human dignity. They equally seek mandatory injunctive reliefs.

280. It is clear from the foregoing that the allegations raised are inherently connected to the constitutional violations alleged and fall squarely within the jurisdiction of this court.

281. The Petitioners' claim is multifaceted, engaging both statutory and constitutional dimensions. Although the Respondents and the Interested Parties have cited various dispute resolution mechanisms, including the County Physical and Land Use Planning Liaison Committee, the Water Regulatory Board and the Water Tribunal, none possesses the mandate or capacity to fully address the alleged violations of the Petitioners' right to a clean and healthy environment or the 2nd Respondent's constitutional duty to plan for Nairobi City County. Indeed, the very invocation of multiple forums underscores that only this court can holistically and effectively determine the issues presented.

282. For this reason, this court finds that this Petition is a candidate for exemption from the doctrine of exhaustion and the objection in this regard is unmerited.

283. On the issue of locus standi, the 107th Respondent contended that the Petitioners lack the legal standing to institute this Petition, having neither pleaded nor provided evidence of ownership of any property whose protection could properly ground the claim pursuant to Article 40 of *the Constitution* of Kenya.

284. Locus standi is defined in Black's Law Dictionary, 9th Edition at page 1026 as:

> " The right to bring an action or to be heard in a given forum".

285. The Court of Appeal in Alfred Njau & 5 others v City Council of Nairobi [1983] eKLR put it in the following terms:

> " The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt's Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding."

286. In their Petition, the Petitioners have outlined that they have filed the suit for and on behalf of Parklands Residents Association seeking for enforcement of their right to inherent human dignity, right to access information, right to fair administrative action, right to clean and healthy environment, among others.

287. Article 22 of *the Constitution* of Kenya provides:

> " 22.
>
> (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members."

288. Further, Article 70 provides for enforcement of environmental rights as follows:

"70.

(1) If a person alleges that a right to a clean and healthy environment recognised 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."

289. Guided by these constitutional provisions, it is correct to say that any person seeking for enforcement of rights under the Bill of Rights and environmental rights may file petitions on their own behalf and even on behalf of the general public. The Petitioners as such have the requisite locus.

290. The next issue concerns whether the Petition meets the specificity test. The 107th Interested Party argued that the Petition fails to disclose any cause of action for the enforcement of a right or fundamental freedom under the Bill of Rights, as the grievances raised merely allege non-compliance with the PLUPA, 2019. In their view, the Petition does not present justiciable constitutional questions.

291. The specificity test was established in the case of Anarita Karimi Njeru v Republic (No.1) (1979) 1 KLR 154 as follows:

> " The test in that case was stated thus: "We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution* , it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed."

292. Similarly, the Supreme Court in Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others [2014] eKLR stated as follows:

> " Although article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v Republic (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement."

293. The Petitioners have averred that this suit is based on enforcement of their bill of rights under Article 22 of *the Constitution*, their right to a clean and healthy environment under Article 42 of *the Constitution*, enforcement of environmental rights as per Articles 69 and 70, as well as a duty of the 1st Respondent to constitute the Nairobi City County Physical and Land Use Planning Consultative Forum, and the County and Local Physical Development Plans as mandated by PLUPA, 2019.

294. The Petition also challenges the issuance of development permits by the 1st Respondent by relying on development plans that are invalid. It is also alleged that the issued development permissions have failed and or neglected to meet the requirements of Article 10 of *the Constitution*.

295. In so alleging, the Petition has set out in detail the factual, legal, and constitutional foundations of the claim. It details the environmental, historical, and cultural significance of the Parklands area and enumerates particular properties and developments allegedly approved or undertaken unlawfully. The Petition therefore raises precise, justiciable constitutional and statutory questions.

296. The final issue raised in the preliminary objection concerns the identification of the Interested Parties. The 107th Interested Party contended that the Petition is defective for want of particulars, as it fails to clearly identify the names and identities of several Interested Parties. It was argued that properties are not legal persons capable of being sued, and therefore, the inclusion of parcels of land, rather than the names of their registered proprietors renders the Petition defective.

297. As aforesaid, Article 22 of *the Constitution* of Kenya grants every person the right to institute proceedings claiming violations of their rights and fundamental freedoms. This provision allows for a broad approach to standing, meaning that proceedings for the enforcement of the Bill of Rights can be instituted by various parties, including an individual, an association, or a person acting in the public interest. However, even with this expanded standing, the claim must still be directed at a specific person or body whose actions are alleged to be violating a right.

298. The Supreme Court of Kenya in setting up the criteria for joining as an Interested Party in the case of Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others (2014) and Francis Karioki Muruatetu & another v Republic & 5 others (2016)eKLR defined an Interested Party as a person or entity that has an identifiable, direct, and substantial legal stake in a court proceeding, even though they were not initially a party to the case.

299. Article 260 of *the Constitution* defines a "person" to include associations and corporate bodies, affirming that a legal action for constitutional violations can be brought against these entities as well as against natural persons.

300. Further, under the Civil Procedure Rules Order 1, Rule 3 provides for who may be joined as defendants as follows:

> " All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise."

301. This rule presupposes that the Respondents, and by extension, Interested Parties, are identifiable persons. Guided by Order 4, Rule 1(c) which provides that among the particulars of a Plaint, it includes the name, description and place of residence of the defendant, so far as they can be ascertained, a rule which also applies to a Petition, shows that when filing any suit, the pleading must contain the descriptive particulars of the parties for a claim to be valid.

302. The Supreme Court in the case of Matemu v Trusted Society of Human Rights Alliance & 5 others [2014] KESC 6 (KLR) in discussing on capacity of a party to sue held as follows:

> " 92. *The Constitution* enlarges the capacity to file a claim in defence of *the Constitution* thereby laying the basis for rights and constitutional enforcement. Article 3(1) provides that "every person has an obligation to respect, uphold and defend this Constitution. It further defines "person" to "include a company, association or other body of persons whether incorporated or unincorporated." *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, adopts the constitutional definition of person."

303. Also, while not directly on this point, the Supreme Court decision in Republic v Chengo & 2 others [2017] KESC 15 (KLR) underscores the importance of the principle of fair trial under Article 50 of *the Constitution*. A fundamental aspect of a fair trial is that the accused or respondent knows the full case against them, which is impossible if the party bringing the claim is not identifiable.

304. The principle extends to civil and constitutional litigation, where the opposing party must be named to ensure they have an opportunity to be heard.

305. In this case, 27th -31st, 33rd -48th ,50th -60th ,62nd -66th ,68th -106th Interested Parties are listed not by names, but indicated as "owners/developers of properties known as...." and land registration numbers follows. Indeed, the ownership of some of the properties has only been revealed through the 107th Interested Party, which vide its Replying Affidavit, identified the same. This is not the description of parties anticipated by the provisions of the law as above outlined. A party in a suit needs to be a person, and not an object or subject matter of a suit.

306. Consequently, although the Petitioners' failure to identify the 27th -31st, 33rd -48th ,50th -60th ,62nd -66th ,68th -106th Interested Parties does not make the entire Petition defective, the claims directed against the said unidentified persons are fatal and are hereby struck out.

II. Whether the 1st to 6th Respondents have complied with their statutory obligations under the *Physical and Land Use Planning Act*, 2019 (PLUPA) with respect to the establishment/preparation of:

a. Nairobi County Physical and Land Use Planning Consultative Forum?

b. Local Physical and Land Use Development Plans for Nairobi County, and in particular Parklands Area?

c. County Physical and Land Use Development Plans for Nairobi City County, And if not? What are the consequences thereof?

307. The Petitioners contend that the 1st to 6th Respondents are in clear breach of the mandatory provisions of the PLUPA, 2019 and its attendant Regulations. They submit that the Act expressly requires every County Government to prepare both a County Physical and Land Use Development Plan and a Local Physical and Land Use Development Plan, alongside the establishment of a County Physical and Land Use Planning Consultative Forum. They urge that these statutory instruments are not optional but form the foundation upon which lawful development control and planning decisions must be anchored.

308. In the absence of such County and Local Land Use Development Plans, and without a properly constituted Consultative Forum, the Petitioners argue that any purported development approvals issued by the 1st to 6th Respondents are ultra vires, unlawful, and unconstitutional.

309. They submit that such approvals are contrary to the statutory framework laid down under PLUPA, 2019, offend the principle of legality, and expose planning in Nairobi City County, including in Parklands, to arbitrary and irregular decision-making. The 8th, 9th, 108th and 109th Interested Parties support the Petitioners' position in this regard.

310. In response, the Respondents contend that contrary to the Petitioners' allegations, Nairobi City County is not devoid of statutory or policy instruments guiding physical and land use planning. They submit that the Nairobi Integrated Urban Development Master Plan (NIUPLAN, 2014–2030), although prepared under the repealed Physical Planning Act (1996), presently informs the County Physical and Land Use Development Plan as contemplated under Section 36 of PLUPA, 2019.

311. They further state that the process of updating and formalizing NIUPLAN under Sections 37 to 41 of PLUPA, 2019 is ongoing, with the aim of aligning it with the current statutory framework. In their view, the Petitioners' argument that the County lacks a master development plan is therefore inaccurate and misleading, given that NIUPLAN remains a comprehensive, visionary, and operative framework addressing Nairobi's planning and development challenges up to the year 2030.

312. The Respondents emphasize that NIUPLAN's spatial strategies have been integrated into the Nairobi County Integrated Development Plan (CIDP) 2023–2027, and progressively budgeted for under the County's Annual Development Plan (ADP) 2024/2025. They therefore submit that planning in Nairobi City County is taking place within an integrated development framework as envisaged by both *the Constitution* of Kenya, 2010 and PLUPA.

313. In addition, the Respondents argue that the County has formulated, approved, and operationalized the Nairobi City County Land Use Development Policy, 2023 and the Nairobi City County Development Control Policy, 2021. These instruments, they urged, prepared pursuant to Sections 17(a) and 20(b)

of PLUPA, 2019, provide policy and regulatory guidance on permitted land uses across different area of Nairobi and set out the standards for permissible developments.

314. They maintain that these policies have effectively filled the regulatory vacuum that followed the expiry of the 2004 Zoning Guidelines in 2016, and are now the operative tools for guiding urban growth and development control in the County.

315. On Local Physical and Land Use Development Plans, the Respondents submit that the process of preparation commenced as early as 2021 under the Nairobi Metropolitan Services (NMS), which issued Requests for Expressions of Interest for consultancy services to prepare Local Plans for various sub-counties. For the Parklands area specifically, the Respondents confirm that preliminary surveys and groundwork have already begun, with a Draft Local Physical and Land Use Development Plan expected by the third quarter of 2025.

316. With respect to the statutory requirement for a County Physical and Land Use Planning Consultative Forum, the Respondents submit that a draft framework has been developed and is captured in a Cabinet Memorandum annexed to their affidavits. They further state that operationalization of this Forum is scheduled for mid-2025 under the County Integrated Development Plan (CIDP) 2023–2027.

317. In light of the foregoing, the Respondents urge the court to find that while full statutory compliance under PLUPA is a progressive obligation, the County has already put in place a suite of instruments including NIUPLAN (2014–2030), the Development Control Policy (2021), and the Land Use Policy (2023) which collectively provide a coherent planning and development control framework.

318. Physical development planning, as a discipline, is primarily concerned with organizing, directing, facilitating, and managing the growth of human settlements. It seeks to ensure the efficient and sustainable use of land and related resources, balancing the demands of development with the imperative of conservation for present and future generations.

319. This principle is embedded in Kenya's legal framework. Article 66 (1) of *the Constitution* provides for the regulation of the use of land, or any interest in or right over land, in the interests of defense, public safety, public order, public morality, public health, or land use planning. The Fourth Schedule of *the Constitution* vests county governments with the power to regulate land use planning within their jurisdictions.

320. This vision is given legal effect through the *Physical and Land Use Planning Act*, 2019 (PLUPA, 2019). The Act establishes a structured, hierarchical, and participatory framework for land use planning across the country.

321. The PLUPA, 2019 gives effect to the Fourth Schedule of *the Constitution* as Section 56 thereof vests county governments with the power to control the use and development of land within their area of jurisdiction in the interests of proper and orderly development. In this regard, the counties are to be guided by the principles and norms of physical and land use planning which include, inter-alia, sustainable land use, comprehensive planning, inclusivity, public participation, and integration of economic, social and environmental needs of present and future generations.

322. PLUPA, 2019 anticipates several types of physical and land use development plans. These include the National Physical and Land Use Development Plan, Inter-County Physical and Land Use Development Plans, County Physical and Land Use Development Plans, and Local Physical and Land Use Development Plans.

323. As the dispute before this court touches on Nairobi City County and, in particular, the Parklands area, the relevant focus is on the County and Local Physical and Land Use Development Plans. To begin with, Section 14 of PLUPA, 2019 mandates the establishment of the County Physical and Land Use Planning Consultative Forum providing thus:

> "(1) There is established a County Physical and Land Use Planning Consultative Forum in each county."

324. Section 14(2) thereof stipulates that the County Physical and Land Use Planning Consultative Forum must bring together a wide range of institutional actors, professionals, and community representatives. The Forum is chaired by the County Executive Committee Member responsible for physical and land use planning, who also provides the secretariat.

325. The membership of the Consultative Forum further includes the County Director of Physical and Land Use Planning, the chairperson of the relevant committee in the County Assembly, and other County Executive Members responsible for key sectors such as economic planning, environment, roads and infrastructure, and social development.

326. Beyond the county government, the law requires national and professional representation. This includes nominees from the National Land Commission and the Director-General of Physical and Land Use Planning.

327. Additionally, the Forum should incorporate experts and stakeholders drawn from professional bodies such as the Kenya Institute of Planners, the Institution of Surveyors of Kenya, and the Architectural Association of Kenya. The Kenya Private Sector Alliance must also be represented, alongside registered resident associations within the county, and the National Council for Persons with Disability. Finally, the provision allows for the co-option of individuals with special skills, knowledge, or interests relevant to physical and land use planning.

328. Section 15 of PLUPA, 2019 speaks to its functions which are set out as including inter-alia, the provision of a forum for consultation on County and Inter-County Physical and Land Use Development Plans. This is reiterated in the Physical and Land Use Planning (County Physical and Land Use Development Plan) Regulations, Legal Notice number 240 of 2021, as well as the Physical and Land Use Planning (Local Physical and Land Use Development Plan) Regulations Legal Notice number 248 of 2021.

329. On the other hand, Section 36 of PLUPA, 2019 provides for the establishment of a County Physical and Land Use Development Plan, once in every ten years. The plan is required to be in conformity with the National Physical and Land Use Development Plan and any relevant Inter-County Physical and Land Use Development Plan. The County Executive Committee member is required to ensure that the plan is prepared and published within a period of eighteen months from the time notice of intention to prepare the plan is published.

330. Pursuant to Section 37 of the Act, the objectives of a County Physical and Land Use Development Plan include, among others, the establishment of an overall physical and land use framework for the county; guiding patterns of rural development and human settlement; providing a structured basis for the delivery of infrastructure and public services; ensuring the sustainable use and management of natural resources; and promoting environmental protection and conservation.

331. The plan is also intended to designate appropriate zones for industrial, commercial, residential, and social development; enhance transport and communication systems and linkages; safeguard national security interests; and address any other planning needs that may be identified by the relevant authority.

332. Section 38 thereof sets out the requirement for a notice of intention to prepare a County Physical and Land Use Development Plan while Section 39 speaks to the contents of a County Physical and Land Use Development Plan which must include inter-alia; policies, strategies and general proposals for the development and use of land; a summary of the situational analysis; proposals for proper county development; resource utilization and linkage with neighboring counties; diagrams, illustrations and description of current and anticipated developments in the county; an implementation strategy; and a reporting, monitoring and evaluation strategy. Further requirements are set out in the First Schedule of PLUPA, 2019.

333. Section 40 requires public participation in the preparation of this plan and sets out the manner thereof mandating publication in the Gazette, in at least two newspapers of national circulation and through electronic media informing the public of the draft. The CEC member is required to facilitate this public participation.

334. Sections 41 t0 44 speak to completion and approval, modification, revision and contents of the plan. Supplementing these provisions is the Physical and Land Use Planning (County Physical and Land Use Development Plan) Regulations, Legal Notice number 240 of 2021. The object of these Regulations is to provide a framework, guidelines and procedures for the preparation, public participation, completion, approval, revision and forms in respect of County Physical and Land Use Development Plans.

335. With respect to Local Physical and Land Use Development Plans, the same are provided for under Section 45 of PLUPA, 2019. This section mandates county governments to prepare these plans in respect of a city, municipality, town, or unclassified urban area. Such plans may provide for long-term or short-term development, urban renewal, or redevelopment, and must be consistent with an Integrated City or Urban Development Plan under the *Urban Areas and Cities Act*.

336. The purpose of the local plans is set out under Section 46, which provides that they shall guide zoning, urban renewal or redevelopment, the development of infrastructure, regulation of land use and development, coordination of sectoral agencies, and the formulation of frameworks and guidelines on buildings and works development.

337. According to Section 47, preparation of such plans may be initiated by the County Executive Committee Member. Section 48 requires the plans to consist of a survey report of the area concerned (prepared in the manner specified in the Second Schedule), together with GIS-based maps and descriptions. The survey report must include technical annexes and sieve analyses of gradient, environment, and infrastructure to maximize suitable locations for development.

338. Section 49 makes provision for notice of objections and approvals thereto. Once approved, Section 50 obligates the County Executive Committee Member to publish, within fourteen days, a notice in the Gazette, two newspapers, and electronic media indicating that the plan has been approved (with or without modifications) and specifying where it may be inspected.

339. A county government may also declare a Special Planning Area under Section 52, either on its own motion or at the request of the national government or the National Physical and Land Use Planning Consultative Forum under the grounds set out thereunder. The contents of a Special Area Plan are set out in Section 53. Finally, Section 54 provides that all plans, including those under the Urban Area and Cities Act, must be prepared and approved in accordance with the *Physical and Land Use Planning Act*, with necessary modifications.

340. The Second schedule of the Act sets out the requirements of a Local Physical and Land Use Plan. There is also the Physical and Land Use Planning (Local Physical and Land Use Development Plan)

Regulations Legal Notice number 248 of 2021. The object of these Regulations is to provide a framework for the preparation and approval of local physical and land use development plans pursuant to Sections 45, 46, 47, 4, 49, 50 and 51 of the Act.

341. The Respondents anchor their case on several instruments. First is the Nairobi Integrated Urban Development Master Plan (NIUPLAN 2014–2030), a strategic framework meant to replace the outdated 1973 Nairobi Metropolitan Growth Strategy. It outlines Nairobi's development vision, situational analysis, zoning proposals, and infrastructure priorities. NIUPLAN emphasizes integration, sustainability, and alignment with Vision 2030, Nairobi Metro 2030, and constitutional values.

342. Second is the Nairobi City County Development Control Policy, 2021, to be replaced by Sessional Paper No. 1 of 2023, Nairobi City County Development Control Policy, 2023. It provides zoning and development control guidelines, and is currently used administratively to vet applications.

343. Third is the Nairobi City County Land Use Policy, 2023 which seeks to provide a framework to guide land use and land-use planning to facilitate optimal and sustainable use of land. The Policy provides a framework for sustainable land management in Nairobi City County. It outlines the background, objectives, and principles of land use, anchored in legal, policy, and institutional frameworks.

344. Key interventions cover land administration, planning, housing, infrastructure, informal settlements, and environmental conservation. The policy also sets out roles for county institutions and provides mechanisms for monitoring, evaluation, and periodic review to ensure effective implementation and adaptability.

345. Fourth, the Respondents cite the County Integrated Development Plan (CIDP) 2023–2027 and the Annual Development Plan (ADP 2024/2025). These are medium-term planning instruments for budgeting, project prioritization, and alignment with national frameworks (Vision 2030, SDGs, Agenda 2063). They also identify strategies for preparing detailed local physical and land use plans.

346. It is noted at the onset that PLUPA, 2019 uses the term "shall" when addressing the preparation of County and Local Physical and Land Use Development Plans as well as in establishing and dealing with the Consultative Forum. This word denotes a mandatory obligation. This is consistent with settled principles of statutory interpretation.

347. In Republic v Cabinet Secretary, Ministry of Agriculture & Livestock Development; Ndungu (Exparte Applicant) [2023] KEHC 26613 (KLR): the court stated:

> " The word "shall" when used in a statutory provision imports a form of command or mandate. It is not permissive, it is mandatory. The word shall in its ordinary meaning is a word of command which is normally given a compulsory meaning as it is intended to denote obligation. The Longman Dictionary of the English Language states that "shall" is used to express a command or exhortation or what is legally mandatory. Ordinarily the words 'shall' and 'must' are mandatory and the word 'may' is directory."

348. In Reserve Bank of India v Peerless General Finance and Investment Co. Ltd (1987 SCR (2) 1), the Supreme Court of India observed that interpretation depends not only on the text but also on the context, since if the text is the texture, context is what gives the colour. In other words, statutory language must be construed holistically in light of its purpose.

349. Applying these principles to PLUPA, 2019, it is evident that Parliament intended to reset the planning framework by establishing a complete regime, leaving no room for reliance on instruments prepared under the repealed Physical Planning Act, 1996. Notably, PLUPA, 2019 contains no transitional

provisions allowing the use of instruments prepared under the repealed Act. Section 91 thereof simply states:

> " The Physical Planning Act, 1996 (No. 6 of 1996), is hereby repealed."

350. The transitional provisions as set out under Section 92 are with respect to development approvals and pending applications under the old law. Read holistically, this omission was deliberate, signifying that development control must henceforth be grounded solely in plans prepared, adopted, and gazatted under PLUPA, 2019.

351. The court will first tackle the issue of County Physical and Land Use Planning Consultative Forum which will be referred to as the "County Consultative Forum." As aforesaid, this forum is anchored on Section 14 of PLUPA, 2019 and is intended to provide a forum for consultation on County and Inter-County Physical and Land Use Development Plans.

352. Regulation 16 of the Physical and Land Use Planning (County Physical and Land Use Development Plan) Regulations Legal Notice 240 of 2021 and Regulation 13 of the Physical and Land Use Planning (Local Physical and Land Use Development Plan) Regulations-Legal Notice 248 of 2021 provide that no county plan can be finalised until it has been subjected to review by this Forum. In short, the Forum is the statutory anchor for public participation, institutional coordination, and stakeholder accountability in the planning process.

353. Admittedly, this Forum is not in place and instead, the Respondents cite the progress made in this respect. They state that in the Built Environment and Urban Planning Sector Priorities for 2023- 2027, CIPD lists as one of its strategies, the operationalization of this Forum.

354. Further still, a draft Cabinet Memorandum has been prepared and is awaiting approval. Once approved, the Consultative Forum is expected to be launched within four (4) months of the approval date as per the proposed 12-month Implementation Roadmap. The operationalization is set for mid-2025. It is also listed as a strategy in the ADP.

355. Similarly, it is also conceded that the Local Physical Land Use Development Plans, and specifically for Parklands area, are not in place. The Respondents state that in the Built Environment and Urban Planning Sector Priorities for 2023- 2027, the CIPD lists as one of its strategies, the preparation of these plans. It is also captured in the County Annual Development Plan, 2024/2025 strategy and is listed as a key intervention in the Land Use Policy, 2023. The court was also informed that the Draft plans are expected by quarter 3 of 2025.

356. Further still, it was deponed that preparations in this regard begun way back in 2021 when the Nairobi Metropolitan Services (NMS) invited Requests for Expression of Interest in Consultancy Services in preparation of Local Physical and Land Use Development Plans for various sub-counties within the County.

357. In view of these concessions by the Respondents, it is evident that despite the Respondents' reference to strategies, policy documents, and draft instruments, the statutory requirements under PLUPA, 2019 remain unmet. Progress or intention cannot substitute for compliance. The inescapable fact is that, to date, neither the County Consultative Forum nor the requisite Local Physical and Land Use Development Plans have been established as mandated by *the constitution* and the statute.

358. With respect to the County Physical and Land Use Development Plan, the Respondents contend that the NIUPLAN currently serves this role. However, when measured against the statutory framework under PLUPA, 2019, this reliance is inadequate. We say so because NIUPLAN was formulated under a repealed statute, and the Respondents themselves concede to this point through their deponent,

acknowledging that NIUPLAN (2014–2030) is in the process of being formalized pursuant to Sections 37–41 of PLUPA. The manner of this formalization and the progress thereof is not disclosed.

359. Further still, it lacks some of the statutory content required by Section 39 of PLUPA, 2019 as read with the First Schedule thereof, such as a reporting, monitoring and evaluation strategy, climate change dimensions, survey report which must be formally adopted by the County Assembly, and an enforcement framework. It has equally not passed through the County Physical and Land Use Planning Consultative Forum, which has not been operationalised in Nairobi County to date. Without this Forum, the participatory and integrative safeguards built into PLUPA, 2019 cannot be achieved, rendering NIUPLAN incapable of serving as a lawful County Physical and Land Use Development Plan.

360. Indeed, as the Court of Appeal in Claire Kubochi Anami & Others v County Executive Committee Member, Built Environment and Urban Planning, Nairobi City County (supra) appreciated, the NIUPLAN is a county-wide integrated master plan setting strategic direction, articulating spatial structure, and providing broad development policy intent. It operates as a compass rather than a detailed plan.

361. This position was further reinforced in Mbaazi Avenue Residents Association & Another v Metricon Home Nairobi Company Limited & Others, Civil Appeal No E1010 of 2024(unreported) where the Court of Appeal affirmed the trial court's position thus:

> "We note that the learned Judge found, rightly so in our view, that: While the Nairobi Integrated Urban Development Master Plan of December, 2014 and Nairobi City County Development Control Policy, 2021 are the operative documents in guiding the approvals of developments in the county, the Court emphasizes the urgent need for the Nairobi City County to put in place the Nairobi County Physical and Land Use Development plan, envisioned under the *Physical and Land Use Planning Act*, to ensure that development decisions are made in accordance with the development plan, which would have been agreed upon by the residents of the County."

362. Regarding the Nairobi Development Control Policy, 2021, although more recent, it has neither been approved by the County Assembly nor gazetted, and therefore remains no more than an internal executive guideline. This position was affirmed by the Court of Appeal in Claire Kubochi Anami & Others v County Executive Committee Member, Built Environment and Urban Planning, Nairobi City County (Civil Appeal No. E160 of 2025)(unreported).

363. In any event, as stated in para 12 of Mr. Akivaga's Affidavit, the same was formulated pursuant to the 2nd and 3rd Respondents roles and responsibilities as provided for under Section 17(a) and 20(b) of PLUPA, 2019. These provisions reference the roles of the County Executive Committee member on formulating a county policy on physical and land use planning and the role of the County Director of Physical and Land Use Planning responsibilities of formulating county physical and land use planning policies, guidelines and standards. It is admittedly a policy document and not the County Physical and Land Use Plan contemplated under the law.

364. As regards the other documents, to wit, the Land Use Policy, 2023, the CIDP and ADP, whereas they are useful as strategic or administrative tools, they do not satisfy the legal requirements of PLUPA, 2019 set out herein above. They lack the substantive breadth, procedural safeguards, and legislative adoption that Parliament intended.

365. Accordingly, the court finds that the Respondents have not complied with their statutory obligations under PLUPA, 2019 regarding the establishment of the County Physical and Land Use Planning

Consultative Forum, and the County and Local Physical and Land Use Development Plans for Nairobi City County generally and Parklands area in particular.

366. Arising from the foregoing conclusion, the next issue is whether, in the absence of a duly constituted County Consultative Forum and the County and Local Physical and Land Use Development Plans as required by PLUPA, 2019 development permissions issued after the coming into force of PLUPA, 2019 are void?

367. The principle of legality provides the lens through which the effect of this non-compliance must be understood. Public bodies, no matter how well intentioned, may only do what the law empowers them to do. That is the essence of the principle of legality, the bedrock of our constitutional dispensation.

368. As emphasised by the South African Constitutional Court in Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council 1999 (1) SA 374 (CC) at para 56 and reaffirmed in Albutt v Centre for the Study of Violence and Reconciliation 2010 (3) SA 293 (CC), the doctrine of legality requires that all exercises of public power have a lawful basis and should be exercised strictly within the scope of statutory authority.

369. In Rachel Adhiambo Ogola & another v Council of Legal Education & another [2017] eKLR - Petition 227 of 2017, the court referenced the decision in Daniel Ingida Aluvaala and another v Council of Legal Education & Another wherein it had earlier noted:

> " Public bodies, no matter how well-intentioned, may only do what the law empowers them to do. That is the essence of the principle of legality, the bedrock of our constitutional dispensation, which is enshrined in our constitution. It follows that for the impugned decisions to be allowed to stand, it must be demonstrated that the decision is grounded on law. As such, the Respondents actions must conform to the doctrine of legality. Put differently, a failure to exercise that power where the exigencies of a particular case require it, would amount to undermining the legality principle which, is inextricably linked to the rule of law. Guidance can be obtained from the South African case of AAA Investments (Pty) Ltd v Micro Finance Regulatory Council and another where the court held as follows:- "(t)he doctrine of legality which requires that power should have a source in law, is applicable whenever public power is exercised . . . . Public power . . . can be validly exercised only if it is clearly sourced in law."

370. Indeed, a breach of the principle of legality cannot be treated as a mere procedural lapse. It strikes at the very heart of constitutional governance. When public authorities act without legal authority, the court must reaffirm the inviolable boundaries of power drawn by *the Constitution* and the law.

371. Such findings are not only corrective, but also declaratory. They restore constitutional order, remind public bodies that discretion cannot substitute for statutory mandate, and underscore that every exercise of public power must trace its legitimacy to a clear legal source.

372. This is the ultimate safeguard of individual rights and the bedrock of accountable governance. Public authority must therefore be both authorized by law and exercised within the limits of that law respecting procedural propriety, substantive fairness, and constitutional values. Where such authority is absent, the act is void, for legality is not optional; it is the very condition for the lawful exercise of public power.

373. Applied in this context, Section 61(1)(a) of PLUPA, 2019 expressly requires the County Executive Committee Member to consider "relevant approved national, county, local, city, urban, town and special area plans" when determining applications for development permission. Without an approved

County or Local Land Use Development Plan in place, such decision-making lacks the statutory foundation that the Act makes a mandatory precondition.

374. Moreover, Section 61(1)(b)–(e) of PLUPA requires the County Executive Committee Member to consider community facilities, environmental and social amenities, comments from relevant authorities and the public, and any leasehold conditions. These obligations cannot be meaningfully discharged in the absence of an approved County Plan, since such a plan is the statutory vehicle through which these considerations are identified, structured, and integrated.

375. Further, while Section 61(2)–(4) creates a hierarchy of accountability through appeals to the County Physical and Land Use Planning Liaison Committee and ultimately to the Environment and Land Court, this appellate structure presupposes that the initial decision was made in accordance with the Act. Where approvals are grounded on instruments that do not qualify as "approved plans" under PLUPA, the very foundation of such decisions collapses, and the appellate mechanism cannot cure the illegality.

376. In the face of the statute, therefore, development approvals granted in reliance on non-statutory instruments such as NIUPLAN or the Nairobi City Development Control Policy, 2021 would ordinarily be ultra vires, as they are issued in a legal vacuum and offend the principle of legality.

377. Nonetheless, the Court of Appeal in Claire Kubochi Anami v County Executive Committee Member, Built Environment and Urban Planning, Nairobi City County (supra) interrogating the NIUPLAN and the 2021 Nairobi City Development Control Policy noted that:

> "Our conclusion, therefore, is threefold. First, the 2004 Zoning Guidelines no longer carry binding legal status in Nairobi under the devolved framework and PLUPA. Second, NIUPLAN 2016 remains a valid, strategic, county-wide plan but cannot itself supply parcel-specific zoning rules. Third, the 2021 Development Control Policy, while legitimately prepared and used as a practical guide, did not attain full legal force without County Assembly approval and gazettement. We, therefore, agree with the learned Judge at page 32 of 50 in his acknowledgment and use of the 2021 Development Control Policy as an operative administrative guide, while agreeing with the appellants that it is not a consummated legislative instrument."

378. The Court of Appeal adopted a transitional posture. While affirming the binding force of PLUPA, 2019 and the mandatory nature of its framework, it cautioned against the wholesale invalidation of approvals and environmental licenses already granted, unless specific illegality is demonstrated in individual cases. The court further directed that pending development applications continue to be processed under PLUPA and its Regulations, with reference to interim administrative instruments, until statutory plans are duly prepared, approved, and gazatted.

379. This court fully aligns with that approach, further observing that the right to a fair hearing and procedural fairness under Articles 47 and 50 of *the Constitution* would equally be infringed were development approvals, some obtained through elaborate administrative processes, to be invalidated en masse without affording the affected property owners an opportunity to be heard. The audi alteram partem rule remains a cornerstone of due process.

380. Moreover, this court is bound by the pronouncements of the Court of Appeal. The principle of stare decisis, deeply embedded in our constitutional order, requires that lower courts adhere to the authoritative decisions of superior courts. Speaking to this principle, the Apex Court in Jasbir Singh Rai & 3 Others v Tarlochan Singh & 4 Others, [2013] eKLR, identified the rationale for the doctrine

of stare decisis as the need for stability, predictability, consistency, reliability, integrity, coherence and flexibility.

381. Consequently, while this court affirms that reliance on NIUPLAN or the Nairobi Development Control Policy, 2021 lacks statutory foundation, it cannot invalidate approvals wholesale, but must instead apply the transitional posture mandated by the Court of Appeal, recognising their validity unless illegality is demonstrated in specific cases.

382. The appropriate remedy is not a blanket nullification but rather a judicial directive to secure immediate statutory compliance going forward, consistent with the rule of law and the transitional posture articulated by the Court of Appeal.

III. Whether the Petitioners have demonstrated alleged constitutional breaches?

383. Among the reliefs sought by the Petitioners include a declaration that the 1st , 2nd , 3rd , 4th , 5th and 6th Respondents' acts, omissions and conduct in respect to developments and development activities that have taken place in the Parklands area of Nairobi City County from August, 2019 are in breach of the public right to life as provided under Article 26, right to a clean and healthy environment as provided under Article 42 and the right to human dignity as provided under Article 28 of *the Constitution*.

384. It is noteworthy that although not under the reliefs sought, the Petitioners in their Petition also averred that the Respondents' refusal to engage the public in decisions on land use and environmental well-being violated Article 10 on national values and principles of governance, Article 35 on access to information, Article 43 on economic and social rights, Article 47 on fair administrative action, Article 69 on obligations in respect of the environment and Article 70 of *the Constitution* on enforcement of environmental rights.

385. Further, the 8th Interested Party also stated that the existence of an approved plan is a statutory prerequisite for the lawful processing of development applications and as such, approval of developments outside the planning framework as provided in PLUPA, 2019 amounts to arbitrary decision-making, contrary to Article 10 of *the Constitution*.

386. In their submissions, the Petitioners emphasized that the lack of notice, consultations, or disclosure of planning documents breached both Articles 10 and 35 of *the Constitution*.

387. It is an established principle of the law that parties are bound by their pleadings, and by extension, the prayers sought. The Court of Appeal in Independent Electoral and Boundaries Commission & another v Mule & 3 others [2014] KECA 890 (KLR) held that:

> " 2. Parties were bound by their pleadings which in turn limited the issues upon which a trial court could pronounce. The judge, no matter how well-intentioned, went well beyond the grounds raised by the petitioners and answered by the respondents before her and thereby determined the petition on the basis of matters not properly before the Court. To that extent, the court committed a reversible error."

388. In this case, the Petitioners particularised how the developments undertaken in Parklands area from August 2019, and also the ongoing developments in the area, have breached, violated and infringed and threaten to continue breaching and violating their right to life, to a clean and healthy environment, to human dignity and to protection of their rights to property and to fair administrative action.

389. It is their position that the developments in City Park Forest since 2019 have violated the rights to a clean environment, property, and fair administrative action by enabling unplanned and illegal

constructions. The Petitioners argued that these actions have led to destruction of natural vegetation, desecration of cemeteries including those of national figures, and threats to historic and religious sites like the Joseph Murumbi Peace Memorial.

390. Additionally, they state that mass tree felling along the Mathare River for high-rise developments further endangers the ecological and cultural integrity of the area. They explained that large portions of land, especially along Limuru Road and the riparian zone of Mathare River, have seen massive tree felling and unauthorized developments, including high-rise buildings constructed in violation of environmental and planning regulations.

391. The Petitioners stated that these developments have caused widespread destruction of indigenous flora and fauna, with no reforestation efforts, affecting numerous neighborhoods such as Jalaram Road, General Mathenge Road, and others. Additionally, that existing buildings are being demolished without proper licenses or legal authority, indicating systemic disregard for planning and environmental laws.

392. They argued that the ongoing developments in the area have led to environmental degradation, including the illegal dumping of demolition debris, encroachment on public open spaces, and blockage of pedestrian walkways. That further, sewer and stormwater systems have been severely compromised, causing untreated waste to flow into rivers and frequent flooding on major roads like General Mathenge and 1st to 3rd Parklands Avenue.

393. Section 107 of the *Evidence Act*, Cap 80 provides as follows:

> "(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
>
> (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

394. This was asserted by the Court of Appeal in the case of Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another [2014] KECA 642 (KLR) which held that:

> "Proof in claims of a civil nature is by way of evidence. Section 3 of the *Evidence Act* (Cap 80) defines evidence as denoting:
>
> '-- the means by which an alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved, and without prejudice to the foregoing generally, includes statements by accused persons, admissions and observations by the court in its judicial capacity.'
>
> In that regard, to prove or disprove a matter of fact, a claimant bears the burden of proof as stated in sections 107, 108 and 109 of the *Evidence Act*, as follows;
>
> 107 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
>
> (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either said.

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall be on any particular person."

395. The burden of proof in constitutional Petitions was discussed in the case of Ndambiri & another v Nairobi Metropolitan Services & 6 others; Harambee Sacco & Co-operative Society Limited & 6 others (Interested Parties) (Environment & Land Petition E026 of 2022) as follows:

> " 132. It is trite law that a party seeking redress for an alleged violation of constitutional rights must plead such violation with clarity, specificity, and particularity. A Petitioner must identify the constitutional provision said to be infringed, describe the manner of infringement, and establish a link between the impugned action and the alleged violation. The principle is well-captured in the oft-cited case of Anarita Karimi Njeru v Republic (1979) KLR
>
> 133. Further, and importantly, the court is guided by the principles of the law of evidence. Sections 107(1) and (2) of the *Evidence Act*, Cap 80 establish that the legal burden of proof lies on the party who asserts the existence of a fact and seeks a judgment based on it. Also, when a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
>
> 134. Complementing this, Section 108 of the Act sets out the incidence of burden stating that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side and Section 109 of the Same Act provides that the burden of proof regarding any particular fact rests on the individual who wants the court to believe in its existence, unless the law expressly places that burden on someone else.
>
> 135. Additionally, Section 112 provides that in civil proceedings, where a fact lies especially within the knowledge of one party, the responsibility to prove or disprove that fact rests with that party.
>
> 136. Reinforcing the foregoing, the Supreme Court in Communications Commission of Kenya & 5 Others v. Royal Media Services Limited & 5 Others [2014] eKLR stated as follows:
>
> "Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance."

396. In support of their case that their constitutional right to life, dignity, clean and healthy environment have been breached, the Petitioners adduced before this court a plethora of photographs and videos. In these photographs and videos, they showcase high-rise residential buildings, allegedly grabbed land, dirty river waters, collapsed construction sites, damaged roads, flooding, sewer infrastructure and demolitions.

397. The Supreme Court in Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR stated as follows:

> " Although article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this article has to show the rights said to be infringed, as well as

the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v Republic (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement."

398. Further, in the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR, the Court of Appeal emphasized the need for precise claims and a clear causal link between the acts or omissions of the respondent and the alleged constitutional violations as follows:

> " 82) These documents, standing alone, do not illuminate any portrait on the 1st respondent's claim. Quite apart from the absence of proof on the claim of irregular award of loans, we have not been able to link the appellant to the alleged complaint. The nakedness of the documents is such that they can support any circumstantial claim, but only if there is more to substantiate the allegations. That is where the evidence requirement sets in. Moreover, the records before us do not show that any of the documents alleged to emanate from the AFC were done under the appellant's hand or authority. This case stands for the proposition that a party cannot make generalized or vague allegations. There must be specificity in identifying the right violated and how the respondent's conduct caused that violation."

399. In the case of Anarita Karimi Njeru(supra), it was asserted that a Petitioner must plead with reasonable precision the provisions of *the Constitution* that have been violated, and the manner in which they have been violated, reinforcing the need for a clear causal connection between the complaint and the constitutional provision alleged to have been breached.

400. The Petitioners argued that the developments which have been undertaken in the Parklands area commenced before and without any legal, procedural and genuine approvals from the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents which have become deleterious to the environment, and have negatively affected and will continue to negatively affect the physical and natural environment of the area now and in the future.

401. They stated that the proposed developments have and will continue subjecting them and their environment to damage breaching their right to clean and healthy environment. That further, the proposed developments continue to subject them to inhumane and degrading treatment violating their right to dignity.

402. In their oral submissions, the Petitioners stated that the Respondents have refused to undertake their statutory duties under *the Constitution* and PLUPA noting there have been several incidents where residents have had several injuries, loss of life and environmental loss and damage.

403. To prove the said constitutional violations, the Petitioners also rely on the annexed videos and photographs. They stated that their evidence in this regard are on the links and photographs annexed which in particular, video of 16th May, 2025 reported three people died in an excavated area.

404. That in the videos, they capture damaged properties and infrastructure, including collapsed walls exacerbated by excavation activities as well as the flooding that has occurred and continue to occur due to the Respondents' failure to adhere to the law.

405. The right to a clean and healthy environment transcends and includes the right to life as protected under Article 26 of *the Constitution*. The High Court in Peter K Waweru v Republic [2006] eKLR speaking to this position noted:

> " The right of life is not just a matter of keeping body and soul together because in this modern age, that right could be threatened by many things including the environment. The right to a clean environment is primary to all creatures including man; it is inherent from the act of creation, the recent restatement in the Statutes and the Constitutions of the world notwithstanding. This right and the other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible."

406. The right to clean and healthy environment has been recognized to be crucial for the survival of humanity. This right was formally recognized by the UN Human Rights Council and General Assembly in October 2021 and June 2022 respectively as an international human right.

407. In the Article by Azadeh Chalabi, "A New Theoretical Model of the Right to Environment and its Practical Advantages" (2023) Human Rights Law Review as cited in the case of Ndambiri & another v Nairobi Metropolitan Services & 19 others (Environment & Land Petition E026 of 2022) [2024] KEELC 13649 (KLR) (10 December 2024) (Judgment), he describes the multifaceted nature of the right to a clean and healthy environment as follows:

> " It should be noted that the right to environment is not just an 'umbrella' right, or the sum of the already existing rights but rather a composite right. This is because of the fact that the ecosystem is so intertwined that often any damage in one part can cause damage in other parts of the environment. Adopting a systems approach, the environment as a system can include both non-living and living beings, humans and non-humans, which are interdependent, and their survival depends on biodiversity at different levels from genes to biomes. The key point is that often harm to any aspect of the environment can be seen as harm to the environment as a whole. For example, as the global temperature continues to rise, the glaciers start melting and this will increase the sea levels. Following that, farms will be flooded, and coastal cities may be immersed. Apart from its influence on the level of food security, all this may make people migrate to other places and can have negative impacts on economies and their role in sustaining everyone. This could gradually make a habitable place unlivable in the long term, if not in the short term. Biodiversity and sustainable environment are objective needs of both humankind and other species, and thus protecting the environment is where the interest of both overlaps. The intertwining of the elements of the environment implies that any act or omission which contributes negatively to the qualities of the environment and its sustainability over time will be in violation of the right to environment. What is important here is to protect the environment as a system of non-living things (water, soil, air, light and minerals, etc.) and living things (humans, animals, plants, bacteria, fungi, protists, etc.) and its biodiversity (especially ecological diversity) over time."

408. In Kenya, Article 26 (1) of *the Constitution* guarantees every person the right to life, and the state is obligated to safeguard and not unjustly deprive any person of life except as permitted by law.

409. The sanctity of life and need for courts to ensure that the right to life is not curtailed arbitrarily was discussed by the Supreme Court in the case of Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR) as follows:

> " To our minds, any law or procedure which when executed culminates in termination of life, ought to be just, fair and reasonable."

410. Article 42 of *the Constitution* guarantees every person the right to a clean and healthy environment and to have the environment protected for the benefit of present and future generations. In enforcing environmental rights, Article 70 (1) provides that one may apply to court for redress if the right to a clean and healthy environment under Article 42 has been, is being or is likely to be denied, violated, infringed or threatened. Article 70 (1) thus gives every Kenyan access to the court to seek redress in environmental matters.

411. The Supreme Court in the case of Export Processing Zone Authority & 10 others (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe AreaArea, Mombasa) v National Environment Management Authority & 3 others [2024] KESC 75 (KLR) extensively discussed enforcement of the right to clean and healthy environment in reference to Rio Declaration on Environment and Development, 1992 as follows:

> " 100. Further, the constitutional provision on the enforcement of the right to clean and healthy environment is largely based on the polluter pays principle where the provisions give extensive power to the court to compel the government or any public agency to take restorative measures and to provide compensation for any victim of pollution and to compensate the costs borne by the victims for the lost use of natural resources as a result of an act of pollution. In addition to the polluter pays principle there is also the precautionary principle which directly impacts on environmental liability. The precautionary principle marks a shift from post-damage control (civil liability as a curative tool) to the level of pre-damage control (anticipatory measures of risks). Principle 15 of the Rio Declaration on Environment and Development states in that context;[i]In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".(See also Kariuki Muigua, Attaining Environmental Justice for Posterity Vol 2 Glen Wood Publishers Limited Pg 26-47)
>
> Section 3(5) of the EMCA embodies these principles to guide the courts at arriving at a determination in an application for redress for a contravention to a clean and healthy environment."

412. When a claim on threat to the right to a clean and healthy environment is brought before court, the court must be guided by certain principles that seek to protect the environment as per Section 3(5) of the EMCA. Among these principles is that of precautionary principle, which is defined under Section 2 of the EMCA as follows:

> " the principle that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

413. The Court of Appeal in National Environment Management Authority & another v KM (Minor suing through Mother and Best friend SKS) & 17 others (Civil Appeal E004 of 2020 & E032 of 2021 (Consolidated)) [2023] KECA 775 (KLR) (23 June 2023) (Judgment) stated as follows:

> " The precautionary principle is defined in section 2 of EMCA as the "principle that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation". We are concerned that NEMA's interpretation of the principle is that it permits the taking of risks in unknown cases, whereas to the contrary, the principle requires caution to be taken even when there is no evidence of harm or risk of harm from a project, and that proof of harm should not be the basis of taking action. The proper application of the principle therefore is that scientific analysis of risks should form the core of environmental rules and decisions, notwithstanding the fact that such analysis may be uncertain. In the alternative, the principle is also used when there are limits to the extent that science can inform actions, and ultimately rules and decisions have to be made having regard to other considerations such as the public perception of the risk and the potential for harm. It is notable that the EIA processes provide opportunity for such analysis and perceptions to be taken into account. EPZA on the other hand made an economic argument to justify the operations of Metal Refinery (EPZ) Limited, in terms of the contribution thereby to economic development. In this respect there will always be competing values that need to be balanced in environmental regulation, as well as the costs and benefits of compliance, and it is notable in this respect that this is one of the main objectives of an EIA and that article 69 emphasizes on ecologically sustainable development."

414. The Petitioners, vide electronic evidence adduced before this court, reveals alarming environmental degradation, including the discharge of effluent into rivers such as the Kibagare and Mathare, obstruction of stormwater drainage systems, sewer spillages, and flooding. Further, they show the state of the roads which are deplorable.

415. The electronic evidence brought forth, graphically illustrates the deteriorating state of the environment in the Parklands area leaving the residents in a destitute state. The right to dignity is not a preserve of a select few but a constitutional entitlement guaranteed to all persons under Article 28 of *the Constitution* 2010 as follows:

> " 28. Every person has inherent dignity and the right to have that dignity respected and protected"

416. As already stated above, the right to a clean and healthy environment, enshrined in Article 42, is not only foundational to human existence but also intricately linked to the right to life under Article 26 and the right to dignity under Article 28.

417. The Supreme Court in the case of Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR) speaking to the right to dignity noted as follows:

> " We will add another perspective. Article 28 of *the Constitution* provides that every person has inherent dignity and the right to have that dignity protected. It is for this court to ensure that all persons enjoy the rights to dignity."

418. These constitutional violations have been attributed to the Respondents' acts of issuing development permission which are not compliant with their statutory obligations under PLUPA 2019.

419. Rightly, as put in the case of Moffat Kamau & 9 Others v Aelous Kenya Ltd & 9 Others [2016] eKLR,

> " 90. It has been my view, which I still hold, that where the procedures for the protection of the environment are not followed, then an assumption may be drawn that the right to a clean and healthy environment is under threat. I cannot put it any better than I did in the case of Ken Kasinga v Daniel Kiplangat Kirui & 5 Others, (supra) where I stated as follows at paragraph 73 of the judgment :-
>
> 'I am prepared to hold that where a procedure for the protection of the environment is provided by law and is not followed, then an assumption ought to be drawn that the project is one that violates the right to a clean and healthy environment, or at the very least, is one that has potential to harm the environment. This presumption can only be rebutted if proper procedure is followed and the end result is that the project has been given a clean bill of health or its benefits are found to far outweigh the adverse effects to the environment."

420. In light of issuance of development permits by the 1st Respondent without complying with their statutory obligations set under PLUPA 2019, an assumption is drawn that the said developments violate the right to dignity and the right to a clean and healthy environment. Accordingly, the Petitioners have shown violations of their Constitutional right to dignity and clean and healthy environment against the Respondents.

IV. What are the appropriate orders to issue?

421. As aforesaid, the Petitioners seek several reliefs including declarations that the 1st -6th Respondents were in breach of their statutory obligations with respect to *the constitution* of the County Consultative Forum and the County and Local Physical and Land Use Development Plans, as required by law.

422. They further seek declarations that all development permissions, approvals, and certificates issued by the County from August 2019 within Parklands area, having been in breach of PLUPA, 2019 are illegal and void. The Petitioners also allege violations of the constitutional rights to life, human dignity, and a clean and healthy environment, holding the Respondents jointly and severally liable for resulting harm.

423. Lastly, the Petitioners pray for injunctions to stop further development approvals and construction in Parklands until lawful plans are prepared, and for orders compelling restoration of unlawfully developed land. They also seek to have the County directed to constitute the statutory forum and prepare the required planning instruments within fixed timelines, together with costs of the Petition.

424. Having found that the 1st to 6th Respondents, have since August 2019, failed to comply with their statutory obligations under the *Physical and Land Use Planning Act*, 2019 (PLUPA), with respect to constitution and preparation of the County Physical and Land Use Planning Consultative Forum and the County and Local Physical and Land Use Development Plans, and that the aforesaid failures occasioned a violation and continuing breach of the Petitioners' rights to dignity under Article 28 and the right to a clean and healthy environment guaranteed under Article 42 of *the Constitution*, the court now turns to the appropriate reliefs.

425. At the outset, the court takes note that the Court of Appeal, in its Judgment delivered on 19th September 2025 in Claire Kubochi Anami & Others v County Executive Committee Member, Built Environment and Urban Planning, Nairobi City County, Civil Appeal No E160 of 2025(unreported)

issued a structural interdict directing the Nairobi City County Government to prepare and gazette the requisite Local Physical and Land Use Development Plans within six (6) months thereof.

426. Similarly, in its judgment delivered on 3rd October 2025 in Mbaazi Residents Association v Metricon Homes Limited & Another, Civil Appeal No E0101 of 2025(unreported), the Court of Appeal directed the County Government to prepare and gazette the County Physical and Land Use Plan within twelve (12) months of that decision.

427. In view of these binding appellate directives, this court will not duplicate or vary the existing structural interdicts, which already provide a clear and enforceable framework for statutory compliance with respect to the preparation and gazettement of County and Local Physical and Land Use Development Plans.

428. Accordingly, this court confines its intervention to the outstanding statutory omission, the failure to establish and operationalize the County Physical and Land Use Planning Consultative Forum, as required under Section 14 of PLUPA, 2019 and the violations found to have been occasioned by the Respondents

429. The Petitioner has under relief (j) also sought for compensation by way of damages. In Gitobu Imanyara & 2 others v Attorney General [2016] KECA 557 (KLR), the Court of Appeal emphasized that damages for constitutional rights violations are not automatic. Such awards are public law remedies meant to vindicate the violated right and deter future breaches, rather than to compensate in the private law sense. The court's discretion in granting this relief must be exercised judiciously, guided by established principles.

430. In assessing whether compensation is suitable, courts must also weigh the competing interests of justice and sound public administration. In Mvumvu v Minister for Transport [2011] ZACC, the South African Constitutional Court cautioned that while victims of rights violations deserve effective redress, courts must also be mindful of "the interests of good government" and ensure that the chosen remedy promotes, rather than undermines, constitutional governance.

431. Similarly, in Residents of Industry House & 8 others v Minister of Police & 9 others (2021) ZACC, the South African court reiterated that monetary compensation should not be imposed where declaratory or structural remedies would suffice to vindicate constitutional values. The court held that it is "not fair to burden the public purse with financial liability where the purpose of the remedy is to uphold *the Constitution* rather than to compensate for quantifiable loss," noting that scarce public resources must be used prudently in light of competing national priorities.

432. In the present case, although the Petitioners seek a declaration holding the 1st to 6th Respondents jointly and severally liable for alleged loss and damage, they neither pleaded nor adduced any specific evidence to substantiate such loss or demonstrate its extent. As such, an award of compensation would neither be rational nor proportionate and would unjustly burden the public purse. The declaratory and structural relief will more appropriately vindicate the Petitioners. This plea fails.

433. The Petitioners also seek costs. The issue of costs is governed by the principle that they ordinarily follow the event, meaning that the successful party should be compensated for the expense incurred in vindicating its rights.

434. Speaking to the aspect of costs, and specifically in public interest matters, the Supreme Court in Rai & 3 others v Rai & 4 others [2013] KESC 20 (KLR), affirmed that while the general rule is that costs follow the event, the rule is not absolute. The court retains judicial discretion to depart from it, taking into account the special circumstances of each case, the interests of justice, and the conduct and motivation

of the parties throughout the litigation. In public interest matters, such considerations are particularly relevant in determining whether an award or denial of costs best serves the ends of justice and fairness.

435. Similarly, in Biowatch Trust v Registrar Genetic Resources [2009] ZACC 14, the Constitutional Court of South Africa was categorical that the award of costs in constitutional matters should advance, rather than hinder, access to justice, and that parties who act bona fide to vindicate constitutional rights should not be penalized merely because their cause bears a public dimension.

436. In the present case, the Petitioners have successfully demonstrated breaches of constitutional and statutory obligations by the Respondents. Their action has served not only their legitimate interest as residents, but also the broader public interest in ensuring lawful, accountable, and sustainable urban governance. Guided by the foregoing principles, the court is satisfied that they are entitled to costs.

437. Ultimately the Petition partly succeeds and the court issues the following orders:

i. A declaration does hereby issue that the Nairobi City County Government is yet to appoint and constitute a County Physical and Land Use Planning Consultative Forum as mandated under Section 14 of the *Physical and Land Use Planning Act*, 2019.

ii. A declaration does hereby issue that the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents acts, omissions and conducts in respect to developments and development activities that have taken place in the Parklands area of Nairobi City County from August 2019 have breached the Petitioners' and the general public's right to human dignity as provided under Article 28 of *the Constitution*.

iii. A declaration does hereby issue that the acts, omissions, and conduct of the 1st to 6th Respondents in relation to developments and development activities undertaken in the Parklands Area from August 2019 have breached the Petitioners' and the general public's right to a clean and healthy environment under Article 42 of *the Constitution*.

iv. The 1st Respondent, Nairobi City County Government, is hereby directed to constitute and operationalize the County Physical and Land Use Planning Consultative Forum within six (6) months from the date hereof, and to file a compliance report before this court within that period.

v. The 1st Respondent, Nairobi City County Government, is hereby directed to formulate and gazette The County Physical and Land Use Development Plan and the Local Physical and Land Use Development Plan for Parklands Area, in strict compliance with the *Physical and Land Use Planning Act*, within 12 months from the date of this Judgment.

vi. An order be and is hereby issued that the failure by the Respondents to comply with the above orders (iv) and (v) will render any approvals after the lapse of 12 months null and void.

vii. The 1st Respondent shall bear the costs of the Petition.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 14TH DAY OF OCTOBER, 2025.

.....

O. A. ANGOTE

PRINCIPAL JUDGE

.....

A. OMOLLO

JUDGE

.....

C. G. MBOGO

JUDGE