

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND PLANNING DIVISION

EP PETITION NO. E025 OF 2024

ENGLISH PRESS LIMITED..... PETITIONER

VERSUS

CABINET SECRETARY MINISTRY OF INTERIOR AND

NATIONAL ADMINISTRATION.....1ST RESPONDENT

NEMA2ND RESPONDENT

NAIROBI CITY COUNTY3RD RESPONDENT

WATER RESOURCES AUTHORITY4TH RESPONDENT

CHIEF LANDS REGISTRAR5TH RESPONDENT

THE NATIONAL LAND COMMISSION6TH RESPONDENT

MINISTRY OF ENVIRONMENT AND FORESTRY..... 7TH RESPONDENT

THE HON ATTORNEY GENERAL..... 8TH RESPONDENT

JUDGMENT

1. The Petitioner brought this suit against the 1st - 8th Respondents vide the petition dated 20th June 2024 supported by an affidavit sworn by Kaplan Patel on the same date seeking the following orders;

- a) A declaration be and is hereby issued declaring that the Petitioner's suit property being Land Reference No. 209/18655 (Grant No. I.R 101466/4) situate along Enterprise Road, Industrial Area, Nairobi County, including the boundary wall, buildings, printing press, packaging facilities constructed thereon and compound do not form and/or is not part of the riparian reserve of the Ngong River;
- b) A Declaration be and is hereby issued declaring that the 1st Respondent's Public Security (Vacation or Mandatory) Orders dated/issued on 2nd May 2024 threatens to violate/violates the Petitioner's right to protection of their property under Article 40 of the Constitution of Kenya,2010;
- c) A declaration be and is hereby issued declaring that the 1st Respondent's Public Security (Vacation or Mandatory) Orders dated/issued on 2nd May 2024in relation to the Petitioner is illegal, null and void;
- d) An order of Certiorari be and is hereby issued to remove into this Honorable Court for purposes of being quashed the 1st Respondent's Public Security (Vacation or Mandatory) Orders dated/issued on 2nd May 2024.

- e) An order of permanent injunction be and is hereby issued restraining the Respondents whether by themselves, their employees, agents and any other person(s) acting under their instruction(s) from entering, breaking, demolishing, destroying, evicting, defacing, flattening, removing and/or in a nay way howsoever interfering with the boundary wall, buildings, printing press, packaging facilities and compound, and quiet enjoyment of the Petitioner's Suit Property being Land Reference No. 209/18655(Grant No. I.R 101466/4) situate along Enterprise Road, Industrial Area, Nairobi County, pursuant to the 1st Respondent's Public Security(Vacation of Mandatory) Orders dated/issued on 2nd May 2024;
- f) An order of mandatory order of injunction be and is hereby issued compelling the 2nd,3rd,4th and 7th Respondents herein to remove the waste is dumped in the Ngong River and/or along the river-bank adjacent to the Petitioner's suit Property being Land Reference No.209/18655(Grant No.IR 101466/4) situate along Enterprise Road, Industrial Area, Nairobi County.
- g) An order of mandatory injunction be and is hereby issued compelling the 2nd,3rd,4th and 7th Respondents herein to ensure that no waste is dumped in the Ngong River and/or along the river-bank adjacent to the

Petitioner's Suit property being Land Reference No.209/18655(Grant No. I.R 101466/4) situate along Enterprise Road, Industrial Area, Nairobi County.

- h) An order of mandatory injunction be and is hereby issued compelling the 2nd,3rd,4th and 7th Respondents to conduct an inspection and survey of the banks along the Ngong River and commence enforcement or improvement action against and any third-party determined to be responsible for dumping of waste, violating anti-dumping measures and failing to enforce the applicable laws and regulations for the prevention of environmental degradation of the Ngong River;**
- i) An order of mandatory injunction be and is hereby issued compelling the 4th Respondents to conduct a fresh inspection and survey, and placement of signboards and beacons in or near the riparian reserve of the Ngong River displaying the extent of the riparian reserve along the river-bank adjacent to the Petitioner's Suit property being Land Reference No.209/18655(Grant No.Ir.101466/4) situate along Enterprise Road, Industrial Area, Nairobi County.**
- j) Any other relief this Honourable Court deems fit to grant the meet the ends of justice.**
- k) Costs of this Petition.**

2. The Petitioner asserted that it owns L.R. No. 209/18655 (I.R. 101466/4) in Industrial Area, Nairobi, hereafter referred to as the suit property, where it operates a printing and packaging facility. It contends that the Suit Property was lawfully created by the amalgamation of several parcels following approval by the former Nairobi City Council in 2005, as reflected in the Deed Plans of 2006 and 2008. These plans consistently show the river boundary on the northern edge of the Ngong River, and the 5th and 6th Respondents have never challenged the validity of its title.
3. They stated that they obtained all necessary development approvals, including building approvals (2004 and 2006) and an EIA Licence (No. 0000200) issued in 2005 and that none of these approvals have been revoked. After the Petitioner completed its developments, unknown third parties began illegally dumping excavated soil along the Ngong River bank bordering the Suit Property.
4. From the beginning of 2008, the Petitioner stated that it repeatedly notified the Nairobi City Council, and later Nairobi City County and NEMA, that the dumping was obstructing the river's natural flow. However, none of the authorities took any remedial action. Between 2009 and 2012, the dumping escalated into a large, illegal dumpsite extending toward the Petitioner's boundary wall.
5. The Petitioner stated that although they submitted an Initial Environmental Audit in 2009, which NEMA found satisfactory, their numerous written complaints from

2008 to 2018 to NEMA and County officials did not result in any intervention. They also mentioned that in July 2019, the Petitioner requested verification of the riparian reserve from the Water Resources Authority (WRA), which confirmed in its 20th September 2019 report that the Suit Property borders the Ngong River. The report noted that the opposite riverbank was being used for illegal solid waste dumping, which had pushed the river towards the Petitioner's side, and that erosion was evident on both banks.

6. They added that the WRA advised them to commission a licensed surveyor to determine the river's original course. A survey conducted in November 2019 showed that the river had shifted significantly due to human interference, with distances between the Petitioner's wall and the riverbank ranging from 6.3 m to 17.5 m exceeding the planned 6-meter riparian reserve and confirming artificial displacement of the river.
7. Therefore, this Petition concerns environmental degradation, riparian encroachment, and prolonged regulatory inaction, all of which have exposed the Petitioner's legally developed property to risk and interference.

The 2nd, 3rd and 4th Replying Affidavits:

8. The 2nd Respondent (NEMA) filed a replying affidavit sworn by David Ong'are on 14th March 2025, which set out inter alia its statutory mandate under EMCA. The mandate includes supervising and coordinating all matters relating to

environmental management. The 2nd Respondent confirms that the Petitioner holds a valid EIA licence issued in 2005 and has consistently complied with environmental audit requirements, including the submission made in September 2024.

9. NEMA acknowledges receiving several reports from the Petitioner about illegal waste dumping along the Ngong River and confirms that such incidents were always formally acknowledged. However, it avers that, because waste management is a devolved function, NEMA forwarded these complaints to the 3rd Respondent (Nairobi City County), whose mandate includes the designation, management, and decommissioning of dumpsites.

10. Mr Ong'are states that at a multi-stakeholder forum, such as the meeting on 9th April 2024, the 3rd Respondent acknowledged that the Likoni dumpsite diverting the river was illegal. NEMA further explains that the 4th Respondent is responsible for water resource regulation, including riparian standards and flood mitigation, and that the Petitioner's documents demonstrate compliance with the riparian reserve as stipulated under the 2007 Water Resources Management Rules. It adds that while NEMA observes a 6-metre riparian requirement, the 5th and 6th Respondents (Survey authorities) apply a 30-metre standard under the Survey Act, which the 1st Respondent relied on when issuing its orders.

11. Further, the 2nd Respondent asserts that although it licenses the Petitioner, the responsibility for managing dumpsites and regulating water resources lies primarily with the 3rd and 4th Respondents. Therefore, those agencies, are best placed to address the issues arising from the 1st Respondent's orders of 2nd May 2024.

12. Vide a replying affidavit sworn on 3rd June 2025 by Nachale Toroitich Micah on behalf of the 3rd Respondent, it denies that it was involved in issuing the Public Security (Vacation or Mandatory) Orders of 2nd May 2024. The 3rd Respondent is constitutionally and statutorily mandated to manage waste, refuse removal, and environmental conservation under Article 42, Article 69, the 4th Schedule of the Constitution, and the Sustainable Waste Management Act.

13. The County states that it has consistently taken reasonable measures to discharge its duties, including enforcement actions, clean-ups, and public awareness campaigns, despite resource constraints. It denies any involvement in or condonation of illegal dumping along the Ngong River. It contends that the Petitioner neither established the County's responsibility nor provided actionable, site-specific intelligence in its past correspondence to facilitate sustained enforcement.

14. The 3rd Respondent further explains that illegal dumping along the Ngong River is a longstanding problem driven by unidentified third parties and criminal cartels,

occurring sporadically and often at night, which complicates enforcement. Given the multi-agency nature of environmental protection, the County argues that it cannot bear sole responsibility where national agencies such as NEMA and the Water Resources Authority also have jurisdiction. The County expresses willingness to collaborate with all stakeholders through joint inspections and mitigation plans. It, however, does not admit liability and urges that the Petition should be dismissed with costs.

15. The 4th Respondent filed a replying affidavit sworn by John N. Kinyanjui on 4th November 2024 explaining that under the Water Act, it is the national agency mandated to regulate the management and use of water resources and advising the Cabinet Secretary on water resource matters. It deposes that following the nationwide flooding in March–May 2024, the 4th Respondent undertook an assessment exercise beginning 15th May 2024 to map flood-affected areas, geo-reference high-level flood marks, determine the 30-metre riparian reserve, and identify pollution sources.

16. This exercise, it contends, was publicly announced, and the Respondent denies ever threatening the Petitioner with any demolitions. It states that under the applicable Water Resources Management Rules 2007, operative when the Petitioner allegedly developed its premises, riparian land is defined as a minimum

of 6 metres and up to 30 metres from the top edge of a riverbank, and certain activities on riparian land required authorization from the Respondent.

17. The 4th Respondent denies ever issuing the Petitioner any approvals or permits for developments on riparian land and asserts that any claim to the contrary must be strictly proven. It emphasizes that any compliance measures must follow the prescribed legal procedure, including issuing a formal Order under Regulation 130 of the 2021 Regulations, which was never issued to the Petitioner.

18. The 4th Respondent disputes the Petitioner's claims that the Ngong River changed its course and relies on satellite imagery from 2002–2024 to assert the river has remained stable and that the Petitioner's developments already existed in 2002.

19. While acknowledging some dumping upstream near Enterprise Road in 2019, the 4th Respondent maintains this did not affect the river's course and did not occur near the Petitioner's property. It asserts that if any encroachment onto the riparian reserve is ultimately established, due process will be followed. It stresses that environmental regulation aligns with constitutional obligations under Articles 66 and 69 and argues that the petition is speculative, discloses no cause of action, and should be dismissed with costs.

Petitioner's response:

20. In response, the Petitioner filed a further affidavit sworn on 30th May 2025 by Kaplan Patel highlighting that the 2nd Respondent (NEMA), through paragraphs 3–

16 of its Replying Affidavit, expressly confirms that the Petitioner holds a valid EIA licence issued in 2005 and has consistently complied with environmental audit obligations. That NEMA has been fully engaged with the Petitioner regarding persistent illegal dumping along the Ngong River, has attended the multi-agency stakeholder meeting of 9th April 2024 and that the Petitioner has complied with the six-metre riparian reserve under the Water Resources Management Rules, 2007.

21. The 2nd Respondent also acknowledges that environmental waste management obligations lie with the 2nd, 3rd and 4th Respondents not the Petitioner and raises no allegation of breach of the EIA licence. Regarding the 4th Respondent (the Water Resources Authority), the Petitioner challenges the inconsistencies and unsupported claims in its Replying Affidavit.

22. It notes that the 4th Respondent refers to a flood-assessment exercise allegedly commenced on 15th May 2024, yet the 1st Respondent's impugned orders were issued earlier on 2nd May 2024 without any such assessment. The 4th Respondent's reliance on a newspaper Public Notice does not support its assertion of a 30-metre riparian reserve, which is raised for the first time in its affidavit.

23. Further, the Petitioner reiterates that the 4th Respondent previously visited, surveyed, and confirmed compliance with the riparian reserve in 2019. That the Land Surveyor's subsequent report submitted to and acknowledged by the 4th

Respondent confirmed that the developments on the Suit Property did not encroach on riparian land.

24. The Petitioner further states that the 4th Respondent's attempt to rely on undated, unidentified "satellite images" to suggest that the river course has been stable since 2002 is unsupported and contradicted by the 4th Respondent's own 2019 correspondence, which acknowledged riverbank erosion and river diversion caused by illegal dumping. The 4th Respondent's affidavit does not dispute the Petitioner's historical documentation, the verified environmental compliance, or the evidence of illegal waste dumping pushing the river towards the Petitioner's property.

Submissions:

25. The Petitioner and the 3rd Respondent filed submissions dated 29th August 2025 and 23rd September 2025 respectively. The Petitioner submitted that the Respondents' affidavits collectively confirm material facts relevant to the determination of this dispute. They all acknowledge that the Petitioner is the lawful proprietor of the suit property and that it obtained an EIA Licence in 2005, and has maintained continuous compliance through periodic environmental audits.

26. It contends that the 2nd, 3rd, and 4th Respondents acknowledge that third parties, not the Petitioner, cause illegal dumping along the Ngong River. Throughout extensive engagement, including correspondence, joint site inspections, and multi-agency

meetings in April 2024, none of the Respondents indicated that the Petitioner had encroached upon riparian land.

27. They stated that evidence placed before the Court demonstrates unequivocally that the Suit Property lies outside the riparian reserve. Such as the 4th Respondent's own letters dated 20th September 2019 and 20th November 2019 which confirm that the Petitioner's development complies with the six-metre riparian reserve under the Water Resources Management Rules, 2007. A licensed surveyor's Report dated 7th November 2019 further established distances between 6.3 metres and 17 metres from the boundary wall to the riverbank.

28. The Petition asserts that no contrary evidence has been produced, nor have the Respondents revoked their earlier confirmations. Further, that the 4th Respondent's allegation of non-compliance is unsupported and contradicted by its prior documentation and its silence during stakeholder engagements.

29. In support of their submissions, the Petitioner cited the Court of Appeal's holding in **Superior Homes (Kenya) PLC v Water Resources Management Authority & 9 others [2024] KECA 1102**, where the Court affirmed that riparian boundaries must be determined according to Rule 116(2) of the 2007 Rules unless the Authority issues a specific contrary determination. The Court further held that regulatory bodies that have previously confirmed compliance cannot later allege encroachment without cogent evidence. As in Superior Homes, where survey

evidence and prior official confirmations demonstrated compliance, the Petitioner's survey and the 4th Respondent's letters conclusively show that the Suit Property is outside the riparian reserve, justifying declaratory relief.

30. The Petitioner submitted that the 1st Respondent's Public Security (Vacation or Mandatory) Orders of 2nd May 2024 are illegal, null and void because they were issued without constitutional or statutory authority. That the Orders violate their right to property under Article 40(1) and do not meet the requirements of Article 40(3) concerning lawful deprivation of property.

31. Applying the principles in **Greenboot Kenya Ltd v KRA [2025]** and **Anarita Karimi Njeru v Republic [1979]**, the Petitioner submitted that they have demonstrated a real threat to their proprietary interests, while the Respondents having filed no response left the allegations entirely uncontroverted. That as elaborated in **Njeru Mairani v Director of Land Adjudication [2025]**, a decision made without jurisdiction or contrary to constitutional requirements is illegal, and therefore void.

32. Consequently, the Petitioner stated that they are entitled to full relief under Article 23(3) of the Constitution which include declarations that the impugned Orders threaten and violate Article 40 rights and that the Orders are illegal, null and void; an order of certiorari to quash the 1st Respondent's unlawful directives, as affirmed in **Republic v Principal Kadhi, Mombasa (2022)**; and permanent and mandatory

injunctive reliefs in line with **Nguruman Ltd v Jan Bonde Nielsen [2014]** and **Mrao Ltd v First American Bank [2003]**. These injunctions should restrain any demolition, eviction or interference with the Suit Property and compel environmental enforcement against illegal dumping along the Ngong River.

33. On the other hand, the 3rd Respondent submits that the Petitioner has not proved the allegations of illegal dumping or alteration of the Ngong River's course as required under Sections 107–109 of the Evidence Act. Their Replying Affidavit expressly denied the allegations and put the Petitioner to strict proof, amounting to a proper traverse under Order 2 Rule 11(2) of the Civil Procedure Rules, 2010.

34. The 3rd Respondent states that in line with decision in **Kibos Distillers Ltd & 4 others v Benson Ambuti Adegga & 3 others [2020] KECA 875**, pollution and environmental allegations must be proved through empirical and scientific evidence, not lay opinion, correspondence, or assumptions.

35. On the claim that the 3rd Respondent failed to remedy the illegal dumping, it argues that the Petitioner relied on general correspondence lacking actionable intelligence such as photographs, coordinates, or inspection reports. The 3rd Respondent maintains that it has consistently carried out its mandate under Articles 42 and 69 of the Constitution, the Sustainable Waste Management Act.

36. It asserts that its Replying Affidavit demonstrates enforcement efforts, clean-up operations, and public sensitization. Further, environmental governance is a multi-

agency responsibility, with primary supervisory authority vested in NEMA under Section 9 of the EMCA, and river course protection vested in the WRA under the Water Act, 2016. Thus, without expert hydrological evidence or findings from the 4th Respondent, the allegation of a changed river course remains unproven.

37. Regarding the reliefs sought, the 3rd Respondent submits that the Petitioner has not met the threshold for the grant of mandatory injunctions, which are exceptional and only issued in the clearest of cases. They cited the case of **Kenya Breweries Ltd v Washington O. Okeyo [2002] eKLR**, where the Court of Appeal held that mandatory injunctions require an applicant to demonstrate a clear case and irreparable harm.

38. Since the Petitioner has not produced scientific or site-specific evidence linking the dumping or river alteration to the 3rd Respondent, and given that the prayers sought are vague and extend into mandates statutorily assigned to NEMA and WRA, the Court cannot impose extraordinary or overbroad obligations on the 3rd Respondent.

39. The 3rd Respondent submits that the Petition is unmerited and should be dismissed with costs. It relies on the provisions of section 27(1) of the Civil Procedure Act, costs follow the event, a principle affirmed in **Republic v Rosemary Wairimu Munene (Ex Parte) [2014] eKLR** and **Cecilia Karuru Ngayu v Barclays Bank**

of Kenya [2016] eKLR, where courts emphasized that costs compensate the successful party.

Analysis and Determination:

40. After consideration of the pleadings, affidavits and submissions on record, the following are issues framed for determination by this court;

- a. Whether the suit property forms part of the riparian reserve of the Ngong River.*
- b. Whether the Public Security Orders issued by the 1st Respondent on 2nd May 2024 were lawful, constitutional, and procedurally fair.*
- c. Whether the impugned orders threaten or violate the Petitioner's right to property under Article 40 of the Constitution.*
- d. Whether the Petitioner is entitled to the reliefs sought.*

a. Whether the Suit Property Forms Part of the Riparian Reserve

41. It is not in dispute that the Petitioner is the registered proprietor of the land L.R. No 209/18655 referenced as the suit property and which land abuts the Ngong River. Under Article 40(1) of the Constitution and Sections 24 and 25 of the Land Registration Act, such title confers upon the Petitioner full rights of ownership, subject only to lawful, proportionate and procedurally fair limitations.

42. The central dispute concerns whether the Petitioner's developments encroach upon the riparian reserve of the Ngong River, which warrants it to be affected by the

public notice dated 2nd May, 2024. The evidence before the Court demonstrates that the Petitioner's land was created through an approved amalgamation process by the then Nairobi City Council, with deed plans prepared in 2006 and 2008. The Petitioner further obtained building approvals and an Environmental Impact Assessment Licence in 2005, none of which have been revoked or impugned.

43. The public security (vacation) order dated 2nd May 2024 issued on the website of the 1st Respondent stated thus;

“One hundred and seventy-eight (178) Dams and Water reservoirs situated on public and private land in thirty-three (33) counties have filled up or are nearly filled up and may spill over any time, posing a high risk to persons living in their neighbourhoods. All persons residing contiguous to the dams and water reservoirs are ordered to vacate the said areas immediately and in any case within 24 hours effective today, failing which they will be subjected to mandatory evacuation for their safety.

.....

All persons residing within the 30-metre riparian corridor of rivers and other water courses across the country are ordered to vacate immediately for their safety and settlements unlawfully established on riparian land removed.”

44. The 1st Respondent did not file any pleadings to contest that it did not issue the above vacation notice. Similarly, the 2nd to 4th Respondents have not denied the existence of this order. The public security order was not specific to persons encroaching on the riparian land but to persons living near these water reservoirs that were filled up or were nearly filling up.

45. Going by the Petitioner's own admission, the water reservoir comprised in the Ngong River has been affected by human interference of illegal dumping of waste which the petitioner argues has caused the river to change its way. The Petitioner pleaded that it has not been dumping any waste on the river bank and has always notified the concerned statutory bodies of the illegal dumping but nothing so far has been done to stop it.

46. In so far as the 2nd Respondent is concerned, it expressly confirmed that the Petitioner has at all times complied with its environmental licensing and audit obligations. The 4th Respondent, Water Resources Authority similarly acknowledged in its correspondence dated 20th September 2019 and 20th November 2019 that the Petitioner's developments complied with the riparian reserve requirements applicable at the time, namely the Water Resources Management Rules, 2007.

47. In its prayer, one of the reliefs sought, the Petitioner sought declaratory orders that the suit property does not form part of the riparian land of the Ngong River. I have

flipped through the copies of documents produced in support of the petition which confirm that its boundaries do not extend on riparian land. The 4th Respondent deposes that according to their regulations, riparian land measures between 6.30 metres.

48. However, there is no letter or notice served on the Petitioner accusing it of encroaching on any riparian land. The Petitioner's fear is purely on the basis of the public security order which made a sweeping statement that riparian corridor is 30 metres. The inference drawn is that in this scenario where the Petitioner's land leaves a set back of less than 30 metres automatically puts it in the category of persons to be evacuated.

49. The 4th Respondent argued that if any encroachment is ultimately proven, due process would be followed, meaning no such process had yet been initiated. Considering the deposition by the 4th Respondent that the riparian reserve or corridor ranges between 6 and 30 metres, one question on what basis the 1st Respondent conclusively stated in the order that the riparian corridor is 30 metres without accounting for the variation.

50. Under Rule 116(2) of the 2007 Rules, the riparian reserve is defined as a minimum of six (6) metres and up to a maximum of thirty (30) metres from the top edge of the riverbank, subject to site-specific determination by the relevant authority. The licensed surveyor's report of November 2019, which was submitted to and

acknowledged by the 4th Respondent, established that the distance between the Petitioner's boundary wall and the riverbank ranged between 6.3 metres and 17.5 metres.

51. The Court of Appeal in **Superior Homes (Kenya) PLC v Water Resources Management Authority & 9 others [2024] KECA 1102** authoritatively held that riparian boundaries must be determined in accordance with the operative regulations and that regulatory authorities cannot arbitrarily alter or expand riparian limits without a lawful, reasoned, and evidence-based determination. The Court further held that where an authority has previously confirmed compliance, it cannot later allege encroachment without cogent and credible evidence.

52. In the present case, the 4th Respondent's reliance on an asserted 30-metre riparian reserve is unsupported by any formal determination, inspection report, or enforcement notice issued in accordance with law. The purported reliance on satellite imagery, without disclosure of methodology, dates, or expert validation, does not displace the Petitioner's survey evidence or the Respondent's own earlier confirmations. It is therefore my view that the Petitioner has proved, on a balance of probabilities, that its suit property does not fall within the riparian reserve of the Ngong River.

b. Legality of the 1st Respondent's Public Security Orders

53. The impugned Public Security (Vacation or Mandatory) Orders dated 2nd May 2024 were issued without prior notice to the Petitioner, without an inspection report, and without reference to any statutory provision conferring authority upon the 1st Respondent to issue demolition or vacation directives over private land.

54. Article 47 of the Constitution guarantees every person the right to administrative action that is lawful, reasonable, and procedurally fair. In **Republic v Principal Kadhi, Mombasa [2022] eKLR**, the Court held that any administrative decision made without jurisdiction or in violation of constitutional safeguards is null and void ab initio.

55. Further, in **Njeru Mairani v Director of Land Adjudication & another [2025] eKLR**, the Court reiterated that a public authority must act strictly within the bounds of its enabling statute and that actions taken without jurisdiction cannot be cured by post facto justification. The 1st Respondent neither filed a replying affidavit nor demonstrated the legal basis upon which it issued the impugned orders. As held in **Greenboot Kenya Ltd v Kenya Revenue Authority [2025] eKLR**, uncontroverted allegations of constitutional violation, once sufficiently pleaded, entitle a petitioner to relief.

56. Consequently, the impugned orders, having been issued without lawful authority and in breach of Articles 47, and if implemented, were likely to violate Article 40

right of the Petitioner. Hence, I hold there is **merit in prayers (b) – (e)** of the relief and hereby grant the orders thereunder.

c. Whether the 2nd 3rd 4th and 7th Respondents ought to clean the illegal dumpsite:

57. The 2nd and 3rd Respondents through their depositions affirm that there exists an illegal dumpsite adjacent to the Petitioner's land. They also confirm receipt of letters from the Petitioner asking them to act. The 2nd Respondent contends that it received the letters but since the management of waste rests on the 3rd Respondent, it forwarded the communications received from the Petitioner to the 3rd Respondent.

58. The 3rd Respondent on the one hand argued that the Petitioner had not proved there was illegal but again state that it has acted except the dumping is usually done at night making enforcement difficult. In addition, it stated that protection of the environment requires concerted effort from the other Statutory bodies such as the Respondent hence the responsibility of clearing this illegal dumpsite should not be left to the 3rd Respondent only.

59. The 4th Respondent referred to the said dumpsite when stating that satellite images showed its presence but denied it caused the Ngong River to change course. All these point to evidence that a dumpsite exists in an area not designated for that purpose. Since it is situated on the border of a river, it should be addressed to protect the river from pollution.

60. The question this court poses is who should be responsible to do the clean up? The 3rd Respondent deposes at paragraph 9 of its replying affidavit that section 9(1) of the Sustainable Waste Management Act CAP 387 C gives it the responsibility of devolved waste management. The section provides thus;

- 1. County governments shall be responsible for implementing the devolved function of waste management and establishing the financial and operational conditions for the effective performance of this function.**
- 6. County governments shall maintain data on waste management activities and share the information with the Authority.**
- 7. County governments shall mainstream waste management into county planning and budgeting.**
- 8. County governments shall develop, manage and maintain designated disposal sites and landfills.**
- 9. County governments shall maintain a register of all waste service providers operating within their boundaries.”**

61. Section 6 and 7 of the same Act provides for the creation of the Waste Management Council by the Cabinet Secretary responsible for matters relating to the environment who in this case is the 7th Respondent. One of the functions of the

council is to **synchronise the development of waste management infrastructure and mobilise resources for financing of the waste management sector.**

62. Further provisions on the Act at section 8(f) mandates the 2nd Respondent to establish a national waste information system for recording, collecting, management and analysis of data and information including

“(iii) the status of the generation, collection, reduction, reuse, recycling, recovery, transportation, treatment and disposal of waste;

(iv) the impact of waste on health and the environment.”

63. From reading the provisions of CAP 387 C some of which are hereby reproduced, I do reach a finding that the 3rd Respondent has a bigger responsibility in the management of waste disposal and in particular, the removal of the dumpsite in question. However, I do agree with the argument by the 3rd Respondent that the 2nd and 7th Respondent have a role to play. The 7th Respondent through the Council to help in mobilizing of resources and the 2nd Respondent to help with coordination.

64. In this proceeding, none of these three Respondents demonstrated any steps undertaken to relocate the impugned dumpsite and or ensure no further dumping was done which then necessitates this court to give appropriate reliefs.

65. The 3rd Respondent cited the case of **Kenya Breweries Ltd versus Washinton Okeyo (2002) eKLR** for the proposition that mandatory injunction should only be granted in the clearest of cases. I think this case is quoted here out of context

because the mandatory injunction sought in the Kenya Breweries case was made in an interlocutory application and not a final judgement as in this case.

66. They also relied on the decision of Kibos Distillers Ltd & 4 Others versus Benson Ambuti Adegga & 3 Others for the proposition that proof that a complaint had been raised years before is not evidence of environmental degradation. That pollution is proved by empirical, technical and scientific evidence.

67. However, in this instance, the Respondents do admit that the dumpsite is in use and they accept the place is not designated for a dumpsite. The location of the dumpsite next to a river speaks for itself that waste would cause pollution. The precautionary principle under article 69(1)(g) obligates the State **to eliminate processes and activities that are likely to endanger the environment.**

68. It is my considered opinion and I so hold that the illegal dumpsite is one such activity that would endanger the environment (the Petitioner included) and which requires action to be taken. Under Article 70 of the Constitution, gives authority to any person to take out proceedings where their right to a clean and healthy environment is infringed and or is likely to be violated.

69. this Court is empowered to grant appropriate reliefs, including declarations, orders of certiorari, and injunctive relief. Given the findings above, the Petitioner is entitled to declaratory orders affirming that its property does not form part of the

riparian reserve and that the impugned Public Security Orders are unconstitutional and void. An order of certiorari is warranted to quash the said orders.

70. As regards injunctive relief, the principles in **Nguruman Ltd v Jan Bonde Nielsen & 2 others [2014] eKLR** and **Mrao Ltd v First American Bank of Kenya Ltd [2003] eKLR** are satisfied having demonstrated a clear proprietary right, an unlawful threat thereto, and the absence of any lawful justification for interference.

71. On the issue of environmental degradation and illegal dumping, the evidence demonstrates prolonged dumping by third parties and regulatory inaction by multiple agencies. Environmental protection is a shared constitutional obligation under Articles 42 and 69. While the Court is cautious not to usurp statutory mandates, it is empowered to issue structural and supervisory orders to ensure compliance with constitutional duties, as recognized **Odando & another (Suing on their Own Behalf and as the Registered Officials of Ufanisi Centre) v National Environmental Management Authority & 2 others; County Government of Nairobi & 5 others (Interested Parties) (Constitutional Petition 43 of 2019) [2021] KEELC 2235 (KLR) (15 July 2021) (Judgment)** where Bor J gave interdicts respecting the relocation of Dandora Dumpsite. Inter alia,

“The Nairobi Metropolitan Services is directed to take steps to decommission the Dandora dumpsite and relocate it to another site within six months of the date of this judgement. The Nairobi Metropolitan Services shall shut down the Dandora dumpsite within six months of the date of this judgement and rehabilitate the dumpsite”

72. In the circumstances, calibrated mandatory orders directing the relevant Respondents to jointly inspect, enforce existing laws, and prevent further dumping are justified and proportionate. Therefore, I hold that the Petitioner is entitled to the reliefs under paragraphs **f, and g** as against the 2nd 3rd and 7th Respondents.

73. Lastly, under paragraph (i) of the reliefs, the Petitioner sought mandatory orders compelling the 4th Respondent to carry out a site inspection to mark out the riparian boundaries. I find no basis has been laid why this court should compel the 4th Respondent to exercise its Statutory mandate. The order is not granted.

74. As a neighbor, the Petitioner took steps seeking clean up before the filing of this suit by writing severally to the 2nd and 3rd Respondents. It is due to their inaction that the present suit was filed which then makes me to exercise my discretion by awarding the Petitioner costs payable jointly and severally by the 2nd 3rd and 7th Respondents.

75. In conclusion, these are the final orders issued:

- a. A declaration be and is hereby issued declaring that the Petitioner's suit property being Land Reference No. 209/18655 (Grant No. I.R 101466/4) situate along Enterprise Road, Industrial Area, Nairobi County, including the boundary wall, buildings, printing press, packaging facilities constructed thereon and compound do not form and/or is not part of the riparian reserve of the Ngong River;**
- b. A Declaration be and is hereby issued declaring that the 1st Respondent's Public Security (Vacation or Mandatory) Orders dated/issued on 2nd May 2024 threatens to violate the Petitioner's right to protection of their property under Article 40 of the Constitution of Kenya,2010;**
- c. A declaration be and is hereby issued declaring that the 1st Respondent's Public Security (Vacation or Mandatory) Orders dated/issued on 2nd May 2024 in relation to the Petitioner is illegal, null and void;**
- d. An order of Certiorari be and is hereby issued to remove into this Court for purposes of being quashed the 1st Respondent's Public Security (Vacation or Mandatory) Orders dated/issued on 2nd May 2024 as relates to the Petitioner.**

- e. An order of permanent injunction be and is hereby issued restraining the Respondents whether by themselves, their employees, agents and any other person(s) acting under their instruction(s) from entering, breaking, demolishing, destroying, evicting, defacing, flattening, removing and/or in any way howsoever interfering with the boundary wall, buildings, printing press, packaging facilities and compound, and quiet enjoyment of the Petitioner's Suit Property being Land Reference No. 209/18655(Grant No. I.R 101466/4) situate along Enterprise Road, Industrial Area, Nairobi County, pursuant to the 1st Respondent's Public Security (Vacation of Mandatory) Orders dated/issued on 2nd May 2024;**
- f. An order of mandatory order of injunction be and is hereby issued compelling the 2nd,3rdand 7th Respondents herein to remove the waste is dumped in the Ngong River and/or along the river-bank adjacent to the Petitioner's suit Property being Land Reference No.209/18655(Grant No.IR 101466/4) situate along Enterprise Road, Industrial Area, Nairobi County within a period of FOUR (4) months from the date of this judgement.**
- g. An order of mandatory injunction be and is hereby issued compelling the 2nd,3rd and 7th Respondents herein forthwith to ensure that no waste**

is dumped in the Ngong River and/or along the river-bank adjacent to the Petitioner's Suit property being Land Reference No.209/18655(Grant No. I.R 101466/4) situate along Enterprise Road, Industrial Area, Nairobi County.

- h. Costs of the Petition awarded payable jointly and severally by the 2nd 3rd and 7th Respondents.

Dated, Signed and Delivered at Nairobi this 18th day of December, 2025

A. OMOLLO
JUDGE