



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**NAIROBI**

**ELC CASE NO E039 OF 2024**

**JANNAH PROPERTIES  
LIMITED.....PETITIONER/RESPONDENT**

**=VERSUS=**

**NATIONAL ENVIRONMENT MANAGEMENT**

**AUTHORITY.....1<sup>ST</sup>  
RESPONDENT**

**WATER RESOURCE AUTHORITY.....2<sup>ND</sup>  
RESPONDENT**

**NAIROBI CITY COUNTY.....3<sup>RD</sup>  
RESPONDENT/APPLICANT**

**MINISTRY OF INTERIOR & COORDINATION OF  
NATIONAL GOVERNMENT.....4<sup>TH</sup>  
RESPONDENT**

**THE INSPECTOR GENERAL OF THE NATIONAL  
POLICE SERVICE.....5<sup>TH</sup>  
RESPONDENT**

**THE ATTORNEY GENERAL.....6<sup>TH</sup>  
RESPONDENT**

**RULING**

1. Before me for determination is the Notice of Motion dated 15<sup>th</sup> October 2024 in which the 3<sup>rd</sup> Respondent/Applicant seeks the following orders:-

**a) Spent.**

**b) THAT the Honourable Court be pleased to issue an order discharging and striking out Nairobi City County, the 3<sup>rd</sup> Respondent/Applicant, from the proceedings herein.**

**c) THAT the Honourable Court be pleased to issue such further orders/directions and orders as may be necessary to give effect to the orders granted for the foregoing prayers and/or are in the interest of justice.**

**d) THAT the costs of this application be borne by the Petitioner/Respondent.**

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Wilfred Wanyonyi Masinde, the acting Deputy Director, Planning Compliance and Enforcement of the Applicant, sworn on even date.

### **THE 3<sup>RD</sup> RESPONDENT/APPLICANT'S CASE**

3. The deponent contends that the inclusion of the Applicant in this suit is an abuse of the court process since the Applicant was not involved in the demolitions on the Petitioner's property. He explained that the Cabinet, pursuant to a

Special meeting held on 30th April 2024, issued a directive for people living within 30 meters of the riparian corridor to vacate due to the devastating impact of the floods. He stated that the directive was based on the results of a country-wide mapping exercise that identified fragile areas.

4. He further stated that the Applicant was neither involved in nor authorized the demolition of the Petitioner's property. He asserted that there is no evidence to show that the 3<sup>rd</sup> Respondent approved any development on riparian land. He maintained that the Petitioner has not disclosed a cause of action against the Applicant.

#### **THE PETITIONER/RESPONDENT'S CASE**

5. The Petitioner filed a replying affidavit sworn by Faith Wambui Njuguna, 4th November 2024, in opposition to the application.
6. The deponent averred that the 1<sup>st</sup> Respondent approved the Petitioner's proposed project subject to several conditions, including obtaining a change of user from the City Council of Nairobi. She further averred that, before commencing the construction projects, the Petitioner applied to the City Council of Nairobi for a change of user for the property, and the council approved it along with the development approvals.
7. That despite obtaining approvals from the Applicant, the Applicant, in the company of the District Officer and with the help of a bulldozer, demolished a section of the perimeter wall. She maintained that the Applicant is a necessary party

because its approvals were crucial to constructing the development on the Petitioner's property. He maintained that its participation will assist the court in resolving the dispute.

### **THE 3<sup>RD</sup> RESPONDENT'S SUBMISSIONS**

8. The 3<sup>rd</sup> Respondent filed its submissions dated 30<sup>th</sup> May 2025.
9. On behalf of the 3<sup>rd</sup> Respondent, Counsel submitted that the only issue for determination is whether the 3<sup>rd</sup> Respondent should be struck out from the instant Petition.
10. Counsel submitted that the 3<sup>rd</sup> Respondent is not a necessary party to this suit as the intended demolition directive was not the result of the Applicant's actions but of third parties. It was submitted that the basis for including the 3<sup>rd</sup> Respondent was to demonstrate the Petitioner's compliance with legal and regulatory standards, whereas the issue for determination is whether the suit property is built on riparian land.
11. Counsel contends that the 3<sup>rd</sup> Respondent should be discharged from the proceedings herein because the responsibility of determining whether a property is riparian land and for enforcing related laws and regulations lies with the 2<sup>nd</sup> Respondent. Counsel submitted that the Petitioner has not alleged any violation of the law by the Applicant.
12. Counsel further submitted that the Petitioner has not disclosed any reasonable cause of action against the 3<sup>rd</sup>

Respondent and therefore it is non-suited. Counsel argued that the Petitioner can pursue its claim without involving the 3<sup>rd</sup> Respondent.

13. Counsel further argued that the development approvals issued by the Applicant at the time were subject to certain conditions which Petitioner fulfilled and that they were of no probative value.

### **THE PETITIONER'S SUBMISSIONS**

14. The Petitioner filed its submissions dated 23<sup>rd</sup> June 2025.
15. On behalf of the Petitioner, Counsel submitted that the only issue for determination is whether the application is merited.
16. Counsel submitted that the 3<sup>rd</sup> Respondent is a necessary party for the effective resolution of the dispute herein. Counsel further submitted that the Applicant issued the approvals that were essential to the construction of the suit property.
17. Counsel argued that excluding the Applicant would undermine the judicial process by preventing an examination of the 3<sup>rd</sup> Respondent's conduct in issuing the development approvals. Counsel also argued that such an examination is essential to show that the Petitioner complied with legal and regulatory standards. Counsel maintained that whether the development plans have probative value is a matter to be decided at trial.
18. In conclusion, Counsel submitted that discharging the 3<sup>rd</sup> Respondent would prejudice the Petitioner's legal rights and

undermine enforcement of the judgment. Counsel urged the court to dismiss the application with costs.

## **ANALYSIS AND DETERMINATION**

31. Having considered the application, the respective affidavits and the rival submissions, the issue that arises for determination is whether the 3<sup>rd</sup> Respondent should be struck out from this Petition.
32. The principles governing the striking out of pleadings or parties are well settled. Striking out is a draconian remedy which should be exercised sparingly. A Respondent may be struck out where it is shown that no reasonable cause of action exists against them, that they are not a necessary party, or that their inclusion would amount to an abuse of the court's process.
33. In the case of **Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others (20-14) eKLR**, the court emphasized that joinder of parties must serve a clear purpose in the determination of the issues before the court.
34. In the matter at hand, it is not in dispute that the 3<sup>rd</sup> Respondent issued development approval to the Petitioner. The 3<sup>rd</sup> Respondent argued that the approvals have no probative value. The Petitioner, on the other hand, contends that the projects on the suit property were developed pursuant to the approvals issued by the 3<sup>rd</sup> Respondent. At this stage, the court is not required to determine the probative value of the approvals alleged to have been issued by the 3<sup>rd</sup>

Respondent. Based on the foregoing, I am satisfied that the 3<sup>rd</sup> Respondent is a necessary party to these proceedings.

44. In the end, I find that the application dated 15<sup>th</sup> October 2024 is not merited and the same is hereby dismissed.

**RULING DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 11<sup>TH</sup> DAY OF DECEMBER 2025.**

.....  
**HON. T. MURIGI  
JUDGE**

**IN THE PRESENCE OF: -**

Njuguna holding brief for Mumia for the Petitioner

Alfred holding brief for Ms Kalimi for the 3<sup>rd</sup> Respondent

Ms Makori for the 2<sup>nd</sup> Respondent

Ms Andia holding brief for Ngara for the 1<sup>st</sup> Respondent

Court assistant - Ahmed