

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC NO. EP E014 OF 2025

KIOGORA MURAI & 4 OTHERS PETITIONERS

= VERSUS =

JOY GARDENS 1st RESPONDENT

NAIROBI CITY COUNTY 2nd RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY (NEMA) 3rd RESPONDENT**

J U D G E M E N T

1. The Petitioners plead that they bring this petition on their behalf and on behalf of the Residents of Flame Tree Drive within Runda in Nairobi under Article 258 of the Constitution. Paragraphs 3 -5 of the petition describe the capacity under which the Respondents are sued.
2. The Petitioners state that the gist of their complaint is that the 1st Respondent has violated their right to a clean and healthy environment guaranteed under Article 42; the Article 60 right on sustainable utilisation of the environment, public participation and utilising the environment for the benefit of the people; ensuring ecologically sustainable development and use of natural resources.
3. The Petition is pleaded to be grounded on the provisions of Articles 2(1), 10, 19, 19,20, 21, 23, 42, 47, 50, 69, 70 and 258 of the Constitution. Further, the

Petitioners cited the relevant statutory provisions of the EMCA, inter alia, sections 3, 58, 87, and 112, which set out the processes that must be followed, thereby guaranteeing the right to a clean and healthy environment.

4. They also rely on International Instruments inter alia; the RIO Declaration on Environment and Development 1992 (principles 3, 4 and 10). For instance, Principle 3 speaks to the development needs being met equitably with environmental needs.
5. Premised on these legal principles, the Petitioner asserted that the Runda area falls under Zone 13, and that the area where the Petitioner's and the 1st Respondent's properties are located is designated as a low-density user zone. They specified that for in compliance with the area policy,
 - a) **The development permitted is single dwelling residential house of upto 5 bedrooms.**
 - b) **The dwelling is upto a maximum of 2 levels (ground and first floor only)**
 - c) **Development to cover upto 25% of the built area within a plot.**
 - d) **Set back to be beyond 6 metres from the road frontage**
6. It is averred by the Petitioners that sometimes in 2023, the 1st Respondent purported to have obtained approvals from the 2nd and 3rd Respondents to undertake a development on its suit parcel **Nairobi / Block 99 / 120.**

Thereafter it commenced construction on the premises and which construction is ongoing.

7. The Petitioners contend that the approval of the building plans was without public participation or consultation with the neighbours and other key stakeholders. In addition, that the 1st Respondent did not obtain an EIA licence as required under section 58 of the EMCA. That the entire process carried out by the 1st Respondent was conducted in a manner contrary to their rights guaranteed under Articles 42 and 69 of the Constitution.
8. The Petition stated the particulars of the Respondents illegalities to wit:
 - a) **Failure to undertake Public participation.**
 - b) **Breach of the area zoning regulations and NEMA approvals.**
That the NEMA approval for ground plus one (3 – level development) is in blatant breach of the zoning regulations.
 - c) **The development is out of character with its surrounding.**
9. They aver for instance, that the swimming pool, the 150,000-litre underground water tank and septic tank have all been built against the boundary wall with the road. Additionally, the Petitioners argue the subject plot being swampy, ground water seepage after the rains will damage the road.
10. That the extensive concrete coverage of the plot does lower the capacity of the plot to absorb rain water. This may also make the sewerage mechanism

to fail thus exposing the neighbouring properties to spillage and other health hazards.

11. The Petitioners plead that they had legitimate expectation that the 1st Respondent would adopt best practices in carrying out its development process. By failing to adhere to the standards expectation.
12. They blamed the 3rd Respondent of abdicating its responsibility for not taking restoration measures on environmental degradation as required under Section 108 of EMCA and Article 47 of the Constitution.
13. As a result of the 1st Respondent's failure to observe the regulatory requirements, the Petitioners aver their rights to a clean and healthy environment including, the loss pleaded include:
 - a) **Noise, increased traffic flow and insecurity.**
 - b) **The massive development without following due process reduces the green area and increased crowding.**
 - c) **The 1st Respondent's drainage of raw sewer water into the storm drain will constitute environmental hazard.**
 - d) **Impacts negatively on the quality of life for residents.**
14. Consequently, the Petitioners humbly pray for orders:
 - a) **A Declaration that the Development of Title No. NAIROBI/BLOCK 99/120 by the 1st Respondent infringes the Petitioner's rights to a clean and healthy environment under Article 42 as read together with Article 69 (1) (f) of the**

Constitution as well as Section 58 (1) of the Environmental management & Co-ordination Act.

- b) A Declaration that the 2nd and 3rd Respondents in allowing the development on property Title No. NAIROBI/ BLOCK 99/120 abdicated their constitutional and statutory duties of safeguarding the Petitioners rights.**
- c) A Declaration that any development on Title No. NAIROBI/ BLOCK 99/120 without adequate public participation including that of the Petitioners and all project affected persons is conducted and concluded in favour of the subject development is illegal**
- d) A permanent injunction to restrain the 1st Respondent either by itself, its agents, servants, assignees, or succession in title from any further construction over property Title No. NAIROBI / BLOCK 99/120.**
- e) A Restoration Order under Article 70 (2) (a) of the Constitution as read with Section 108 and 11 of the Environment Management & Coordination Act compelling the 1st Respondent to restore the property known as Title No. NAIROBI/BLOCK 99 / 120 to the state it was before the impugned development.**

- f) An Order compelling the 2nd and 3rd Respondents to take such measures that will ensure that the 1st Respondent ceases to interfere with the rights of the Petitioners including demolishing any structure or re-adjusting any part of the development.**
- g) Compensation by way of General Damages against the 1st Respondent.**
- h) Costs of this suit with interest thereon.**
- i) Any other relief that this Honourable court may deem just to grant.**

15. The 1st Respondent challenged the Petition through the Replying Affidavit of Stephen Kimani Mwangi sworn on 10th September 2025. He deposes that before submitting their development plans for approval, they engaged the neighbours on 23.3.2023.
16. He avers on behalf of the 1st Respondent that being aware of the existence of the Residents' Association, they engaged their leadership by submitting the development plans to New Runda Association through its liaison officer on 24.3.2024 through whatsapp media.
17. It is the 1st Respondent's case that they obtain all the requisite development approvals. Further, that after a year of continuous engagements, they began construction on 24.4.2024. that they were issued with a gate pass by the

Resident's Association to allow for the in and out movement of Construction trucks.

18. The 1st Respondent deposes the Construction continued undeterred until 23.9.2024 when a meeting was called with the Residents' Association. He insists the 1st Respondent is constructing a single dwelling residence as define under EMCA and PLUPA 2019.
19. The 1st Respondent stated that it has always been open to feedback. That all concerns raised have been addressed and resolutions reached as believe in them and the Residents' Association. That the 1st and 5th Petitioners have been present in all these meetings including the meeting of 18.2.2025.
20. The 1st Respondent denied that the 3rd Respondent had issued it with a stop order despite a site visit made on 19.3.2025.
21. The 1st Respondent argues that single dwelling residential buildings do not require public participation to be undertaken. That despite this, they had consulted with the community. The 1st Respondent put the Petitioners to strict proof.
22. It is their case that the Petitioners has exceed zoning requirements under PLUPA but failed to demonstrate what law was used to measure buildings. They maintain their building is regular having obtained all the required approvals.
23. Similarly, the 1st Respondent denied that it has built boundary to boundary stating instead that it has left significant space between the wall and the

boundary. It is being built on a corner plot which enjoys leaner conditions for construction.

24. In contesting that their land is on a swampy area, the 1st Respondent relied on regulation 49(1) of the Building Code which states thus;

“The approving authority shall inform the owner where there is reason to believe that there may be unstable soil or an unstable slope in the area or on a construction site upon which a building is to be erected or situated”

25. That, by receiving the approvals without objection, the 1st Respondent asserts that the Petitioners' averments regarding unstable soil are unsubstantiated and were put to strict proof.
26. It avers that the particulars of loss set out in paragraph 48 of the Petition are unsupported. They deny breaching any laws and assert that greenery will be planted in the construction of all those spaces left bare. They urged the court to dismiss the Petition in its entirety.
27. The 2nd Respondent also opposed the Petition by vide a Replying Affidavit sworn on 27.8.2025 by Mr Wilfred Masinde, its Acting Deputy Director Planning, Compliance and Enforcement. He affirmed that the 2nd Respondent received a development application from the 1st Respondent on 4.8.2023. Pursuant to its mandate given under Section 61 (2) (a) of PLUPA and having confirmed the application complied with the Zoning Policy for the area, the same was approved on 31.8.2023.

28. The 2nd Respondent continued that sometimes in 2025, the 1st Respondent expressed a desire to alter the approved plans on 13.8.2023 vide PLUPA – BPM-007015. The revised applications were also approved on 22.5.2025. It confirmed that the approval is for a single-dwelling unit in a low-density area and on the plot size is given as half acre (0.2021 Ha).
29. The 2nd Respondent denies the development on the suit plot is commercial adding that the status was also confirmed during a site visit made on 5.6.2025. They also deny the development is against the Zoning policy for this area. It urged the court to dismiss the Petition.
30. The Petitioners filed a further affidavit on 14.11.2025, sworn by the 1st Petitioner in response to the 1st and 2nd Respondents' replying affidavits. The 1st Petitioner deposed he was not aware of any engagements with New Runda Association and the 1st Respondent in the year 2023. That even such engagement took place, it did not give the 1st Respondent a license to construct premises contrary to the area Zoning policy.
31. It is their contention that the 1st Respondent has not produced a "no objection note" from the Residents' Association. Further, the minutes annexed as SKM 11 are unsigned, and they evidence that the issues raised in this petition arose over a year before this case was filed. They aver that the 1st Respondent's decision to discontinue building the 3rd level is an admission that the approvals obtained from the 2nd Respondent were not in consonance with the by-laws.

32. Regarding on-ground coverage, the Petitioners stated that they rely on the Nairobi Policy Development Control Policy 2022, EMCA, and the applicable regulations. They contend that the 1st Respondent is at liberty to develop the suit property, provided the structure is compliant.
33. For the 2nd Respondent, the Petitioners aver that their Replying Affidavit is devoid of substance. The 1st Petitioner stated that it is false for the 2nd Respondent to depose that a setback of 17 metres and 11 metres has been left.
34. The Petitioners filed submissions dated 28th January 2026, and the 1st Respondent's submissions were dated 21st January 2026. I have read and considered both, and references will be made in the body under the determination paragraphs set forth below.

ANALYSIS AND DETERMINATION:

35. The Petitioners raised the following three questions in their submissions, which the 1st Respondent answered in their submissions. I adopt the stated questions for the determination of the dispute, which are: -
- a) Whether the approvals obtained by the 1st Respondent can be impeached in light of the Court of Appeal's finding to the effect that the approvals lawfully issued are not invalidated.**
 - b) Whether the Petitioners have suffered loss**
 - c) Whether the Petitioners are entitled to a remedy and of what kind.**

36. They argue that the Court of Appeal in **Nairobi Civil Appeal No. E160 Rhapta Road Residents Association Vs. CECM Built Environment & Urban Planning & Others** held inter alia that the 2021 Development Control Policy could only be used by the 2nd Respondent as an administrative guide as it had not been passed by the County Assembly. The said Policy classified Runda Estate under Zone 13.
37. Therefore, the Petitioners posit that the 1st Respondent's approvals can only stand if they were lawfully granted. In arguing that they were not lawful, the Petitioners submit that the ground covered and the plot ratio used exceed what is permitted in the 2021 Development control Policy, 2021 for Runda estate. They also argue that the plant is too close to the boundary wall. In support of their submissions, they relied on their annexure KM 4.
38. It is true that the annexure KM-4 (Nairobi Development Control Policy, 2021) produced by the Petitioners, Runda Estate, is classified under Zone 13D. It provides a plot size of 0.2, a plot coverage of 50%, and a level/Skyline of 25%. It is designated for single-dwelling, low-density residential use; maisonettes; and one-family dwelling houses.
39. Additionally, the Petitioners produced a report dated 18.03.2025 by Cosmoplan Consultants (annex KM-14). The report lists Arch. S. K. Kahinga as the author and states that the building covers an approximate area of 1995 Sm, based on the drawings shared with them. Thus, the report asserts that the plot ratio used is slightly less than half an acre (0.2ha).

40. The report stated that the area covered by the building on the ground floor is 36.7%, against the recommended 25%, and the plot ratio coverage used is 95.9%, against the recommended 50% for the area. The expert noted that, following concerns raised by the Residents, the owner (1st Respondent) has caused a revision of the building plans. The expert advised that, since there was no written commitment and no evidence that the revised proposal had been presented for approval to the County Government, it cannot be considered a legal document.
41. There is no dispute that the Residents raised concerns about the 1st Respondent's approved development plan issued on 13.8.2023. The 1st Respondent admits the concerns and deposes that he sought to maintain good neighbourly relations, and therefore agreed to revise the impugned plan to address those concerns.
42. Consequently, a revised plan was submitted to the 2nd Respondent in April 2025 and approved on 22.5.2024. According to annexure WWM-4, the application for revision of the plan was submitted on 22.4.2025. A copy of the revised approvals was produced by the 1st Respondent as annexure SKM-14.
43. Going by the Petitioners' expert report dated 18.3.2025, one can say the approved plans dated 13.8.2023 issued to the 1st Respondent were contrary to the Zoning guidelines for Runda estate as they were approved for 3-levels. It is also this report that may have formed the basis of the meeting held on

19.3.2025 and referred to by the 1st Respondent. This meeting may also have informed the 1st Respondent's decision to revise its development plan.

44. From the record of pleadings filed, it appears that while the consultations were ongoing, some of the residents of the Flame Tree drive (runda), who comprised the Petitioners, did not trust that the 1st Respondent would implement the proposed revised plans. Hence, they filed this Petition on 3.4.2025, a date falling before the submissions of the revised development plans on 22.4.2025 to the 2nd Respondent.
45. In their further affidavits, the Petitioners denied knowledge of the engagements undertaken in 2023. They depose that the 1st Respondent's decision to discontinue construction to the 3rd level is an admission that the previous approvals were not in consonance with the by-laws. However, the Petitioners did not file or produce a further expert report setting out the plot ratio and coverage following the approval of the revised development plan.
46. The 1st Respondent's approved revision of the development plan in May 2025 introduced new set of facts post the filing of the petition. It is my considered opinion and I so hold that the Petitioners needed to present additional evidence reaffirming that the new drawings still exceed the plot ratios as per the area policy.
47. Further, the evidence contained in the documents annexed by both Respondents affirm the building is being put up for residential use. The Petitioners criticised it for the plot ratio used but didnot present evidence

that the building was not a single dwelling residential house. Hence this court, cannot make a finding that the revised approved plan dated May 2025 was not lawfully approved.

48. The Petitioners pleaded and argued that they had suffered loss and which has been denied by the 1st and 2nd Respondents. The Petitioners submitted that when a developer disregards the established plot ratio and ground coverage, the loss suffered by the neighbours is not merely aesthetic but a tangible decline in property value, health, and quality of life.
49. The case of **Communications Commission of Kenya and 5 others vs. Royal Media Services Ltd & 5 Others (2014) eKLR** emphasized that while Article 22 (1) of the Constitution permits anyone to institute proceedings for the enforcement of fundamental rights and freedom, a litigant invoking that jurisdiction must clearly demonstrate the specific rights alleged to have been violated and the factual basis upon which the grievance is found.
50. In this instance, the Petitioners also alleged decline in their property value caused by the alleged unlawful action or inaction of the Respondents. However, no valuation report was filed to corroborate the assertion that the property values had indeed decreased as a result of the upcoming development undertaken by the 1st Respondent.
51. They pleaded that their quality of life and health are likely to be adversely affected. This allegation appears to be premised on the assumption that the

sewerage system put up by the 1st Respondent will not function properly and will discharge raw sewage into the storm waters, and that it was a commercial development. These assumptions required evidential support that the sewerage system the 1st Respondent had put up was defective. However, the Petitioners, other than stating the facts, did not go further to prove how.

52. The Petitioners further submitted on matters that required scientific evidence i.e. over coverage **blocking the natural wind paths** through an estate leading to **“heat islands”**. They argue that controlled estates are designed with specific **“carrying capacity”**. If all and sundry are allowed to exceed, sewer lines, drainage and parking are all affected.
53. This court does find that the 1st Respondent does not comprise persons that would fall under the description of **“all and sundry”** because it owns a property in the area just like the Petitioners. The impugned development was described as being undertaken on Nairobi Block 99/120 and the Petitioners are not disputing the ownership.
54. The burden was on the Petitioners’ shoulders throughout to prove all the violations of the rights pleaded in the petition. The court is not told the direction of the wind in this estate and whether it was only the 1st Respondent’s project undertaken on a designated plot that would block its flow.

55. Additionally, while relying on the Nairobi 2021 Development Control Policy, which describes the area as a single-dwelling residential area, the Petitioners did not present evidence of the area's carrying capacity. They did not plead or submit on the **meaning of "carrying capacity"**, whether it is in terms of human population or built structures, or how the 1st Respondent's structure has interfered with it. They also did not indicate whether each resident parks their vehicles in their compounds or in common designated parking areas.
56. The Petitioners urged the court to grant the reliefs sought in the Petition and my answer is that the Petitioners are not entitled to any reliefs following the foregoing analysis. In addition to the above analysis, Article 159(2) of the Constitution recognises alternative methods of dispute resolution, including reconciliation and mediation.
57. The 1st Respondent has demonstrated that it engaged with the Residents Association which was the representative body representing the interests of the Flame Tree Lane residents including the Petitioners. The 1st Petitioner stated during cross-exam that some of their protests were by way of a letter (dated 3.3.2025 and 11.3.2025) and a meeting of 18.2.2025 whose minutes the 1st Respondent annexed.
58. The 1st Petitioner admitted that in this meeting of 18.2.2025, the 1st Respondent agreed to reduce the building to two (2) floors. Despite this agreement, the 1st Petitioner averred that the 1st Respondent did not take this

meeting seriously. However, he had no evidence of any construction after 19.3.2025 or beyond the two-level floor.

59. It is stated that the wife of the 4th Petitioner was their Street representative in the Residents association. A meeting was held between the 1st Respondent and the Residents Association on 18.2.2025 and it is stated that the 1st Respondent in this meeting agreed to revise the plan to address the concerns raised. In the spirit of conciliation, the Petitioners ought to have set timelines for compliance on the proposed revision of the approved plan. In default on the part of the 1st Respondent then they file this claim.
60. I am aware that the option of alternative dispute resolution mechanism does not take away the rights to seek a remedy before this court. However, in this case, the Petitioners have not demonstrated any merit on the plot ratio and ground coverage post their initial report dated 18.3.2025. They have also not proved the allegations pleaded regarding environment harm. Accordingly, I order the Petition dismissed for want of merit.
61. Although costs follow the event, in this case, I order each party to bear their costs. This is because the Petitioners' claim regarding the floor levels had merit prior to the approval of the revised plan.

Delivered, Dated and Signed at Kisii, virtually this 12th of February, 2026.

A. OMOLLO

JUDGE

ORIGINAL