REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E&P CONST. PETITION NO. _E045 OF 2024

NORTHERN BLOCK RESIDENTS LTD.....PETITIONER

AND

MEDIVIEW LIMITED.....1ST RESPONDENT

COUNTY GOVERNMENT OF NAIROBI.....2ND RESPONDENT

NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY……....3RD RESPONDENT

RULING

1. For determination is the application dated application dated 13th December, 2024 under the provisions of articles 22, 23(3), 40, 42, 47 and 70 of the Constitution of Kenya; Rule 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013:
   a. Spent
   b. Spent
   c. THAT pending the hearing and determination of the Petition herein, a conservatory order do issue restraining the 1st Respondent whether by itself, its agents, servants, employees or any person acting under its authority from proceeding with any construction, development, or activities on the suit property;

d. THAT the costs of this application be provided for.

2. The applicant lists the following grounds in support of the application:

i. THAT the 1st Respondent is proceeding with construction on Plot L.R. No. 7258/54 (7258/3/55) Gigiri Road, Nairobi, despite a suspension order issued by the County Government dated 18th September 2024, which required them to address critical public concerns within 14 days, including waste management plans and traffic impact assessment, none of which has been done.

ii. THAT the 1st Respondent's NEMA license issued on 3rd February 2020 was valid for only 24 months and has since expired, rendering the ongoing construction activities illegal and unauthorized.

iii. THAT the development grossly violates zoning regulations by proposing a 200-bed commercial hotel in a designated low-density residential area zoned for one dwelling per half acre, with a plot ratio of 250% against the permitted 25%.

iv. THAT the development poses immediate environmental hazards through inadequate sewerage infrastructure, with no approved plans for managing the projected daily waste output, posing a direct threat to the adjacent river system and Karura Forest ecosystem.

v. THAT the development will generate between 980-1,634 daily vehicle trips on a private road without the requisite traffic impact assessment or mitigation measures, in an area already experiencing severe traffic congestion.

vi. THAT any delay in granting the conservatory orders sought will render the entire petition nugatory as construction advances daily, causing irreversible environmental damage and infrastructure strain that will be impossible to remedy.

3. The Applicant also swore an affidavit in support of the motion.
4. The application is opposed by the replying affidavits sworn on behalf of the Respondents on various dates. The 1st Respondent deposed that its development had complied with all the approval requirements. Mr Cauviere deposed that the 1st Respondent submitted an EIA report to the 3rd Respondent for consideration of issuance of an EIA licence in accordance with section 58 of EMCA.
5. He averred that the views of all those parties likely to be affected were also taken in meetings held on 19th December 2020 attended by the representatives of the Canadian High Commission, the neighbouring residents and annexed a copy of the attendance list. They also averred that they shared questionnaires which were designed to capture stakeholder feedback on the potential environmental and social impacts of the project.

6. The 1st Respondent proceeded to annex copies of the EIA report and the EIA license issued to them dated 3rd February 2020. The project was not completed and so the 1st Respondent applied for extension. They also confirm that at one point the development license issued by the 2nd respondent had issued a suspension notice dated of 18th September, 2024 due to complaints from the Residents.
7. That the threatened suspension by the 2nd Respondent was lifted vide their letter dated 14th February, 2025 which stated that they had exhaustively studied the contents of the documents from the various lead agencies and therefore considered the matter closed. The 2nd Respondent in this letter said they would communicate to the neighbourhood associations will be informed that their concerns had been addressed.
8. In their replying affidavit, the 2nd Respondent deposed that upon receipt of documents forwarded to them by the 1st Respondent on 25th September 2024 including approval and design of effluent disposal by the 3rd Respondent and Water Resources Authority they were satisfied that the concerns of the neighbourhood residents had been addressed. Therefore, they had no objection to the construction going on and they were opposed to the issuance of any conservatory orders.
9. According to the 2nd Respondent, one of the reasons they lifted the suspension was premised on the approval from the 3rd Respondent. The 3rd Respondent deposes that it derives its mandate from EMCA. The 3rd

Respondent deposed that vide its replying affidavit dated 24.2.2025, they had supported the issuance of the conservatory orders restraining the 1st Respondent from continuing with construction activities.

10. The 3rd Respondent stated that pursuant to inter parties mediation, it had brought the 1st Respondent into compliance with the directives issued on 13th March, 2024. That the 1st Respondent has now been issued with a second variation certificate which effectively extends the validity of the EIA license by a further 24 months.

11. The Applicant submits that July 2025 NEMA variation, issued seven months post-petition without fresh public participation, exemplifies the constitutional prejudice Wilson Kaberia Nkunja identified. Administrative bodies cannot retroactively legitimize ongoing violations through rushed approvals that ignore changed circumstances including active litigation and recorded community opposition. This pattern violates Article 47's fair administration guarantee by creating arbitrary compliance timelines that undermine regulatory certainty and encourage lawless development followed by post-facto regularisation.

12. They further argue that the 1st Respondent's 250% plot ratio in a 25% residential zone represents exactly the arbitrary approval the Court of Appeal condemned in the case of **Claire Kubochi Anami & 2 Others v CECM, Built Environment, Nairobi County [2025] KECA**. That his tenfold breach cannot be cured by a 2016 "Change of Use" issued during

the policy vacuum period when, as the Court noted, neither citizens nor developers have certainty. The constitutional prejudice to residents' Article 40 property rights and Article 42 environmental rights is manifest through permanent neighbourhood transformation that destroys residential character and quality of life.

13. The Applicant submitted on the purpose of issuance of conservatory orders and urged that in this instance, unless the orders are issued, the damage would be irreparable. I am aware prosecution of the application was put on hold to allow parties to attempt an out of court settlement. The parties reported back to court that no agreement was reached. Consequently, for the 3rd Respondent's averment that the neighbourhood's concerns were resolved after mediating between the parties needed a little detail on how these concerns were addressed. Especially with the parties confirming no settlement was reached and the application now proceeding to hearing.

14. Furthermore, the 2nd Respondent stated that they lifted their suspension premised on the approval from the 3rd Respondent as forwarded to them by the 1st Respondent. The Applicants had lodged a complaint before filing of the Petition, the background of which is set out in paragraphs 8-13 of the Petition. The 3rd Respondent confirmed in its earlier replying affidavit that the 1st Respondent had not complied with all its requirements and indeed urged the court to grant the conservatory orders.

Thus, at the time of filing of the application, the 3rd Respondent admits the Applicant had good grounds.

15. It is on the basis of the history of this case that I am persuaded to grant the orders sought. Why? The 2nd and 3rd Respondents raised issues with the development licenses in the possession of the 1st Respondent. The 3rd Respondent states the mistake has now been remedied, but without any explanation of the remedy that has been or will be undertaken. What they have annexed in the latter affidavit of 25th July 2025 is the extension of the EIA license by an additional twenty-four (24) months.

16. There is no evidence that the issues raised, which were affirmed by the affidavit of Mr Orina, were addressed for this court to refuse the grant of the conservatory orders sought. Thus, the balance of convenience tilts in granting the orders so that the claim by the Petitioner is not rendered nugatory.

17. It is on this account that I hold there is merit in the motion dated 13.12.2024 and allow it by granting order number 3 thereof. The temporary conservatory orders shall remain in force for a period of twelve months, within which time the petition ought to have been heard and determined. Costs of the application in the cause.

Dated, Signed and Delivered at Nairobi this 13th day of November, 2025

A. OMOLLO

JUDGE