



Nine Degrees Management Limited v Rapid Oak Properties Limited & 4 others; Nca & 4 others (Interested Parties) (Environment and Planning Petition E032 of 2025) [2025] KEELC 18410 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18410 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND PLANNING PETITION E032 OF 2025
AA OMOLLO, J
DECEMBER 18, 2025**

BETWEEN

NINE DEGREES MANAGEMENT LIMITED PETITIONER

AND

RAPID OAK PROPERTIES LIMITED 1ST RESPONDENT

HAYAT HEIGHTS LIMITED 2ND RESPONDENT

STROMAX HOLDINGS E.A LTD 3RD RESPONDENT

U DESIGN ARCHITECTS 4TH RESPONDENT

PRECISE CIVIL ENGINEERING 5TH RESPONDENT

AND

NCA INTERESTED PARTY

NEMA INTERESTED PARTY

NAIROBI CITY COUNTY INTERESTED PARTY

WATER RESOURCES AUTHORITY INTERESTED PARTY

HON. ATTORNEY GENERAL INTERESTED PARTY

RULING

1. For determination in the notice of motion application dated 30th July 2025 taken out under article 22, 23, 40 and 165 of *the Constitution* by the Petitioner as against the Respondents. The Petitioner/Applicant seeks to be granted the following orders;

a. Spent



- b. Spent
 - c. Spent
 - d. Pending the determination of the petition, the court be pleased to issue an order of temporary injunction restraining the Respondents whether by themselves, their employees and or persons acting on their behalf from continuing with construction of the proposed residential development on L.R No. 209/18662 (NBI Block 27/416) off Kindaruma road, Nairobi City County and or otherwise interfering with the Petitioner's right to quite possession and enjoyment of Nine degrees Apartments situate on L.R. No Nairobi Block 27/413.
 - e. In the alternative, conservatory orders do issue restraining the Respondents from constinuing with construction of the proposed residential development on L.R No. 209/18662 (NBI Block 27/416) off Kindaruma road, Nairobi City County which construction has been commenced in violation of the 3rd Interested Party's zoning requirements.
 - f. The court does direct the OCS Kilimani Police Station to ensure compliance with the orders issued by the court
 - g. Costs of the application be provided for.
2. The application is premised on the several grounds listed on its face which grounds include;
 1. The Petitioner has become aware through a report prepared on June 2025 on its instruction that the project was commenced and continues without the proper licenses and approvals
 2. The Petitioner is instructed through its engineers that there are various regulatory lapses
 3. The 1st Respondent has obtained conflicting licenses as regards the number of levels and apartment units to be constructed on the premises
 4. The Petitioner is apprehensive that the construction of the proposed residential units has violated and continues to violate the relevant provisions of EMCA inter alia, failure to undertake an EIA assessment.
 3. The application is further premised on the supporting affidavit sworn by Peter Onasis Ochieng Loch on 30th July 2025 which restates the facts set out in the grounds of the application. Mr. Loch deposes that pursuant to the Engineer's report annexed as POCL-3, the Respondents had yet to comply with obtaining licences from the 2nd to 4th Interested Parties.
 4. He deposes that as per the Nairobi County Zoning Policy of 2021, Kitisuru is zoned 4D for purposes of mixed development and restricts the levels to a maximum of four floors. He avers that neither he nor the Petitioner's tenants were consulted regarding any change of use that would permit the Respondents to exceed the restriction of four levels.
 5. The Petitioner deposes that meetings were held with the Respondents following the letters of complaint they wrote. That it is only in the meeting held on 30th May 2025, when the 3rd Respondent attended, that the 3rd Respondent shared architectural and structural drawings, 3D images of the building, and a brochure of plans issued to potential customers.
 6. Despite these meetings, the Petitioners assert that their concerns were not addressed. It is on this basis that it is seeking the orders sought be granted to protect their rights.
 7. The 1st Interested party filed a replying affidavit sworn on 27th October 2025 by Stephen Mwilu. Besides describing the statutory mandate of the 1st Interested Party, Mr Mwilu deposed at paragraph 14 that



their compliance officers visited the 2nd Respondent site and confirmed that the project is registered, there was evidence of netting on the outer side of the development, the construction was at the 4th floor level and that the project had been earlier suspended on 7th June 2024.

8. The 2nd Respondent filed a replying affidavit sworn on 24th October, 2025 by Zamzam Rashid who deposed that she is a director. She avers that the 2nd Respondent is the registered proprietor of L.R No. 209/18662/2 (Nbi Block 27/417). It is her deposition that the Respondents hold requisite licenses, permits and approvals from the 1st to 3rd Interested Parties.
9. She deposed that the 2nd Respondent's project is for 14 floor levels comprised of 85 residential units as shown in the architectural and structural drawings. That they also submitted an EIA project report for the construction of 14 level residential building comprising of 85 no of apartments. The application was reviewed and an EIA license issued. They deny contravening the applicable laws of the land.
10. The Respondents aver that the Petitioner is referring to zoning regulations in Kitisuru yet the property is situated in Kilimani, off Kindaruma Road, Dagoreti sub-county. Further, the Respondents accuse the of speaking about four floors yet their own building is Twelve floor levels.
11. The respondents also stated that pursuant to the demand letters issued to them on 12th May 2025, they convened a meeting where it was mutually agreed that the Respondents would reinforce the existing safety nets and which they did. They further state that they undertook repairs to sections of the Petitioner's security fence that had been damaged. Consequently, the Respondents urge this court to dismiss the present application for want of merit.
12. The learned counsels for the parties offered oral submissions which I have read and considered in this determination.

Analysis and Determination:

13. The Petitioner herein is urging the court to grant interim orders of injunction and or conservatory reliefs to stop the on-going construction pending hearing and determination of their petition. It is settled law that for an Applicant to merit these orders, it must demonstrate that it has a prima facie case with a chance of success, or that it will suffer irreparable loss that damages cannot compensate, or that the balance of convenience tilts in its favour.
14. Conservatory orders are by definition decisions arrived at by a Court of law to maintain status quo/ current status of affairs to ensure that circumstances do not change while a matter is before a Court of law pending judgement. Basically, conservatory orders ensure that nothing changes circumstantially in a matter, pursuant to the existence of other factors to be determined by the court.
15. The applicable principles for the grant of conservatory orders were set out by Onguto J. in the precedent established in Board of Management of Uhuru Secondary School v. City County Director of Education & 2 Others [2015] eKLR. In summary, the principles are as follows; "The Applicant ought to demonstrate an arguable prima facie case with a likelihood of success and that in the absence of the conservatory orders he/she is likely to suffer prejudice. The Court should decide whether a grant or a denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights. Whether if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory. It is clear that a party seeking a conservatory order is mandated to demonstrate that should the court fail to grant a conservatory order, there is a high probability of him/her suffering prejudice as a result of the violation or threatened violation of *the Constitution*. However, this must be weighed against public interest."



16. In the application before me, one of the grounds raised was that the construction was going without the required approvals in accordance with the development laws/regulations. In a rejoinder, the Respondents through their replying affidavit annexed copies of the relevant approvals obtained inter alia EIA license and approvals from the 1st and 3rd Interested Parties.
17. Further, the Petitioner stated in paragraph 17 of the supporting affidavit that in the meeting of 30th May 2025, the 3rd Respondent shared with them the architectural and structural drawings. The 1st Interested Party also visited site and found the necessary approvals were available including a site board.
18. The Petitioner in one breath pleads absence of these permits and again affirms they exist except that the licenses are conflicting. It deposed that one set of approval spoke to 15 level floor comprised of 50 units and another permit spoke to 14 level floor comprised of 85 units. For this stage, the fact of existence of licenses take out the complaint/pleading that the building was contravening the relevant laws. The conflict of the licenses is a matter to be dealt with during the main hearing.
19. The Petitioner also asserted that the development is not compliant with the zoning regulations for this area which permits only four level floors imposed by the 3rd Interested Party. Paragraph 12 (a) of the Petitioner's affidavit states that Kitisuru is classified under zone 4D which permits buildings upto 4 levels.
20. In the application, the Petitioner describes the location of the property as situate off Kindaruma road, Dagoretti sub-county which the Respondents say is in Kilimani area and not Kitisuru. The pleadings as filed does not disclose the allowable levels for buildings that are off Kindaruma road. The Respondents also deposed that the Petitioner's own building has 12 floors and attached photographs to support. This point is also wanting as a basis for establishing a prima facie case.
21. Regarding irreparable loss, the Petitioner alleged that the construction debris netting erected is currently in a dilapidated state. They add that there are no construction wall barriers or scaffolding netting around the construction. Lastly, no systems have been put in place to redirect water run-off.
22. The 1st Interested Party deposed that there were nettings in place. The Respondents said that they held a meeting with the Petitioner before the filing of this case and agreed to reinforce the nettings and repair the damage occasioned to the Petitioner's security wall. Therefore, it is my considered opinion that the probable loss complained of can be compensated in damages.
23. In whose favour is the balance of convenience? When the case was filed, construction had already commenced, as evidenced by the stop order issued by the 1st Interested Party in June 2024. The 1st Interested Party further deposes that, on their visit to the site, the building was at level four (4). The Petitioner affirms that meetings were held between them and the 3rd Respondent in May 2025, but denies that their issues were addressed.
24. The facts point to construction that has progressed, which tilts the balance of convenience in favour of allowing the Respondents to continue with their construction. Any prejudice the Applicant is likely to suffer can be addressed through the Interested Parties' supervisory visits or at the hearing of this petition.
25. In conclusion, I hold that the application is without merit and dismiss it. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF DECEMBER, 2025.

A. OMOLLO



JUDGE

