Kassam & 12 others v Shah & 16 others (Environment and Land Petition E007 of 2024) [2025] KEELC 5354 (KLR) (17 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5354 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND PETITION E007 OF 2024

OA ANGOTE, J

JULY 17, 2025

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010 ARTICLES 1, 10, 19, 20, 22(1), 23(1), 70, 165 AND 232

AND

IN THE MATTER OF THE ONGOING AND FURTHER INTENDED VIOLATION AND CONTRAVENTION OF ARTICLES 26, 28, 35, 42, 43(1) (B), 47(1), 50, 69(1),70, 73 AND 75(1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF BREACH AND VIOLATION OF THE PROVISIONS OF THE ACCESS TO INFORMATION ACT, 2016

AND

IN THE MATTER OF BREACH AND VIOLATION OF THE PROVISIONS OF THE PHYSICAL LAND USE AND PLANNING ACT, 2019

AND

IN THE MATTER OF BREACH AND VIOLATION OF THE PROVISIONS OF THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT NO 8 OF 1999

AND

IN THE MATTER OF BREACH AND VIOLATION OF THE PROVISIONS OF THE NATIONAL CONSTRUCTION AUTHORITY ACT

AND

IN THE MATTER OF BREACH AND VIOLATION OF THE PROVISIONS OF THE WATER RESOURCES AUTHORITY

ACT

AND

IN THE MATTER OF BREACH AND VIOLATION OF THE PROVISIONS OF THE LAND ACT

AND

IN THE MATTER OF BREACH AND VIOLATION OF THE PROVISIONS OF THE LAND REGISTRATION ACT

AND

IN THE MATTER OF BREACH AND VIOLATION OF THE PROVISIONS OF THE LAND REGISTRATION ACT

AND

IN THE MATTER OF THE LEADERSHIP AND INTERGRITY ACT

AND

IN THE MATTER OF THE PUBLIC OFFICERS ETHICS ACT

AND

IN THE MATTER OF ACTIVITIES DELETERIOUS TO THE ENVIRONMENT ON L.R NO 209/871/14 AND 209/871/11- CITY PARK DRIVE, PARKLANDS

AND

IN THE MATTER OF BREACH AND VIOLATION, AND THE INTENDED BREACH AND VIOLATION OF THE PETITIONERS' AND GENERAL PUBLICS' RIGHT TO LIFE

AND

IN THE MATTER OF INHUMANE AND DEGRADING TREATMENT OF THE PETITIONERS AND THE GENERAL PUBLIC

AND

IN THE MATTER OF ACTS AND OMMISSIONS AND CONDUCT THAT ARE DELETERIOUS TO THE ENVIRONMENT

BETWEEN

KARRIM SHERALI KASSAM ..... 1ST PETITIONER

J & J FAMILY VENTURES LIMITED ..... 2ND PETITIONER

KUNAL BID ..... 3RD PETITIONER

SANJAY ADVANI ..... 4TH PETITIONER

HARSH NARAN CHAVDA ..... 5TH PETITIONER

SHAFIQ DAWOODANI ..... 6TH PETITIONER

MARGARET KAPTUIYA KOMEN ..... 7TH PETITIONER

FAIZAL JERAJ ..... 8TH PETITIONER

SAIRA GILANI ..... 9TH PETITIONER

KETAN GOSWAMI ..... 10TH PETITIONER

ASHMI SHAH ..... 11TH PETITIONER

SHELINA MANJI ..... 12TH PETITIONER

HEENAL TANK ..... 13TH PETITIONER

AND

SHANTILAL RAYCHAND SHAH ..... 1ST RESPONDENT

GREENDIME CONSULTANTS LIMITED ..... 2ND RESPONDENT

BENJAMIN N OMBATI ..... 3RD RESPONDENT

ZAMIL REALTORS LIMITED ..... 4TH RESPONDENT

JW ARCHPLANS LIMITED ..... 5TH RESPONDENT

TERRA CONSULT ..... 6TH RESPONDENT

SPEKTRA CONSULTING ENGINEERS ..... 7TH RESPONDENT

CHALBAK CONSTRUCTION COMPANY LTIMITED ..... 8TH RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT ..... 9TH RESPONDENT

PHILIP ANALO AKIVANGA ..... 10TH RESPONDENT

STEPHEN GATHUITA MWANGI ..... 11TH RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 12TH RESPONDENT

CATHERINE THAITHI ..... 13TH RESPONDENT

NATIONAL CONSTRUCTION AUTHORITY ..... 14TH RESPONDENT

WATER RESOURCES AUTHORITY ..... 15TH RESPONDENT

ROBINSON MAINA KIMARI ..... 16TH RESPONDENT

JUSTUS MWAURA ..... 17TH RESPONDENT

JUDGMENT

Introduction

1. This Judgment arises from a dispute that is emblematic of a broader and increasingly contentious urban challenge, the conflict between rapid urban development and the preservation of established neighbourhood character.

2. The dispute involves a vigorous and acrimonious contest between a property developer, intent on constructing a high-rise residential development, and neighbouring residents, who vehemently oppose the project on grounds ranging from alleged violations of planning laws to fears of environmental degradation, loss of privacy, and destruction of community heritage.

3. At the heart of the dispute lies a proposed multi-storey development within an area long characterized by single-dwelling units and modest structures. The developer contends that the project complies with all legal and regulatory requirements and aligns with the county's vision for urban densification.

4. Conversely, the objecting residents argue that the proposed development offends the right to a clean and healthy environment, planning principles and laws and their legitimate expectations, and poses significant adverse impacts on infrastructure, sunlight access, and neighbourhood tranquility.

5. This Court is called upon not merely to resolve a private land-use conflict, but to interpret the law in a manner that balances competing public interests, the right to property and economic development, on the one hand, and the right to a healthy, orderly, and sustainable environment on the other.

The Petitioners' case

6. Vide the Petition dated 28th March, 2024, the Petitioners seeks the following reliefs:

   i. A declaration that the approval of change of use of the properties known as L.R No 209/871/14 and L.R No 209/871/11-City Park Drive, Parklands by the 9th, 10th and 11th Respondents was illegal, irregular, un-procedural, null and void.

   ii. A declaration that the development and construction activities on L.R No's No 209/871/14 and L.R No 209/871/11-City Park Drive, Parklands that commenced on the 1st January, 2021 was not approved by the 9th, 10th and 11th Respondents or any of the 10th Respondent's employees and officers, and is in breach and violation of the provisions of the Physical and Land and Urban Planning Act, 2019.

   iii. A declaration that the approval for proposed residential apartments by Nairobi City County whose details appear on the signboards erected next to the properties known as L.R No 209/871/14 and 209/871/11-City Park Drive, Parklands as NCC-CPF AV-209, is illegal, irregular, unprocedural, null and void.

   iv. A declaration that the information and contents pf the EIA Project Report in respect to the ownership of the property known as L.R No 209/871/14 and on public participation on the proposal to develop residential apartments on L.R No 209/871/14 prepared by the 2nd and 3rd Respondents and presented to the 12th and 13th Respondents in March, 2021 is false, incorrect and untrue.

   v. A declaration that the NEMA License whose details appear on the signboard erected next to the property known as 209/871/14-City Park Drive, Parklands as NEMA/EIA/PSL/11617 was irregularly and un-procedurally issued by the 12th and 13th Respondents to the 1st Respondent and is therefore null and void.

   vi. A declaration that the 12th and 13th Respondent did not issue the NEMA License whose details appear on the signboard erected next to the property known as L.R No 209/871/11 as EIA/PSL/16056-City Park Drive, Parklands.

   vii. A declaration that the 12th and 13th Respondents did not and have not given permission or license for the construction and development of residential apartments on L.R No 209/871/11-City Park Drive, Parklands by the 1st -8th Respondents, their agents/servants/proponents or any other person.

   viii. A declaration that the 14th Respondents project registration nos appearing on the signboards erected next to the properties known as L.R No's 209/871/14 and 209/871/11-City Park Drive, Parklands as nos 53127415710469, 53127415710417, 53127415710860 and/or 80894/B/1223 are illegal, irregular and un-procedural.

ix. A declaration that certificates of compliance issued by the 14th Respondent to the owner/ developer /proponent, including the 1st -4th Respondents of the proposed residential apartments on L.R No's 209/871/14 and 209/871/11 registered as project no's 53127415710469, 53127415710417, 53127415710860 and/or 80894/B/1223 or any other NCA registration number are illegal, irregular, un-procedural null and void.

x. A declaration that the act and conduct of the 15th, 16th and 17th Respondents to reduce and minimize the size of the riparian land along Mathare River next to the property known as L.R No 209/871/11-City Park Drive, Parklands was illegal, irregular, un-procedural, null and void.

xi. A declaration that the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Respondents acts and conduct to undertake construction and development of residential apartments on L.R No 209/871/11-City Park Drive, Parklands is illegal, irregular and un-procedural.

xii. A declaration that development and construction activities on L.R No's 209/871/14 and 209/871/11-City Park Drive, Parklands by the 1st, 2nd, 3rd, 4th , 5th, 6th , 7th and 8th Respondents which commenced on 1st January, 2021 are illegal, irregular, un-procedural, null and void ab initio.

xiii. A declaration that the 10th, 11th, 13th 16th and 17th Respondents have breached and violated Section Six of *the Constitution* of Kenya, and the provisions of the *Leadership and Integrity Act* and the Public Officers Ethics Act.

xiv. A declaration that the acts, conducts and commissions of the 1st, 2nd, 3rd , 4th, 5th , 6th , 7th , 8th , 9th , 10th ,11th , 12th ,13th ,14th ,15th 16th , and 17th Respondents to develop and construct residential apartments and other structures on L.R No's 209/871/14 and 209/871/11 have denied, breached, violated and infringed, and continue threatening to deny, breach , violate and infringe the Petitioners and the general publics' right to life and to a clean and healthy environment.

xv. A declaration that the acts, conducts and omissions of the 1st, 2nd, 3rd, 4th, 5th ,6th, 7th, 8th, 9th, 10th, 11th 12th 13th 14th ,15th, 16th and 17th Respondents on the on-going development of residential apartments and other activities on L.R Nos 209/871/14 and 209/871/11 are deleterious to the environment.

xvi. An order of permanent injunction stopping, halting, preventing and discontinuing any act or omission by the 1st , 2nd , 3rd , 4th , 5th , 6th , 7th and 8th Respondents, their agents/ servants/proponents , or any other person that is deleterious to the environment, which acts include undertaking construction and development activities on L.R No 209/871/14 and 209/871/11-City Park, Parklands, until and unless they first decommission the developments so far undertaken and restore the degraded properties to their original condition, or as to near to their original condition as is possible, as it was before 1st January, 2021 within a period of 90 days from the date of the order.

xvii. A mandatory order compelling the 9th, 10th , 11th , 12th , 13th , 14th , 15th , 16th and 17th Respondents, jointly and severally to stop, prevent and discontinue any act or omission by the 1st , 2nd , 3rd , 4th , 5th , 6th , 7th , 8th and 9th Respondents, their agents/servants/proponents, or any other person which acts and omissions include undertaking any further construction and development activities on L.R No's 209/871/14 and 209/871/11-City Park Drive, Parklands, until and unless they first decommission the developments so far undertaken, and restore the

degraded properties to their original condition, or as near to their original condition as is possible, as it was before 1st January, 2021.

xviii. An order that costs of decommissioning and restoring the degraded properties known as L.R 209/871/14 and 209/871/11-City Park Drive, Parklands to their original condition as it was before 1st January, 2021 be met by the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th ,14th, 15th, 16th and 17th Respondents, jointly and/or severally.

xix. General Damages.

xx. Costs of the Petition.

7. In support of the Petition is the Affidavit sworn on 28th March, 2024, Supplementary Supporting Affidavit sworn on 15th May, 2024, Further Supporting Affidavit sworn on 24th February, 2025, and Supplementary Affidavit sworn on 27th May, 2025, all deponed to by Mr Kassim Sherali Kassam, the 1st Petitioner, on behalf of the Petitioners.

8. According to the Petitioners, they are owners, occupiers, and residents of Muthaiga Valley Apartments (also known as Anahita Apartments), and have instituted this Petition, not only on their own behalf, but also in the public interest, given the far-reaching implications of the issues raised.

9. According to Mr. Kassim, he owns Apartment No. E7 erected on L.R. No. 209/871/13 (now Nairobi Block 37/27), located along City Park Drive, Parklands, jointly with Noreen Akhtar, having acquired it through a long-term lease from Berkshire Properties Limited, via a Sale Agreement dated 18th November 2016.

10. The 1st Petitioner deposed that all the other Petitioners similarly acquired their respective apartments within the same development through sale agreements executed between 2014 and 2023, spending between Kshs 15 to 20 million per unit, primarily for use as retirement homes and that the said parcel of land is centrally located between properties known as L.R. No. 209/871/14 and L.R. No. 209/871/11 (hereinafter "the suit properties"), with the lower parcel extending to the Mathare River.

11. It was deposed that the suit parcels L.R 209/871/11, L.R 209/871/13, and L.R 209/871/14 are connected to Muthaiga Estate by a footbridge erected on Mathare River along a public access road that links the said Muthaiga Estate with Parklands Estate, Nairobi.

12. The Petitioners state that they were attracted to the location by the lush green environment surrounding the apartment complex, the proximity to essential services, the area's infrastructure, and the clean and healthy environment, including its closeness to Karura Forest and that at the time of their occupation, the surrounding suit properties were developed with single-family four-bedroom maisonettes.

13. It is their case that in January 2021, the owner/occupier of the suit properties began redeveloping the parcels, which included demolition of the existing single residential houses, felling of trees and other vegetation, and the erection of a hoarding wall on L.R. No. 209/871/11, and that no prior notice was given to the Petitioners or neighboring residents, and no development signboards were erected to identify the developer or the nature of the construction.

14. It was deposed that it was not until August 2023 that signboards were put up; that one indicated that the project on L.R. No. 209/871/14 was named Greenview Apartments and was to comprise of residential apartments by Zamil Realtors Limited, with various consultants and contractors listed who were as Architect-J. W Archplans, structural engineer-Terra Consults, service engineer-Spektra Consulting and labour contractor-Zamil Realtors Limited and that approvals were cited as NEMA

License No. NEMA/EIA/PSL/11617, NCA Project Registration No. 5312741510417, and NCC Plan no. CPF-AV-209.

15. On the other hand, the signboard on L.R. No. 209/871/11 indicated that the project is known as Greenview II Apartments also developed by Zamil Realtors Limited as the Client. The contractors and consultants were listed as architect-J.W Archplans, structural engineer-Terra Consults, labour contractor -Chalbak Construction Co. Ltd and that approvals were cited as NEMA License No. EIA/PSL/16056, NCA Project Approval No. 5312741510469, NCC Plan no CPF-AV-209.

16. It was averred by the Petitioners that prompted by these developments, they undertook investigations to ascertain the identity of the developers and the validity of the approvals and permits issued by the Nairobi City County Government (NCG), the National Environment Management Authority (NEMA), the National Construction Authority (NCA), and the Water Authority and that the urgency was heightened by the destructive and disruptive nature of the works, which were causing serious environmental and structural harm.

17. The Petitioners averred that they also observed that construction on L.R. No. 209/871/11 was dangerously close to the Mathare River and that a public access road, with the footbridge linking Parklands Estate to Muthaiga Estate had been moved and the access road significantly narrowed.

18. Despite multiple written inquiries to the 9th to 15th Respondents about the legality and procedural compliance of the developments, it was argued, responses were sparse; that the 12th and 13th Respondents confirmed that NEMA License No. NEMA/EIA/PSL/11617 had been issued on 28th May 2021 for construction of a 15-storey residential complex with 98 units on L.R. No. 209/871/14 and that this was based on an Environmental Impact Assessment (EIA) Report submitted by the 2nd and 3rd Respondents.

19. It was deposed that on its part, the 14th Respondent confirmed project registration for L.R. No. 209/871/14 and issuance of a certificate of compliance on 10th August 2021; that it did not however provide copies of the certificate of compliance for the projects registered as 53127415710469 and 53127415710417 which are displayed on the signboards erected next to the subject properties and that the 15th Respondent similarly failed to respond to queries about the riparian boundary of Mathare River next to the suit properties.

20. It was deposed by the 1st Petitioner, on behalf of all the Petitioners that on 12th March 2024, their counsel visited the site accompanied by the 16th and 17th Respondents, seeking to have the 15th Respondent point out the extent and boundaries of the riparian land on Mathare River and that the latter declined to provide such demarcation, stating that the 15th Respondent's mandate was limited to water resources.

21. According to the Petitioners, during the visit, they observed that the signboards had been altered and that the signboard next to 209/871/14 was now showing the following: client-Zamil Realtors Limited, architect-J.W Archiplans, structural engineer-Terra Consults, service engineer- Spektra Consulting, labour contractor- Zamil Realtors Limited, two NEMA License numbers No EIA/PSL/16056 and NEMA/EIA/PSL/11617, two NCA project reg no 5312741510860 and NCA No 80894/B/1223 and NCC Plan no CPF-AV-209.

22. On the other hand, it was deposed, the signboard next to the property 209/871/11 shows the client is Zamil Realtors Limited, architect - J.W Archiplans, structural engineer-Terra Consults, service engineer -Spektra consulting, labour contractor - Zamil Realtors Limited, the NEMA License no is EIA/PSL/16056, the NCA Project approval no 5312741510860 and another NCA 80894/1223, and the NCC No is CPF-AV-209.

23. The Petitioners opine that as their investigations were on-going, construction continued reaching level 16 on L.R. No. 209/871/14 and level 7 on L.R. No. 209/871/11; that the works were, and are being undertaken negligently and without professional care and that their residential units have been severely affected, with natural light completely blocked rendering their solar panels un-usable and condemning them to full reliance on electricity and that their ventilation is blocked, bedroom and kitchen windows sealed off with construction debris, and the previously accessible fire escape route rendered unusable.

24. The Petitioners allege that further, water seepage from the developments enters their apartments hourly, causing continuous structural damage; that the close joining of walls and beams pose a clear safety risk and any calamity will affect the two buildings and that the blocked drains and manholes have worsened the situation, resulting in foul smell and discharge of effluents into the Mathare River.

25. Moreover, they claim, the developers have illegally encroached on public land, including access roads and the footbridge between Parklands and Muthaiga Estates; that the developments and purported change of use are illegal, unapproved, and procedurally flawed; that the planning reference number displayed NCC-CPF AV 209 is misleading and that no license was or has been issued by the 12th and 13th Respondents to the 1st -8th Respondents allowing development or construction on the property, L.R No 209/871/11.

26. According to the Petitioners, the contention that an EIA license with respect to parcel L.R 209/871/11 was granted by NEMA is false. With respect to NEMA/EIA/PSL/11617 and the attendant EIA Project report, for L.R 209/871/14, the Petitioners highlight inconsistencies in the EIA Report to wit, that the report names Shantilal Raychand Shah as the proponent yet the indenture dated 25th May, 1978 and registered on 26th May, 1978 show the conveyance was between Mutual Properties Limited and Hirji Dharamshi Shah, Nileshkumar Hirji Shah and Bharat Premchand and that despite this, the Indenture was signed between Mutual Properties (City Park) Limited, Shantilal Raychand Shah, Shantilal Merchant and Liladhar Vardhanan.

27. Further, it was averred, the Report erroneously describes the land as measuring 3 acres, whereas the deed Plan and indenture place its size at 0.2023 hectares; that while the report proposes construction of 60 units, NEMA License NEMA/PSL/11617 approved 98 units; that there was no public participation as alleged on 6th and 8th March 2021, and that the numbers provided in the questionnaires are unreachable, and no Respondent is linked to the area.

28. More still, it was argued by the Petitioners, while the report states that all necessary physical planning regulations were taken into account during the design of the projects, NEMA licenses were issued before the proposed residential apartments had been approved by the 9th -11th Respondents and that the application for approval of the development was made long after the owner had commenced development on L.R 209/871/14.

29. The Petitioners argue that the approvals issued by the 9th, 10th and 11th Respondents is for two separate and distinct properties and is therefore illegal; that the claim by the 14th Respondent that the proponents satisfied the requirements of project registration and were issued with certificates of compliance is untrue, and that it is illegal and irregular to have the 14th Respondent register the same projects with different registration numbers as was the case herein.

30. Further still, it was deposed, the NCA certificates are illegal having been issued to a developer who had long ceased to have any interest in the property L.R 209/871/11.

31. Additionally, it is the Petitioners' case that the 5th to 8th Respondents failed to display their professional or membership registration numbers on the project signage, which constitutes an irregularity and that

it is unlawful for the 15th to 17th Respondents to alter the riparian boundary of the Mathare River without proper authorization from the relevant authorities and continue building thereon.

32. The Petitioners emphasize that despite full knowledge of the ongoing works, the 9th-17th Respondents have taken no action; that the development violates *the Constitution*, multiple statutes including the *Physical and Land Use Planning Act* (PLUPA), the Environment Management and Co-ordination Act (EMCA) and the *Water Act*, and that it is only fair that the same be demolished and the property reverted to its original position.

33. The Petitioners contend that the construction being undertaken on the suit property by the 4th Respondent is being used as a means to force them out of their legally acquired homes.

The 4th Respondent's response

34. The 4th Respondent, through its Director, Liban Mahamed Said, swore a Replying Affidavit on the 4th April, 2025. He deponed that the 4th Respondent is the registered proprietor of the suit properties L.R 209/871/11 and 209/871/14 located in a high-density area characterized by a concentration of numerous high rise apartment buildings including "Anahita Apartments" where the Petitioners live.

35. The 4th Respondent stated that he purchased parcel 209/871/14 from Berkshire Properties Limited on 21st December 2020, and parcel 209/871/11 on 22nd December 2022 and that the general parklands area is predominantly urban with a mix of residential, commercial and recreational spaces making it a vibrant and dynamic environment.

36. He deponed that the preparation for construction commenced on or about July, 2021 for L.R No 209/871/14 and January, 2022 for L. R209/871/11 and that at the time of the institution of this Petition, the developments were at the 7th floor level for L.R 209/871/11 and undertaking internal finishing for L.R 209/872/14 as its construction was complete. According to the 4th Respondent, from July, 2021 to the filing of this Petition, the Petitioners were aware of the ongoing constructions and the delay in the filing of this Petition speaks to lack of bona fides.

37. According to Mr. Said, no mature trees were cut down as alleged. Rather what were removed are shrubs and bushes which are normally required to be cleared before any construction and that the 4th Respondent complied with all legal requirements under PLUPA including the publication of a notice in the newspaper and displaying of a visible sign board on the subject properties.

38. In respect to parcel 209/872/11, the 4th Respondent obtained a change of user of the property from single to commercial multi-dwellings on 15th September, 2021 under ref PPA-CU-ADC342. For parcel 209/871/14 and that a similar change of user was issued on the 11th March, 2021 under ref PPA-CU-AAE125.

39. It is the 4th Respondent's case that prior to the issuance of the change of user applications, the physical planner M/S Christopher Omare-Registered Planner, submitted planning reports for the proposed change of user from single to multi-dwelling apartments on the two suit properties and that other than the notices required under PLUPA, it is not legally obligated to communicate with each and every Petitioner. In any event, it was deposed, the sign boards alluded to by the Petitioners speak to their compliance with the law.

40. The 4th Respondent deponed that there is no evidence that the 4th Respondent constructed any component of its development outside its beacons and that the 9th -15th Respondents failure to respond to the Petitioners' letter cannot attract a negative inference as to the propriety of the approvals issued.

41. Following complaints by the Petitioners on the legality of the licenses issued by various responses, it was deposed, revisitation of the site was carried out by the 15th and 12th Respondents on the 13th March, 2023, 11th March, 2024 and 4th April, 2024, during which it was confirmed that all the conditions imposed in the pegging report were followed and abided to and that the validity of their licenses was confirmed by the 12th Respondent in its response of 2nd May, 2024 and the 14th Respondent duly issued a certificate of compliance for both projects.

42. According to the 4th Respondent, the Petitioners' allegations regarding changes to the signboards are unsubstantiated and should be disregarded; that the 4th Respondent obtained approval for additional floors on parcel L.R. No. 209/871/14 from the 9th Respondent, which approval was duly issued on 30th August 2023; that with respect to L.R. No. 209/871/11, the original approval was for a 17-floor development; that an application to add one additional floor was submitted via a notice dated 17th February 2022 and that as the project currently stands at the 16th floor, the development remains compliant with the original approval.

43. The 4th Respondent's Director further deponed that the Petitioners' complaints concerning blocked sunlight and airflow do not constitute absolute or inherent rights and that such outcomes are typical and inevitable in urban development and do not, in themselves, amount to violations of any protected legal or constitutional entitlement.

44. Regarding allegations of water seepage into the Petitioners' basement, it was his position that there is no nexus between the alleged seepage and the 4th Respondent's development and that at the material time, Kenya was experiencing unusually heavy rainfall and widespread flooding.

45. As to the claim that the proximity of the buildings poses a shared disaster risk, the 4th Respondent's Director termed the assertion sensationalist and unsupported by evidence. Mr. Said contended that, if anything, the Petitioners' construction being allegedly "beacon to beacon" exemplifies poor planning, for which they cannot now fault the 4th Respondent.

46. Similarly, he urged that the allegations concerning blocked drainage and discharge of sewer effluent lack evidentiary support and cannot be attributed to the 4th Respondent's development. It was asserted that no public access road has been denied and that the 4th Respondent is aware of the legal consequences of such encroachment.

47. On the environmental compliance front, Mr. Said averred that Environmental Impact Assessment (EIA) reports dated 9th March 2021 and 28th September 2021, prepared by Greendime Consultants, were submitted in support of the proposed residential developments and that these reports included monitoring and evaluation frameworks for all project phases, including planning and commissioning.

48. It was deposed that after due assessment, the 12th Respondent issued EIA licenses on 28th May 2021 for L.R. No. 209/871/14, and on 20th December 2021 for L.R. No. 209/871/11.

49. The 9th Respondent is said to have issued construction approvals for both properties in accordance with the statutory framework under the PLUPA, and the relevant construction permits were duly granted. The 4th Respondent maintained that the 9th Respondent has no mandate to determine or alter riparian boundaries, as this responsibility falls under Rule 116 of the Water Resources Management Rules, 2007. It is emphatically denied that any part of the development encroaches upon the riparian reserve.

50. It was further deponed that certain approvals were submitted in the names of the 4th Respondent's predecessors in title, since land records at the time of application still reflected them as the registered proprietors. Given the delays in updating land records, and with the consent of the previous owners,

it was deposed that the 4th Respondent elected to proceed with applications under their names. Such technicalities, it was urged, do not affect the legal validity of the approvals, which in any event attach to the property, not the Applicant.

51. As for the riparian reserve, it was stated that a request for the pegging and marking of the River was made by their immediate predecessor, M/S Berkshire Properties Limited vide the letter dated the 13th April, 2021, following which the 15th Respondent made a site visit on the 3rd May, 2021 and undertook the exercise of marking 10 metres as the riparian reserve.

52. Mr. Said emphasized that the 4th Respondent has made significant financial investments in the two developments, fully complying with statutory requirements and securing all requisite licenses and that the units have been sold to third parties who have since acquired legal and beneficial interests.

53. As a result of this Petition and the ensuing conservatory orders, it was deposed that the 4th Respondent has breached contractual obligations to purchasers, some of whom have demanded refunds; that the 4th Respondent has also accrued debts to various consultants and suppliers, namely: Archplans Limited – Kshs 8,880,000; Five Star Agencies Limited – Kshs 13,947,890; Unicorn Hardware – Kshs 18,550,000 and T.L.L Light House – Kshs 20,500,000.

54. Additionally, Mr. Said stated, the project's structural engineer has raised urgent safety concerns in a letter dated 20th November 2024. According to the engineer, failure to waterproof the roof slab could cause water seepage that would damage plaster works and may ultimately necessitate demolition and reconstruction of the roof; that water is already entering the lower basement through the retaining walls, threatening light fixtures and posing a serious electrical hazard and that this may require a complete overhaul of the basement wiring.

55. The 4th Respondent contended that the Petition is intended to frustrate its legitimate development interests; that there is no evidence of irregularities in the approvals and licensing processes, nor of any constitutional violations as alleged and that the issues raised are not of constitutional import but relate to administrative and procedural matters.

56. Vide a Supplementary Affidavit dated 9th April, 2025, Mr. Liban Mahamed Said reiterated his assertions as set out in his earlier Affidavit, and further stating that the Petition is an appeal against the development permits by the 9th Respondent and deviates from the substratum of the Petition.

57. He deponed that the certificates with respect to titles known as L.R Nairobi/Block 37/25 and Nairobi/Block 37/28 are the converted certificates of title of the subject properties vide gazette notice 8631, Vol CXX111 No 175 which the court ought to take judicial notice of.

58. He stated that where a proponent seeks to develop additional floors on an already approved development, they have to seek a new approval which they did and the same was issued on the 30th August, 2023; that the development permission has been duly issued under the PLUPA regulations and that the development of parcel 209/871/11 has not gone beyond the allowed sixteen floors.

59. As regards the contention that they should have sought the development permission before carrying out the demolitions, it was stated they sought and were granted demolition permits and that Sections 61(1) and (2) of the PLUPA do not expressly provide for the issuance of the submission certificate alluded to by the Petitioners.

60. It was urged that the Petitioners assertions are based on innuendo's and assumptions. Further, that the Petitioners are challenging the proprietary rights of innocent third parties who have not executed any sale agreements with the 4th Respondent hence not privy to the agreements and that the Petition is unmerited and should be dismissed.

The 9th, 10th and 11th Respondents' response

61. The 9th, 10th and 11th Respondents filed a Replying Affidavit sworn by Vincent Masinde, an employee of the Nairobi City County on the 21st May, 2025. He deponed that the 9th Respondent is empowered by Article 186 as read with para 8, Part 11 of the 4th Schedule of the 2010 Constitution to handle county planning and development.

62. According to Mr. Masinde, the 9th Respondent received an application to develop L.R No 209/871/14(now known as Nairobi Block 37/28) into a 98-unit apartment from Hirji Dharamshi Shah & Nileshkumar Hirji Shah and that the application was tabled in the Urban Technical Committee Meeting held on 16th December, 2021 and subsequently approved vide CPF AV 209 as evinced by the approval dated the 7th April, 2021.

63. Later on, it was deposed, on 14th July, 2023, Zamil Realtors, applied via application PLUPA-BPM-002850 to extend one extra level to the project on L.R No 209/871/14; that the application was tabled under the Urban Technical Committee meeting as item no 104 and consequently approved vide a Notification of Approval Serial Number- SUB-008543. He also confirmed that the developments on L.R No 209/871/11 were also approved vide CPF AW269 as evinced by an internal memo issued by the County Executive Committee Member for Built Environment & Urban Planning.

64. Mr. Masinde stated that the approvals were procedural, legitimate and in accordance with the relevant legal framework including but not limited to the Physical Land Use & Planning Act, 2019 and the Building Code, 1968.

The 12th Respondent's response

65. The 12th Respondent, through its Director General, Mamo B Mamo, swore a Replying Affidavit on the 2nd May, 2024. He deponed that the 12th Respondent, established under Section 7 of EMCA is the principal institution of the government that has the authority to exercise general supervision and co-ordination of all matters relating to the environment.

66. It was his disposition that in order to achieve its core objectives, NEMA has, in consultation with lead agencies and relevant stakeholders prescribed rules and guidelines to enable it receive, review and approve EIA reports as per the provisions of Section 58 of EMCA.

67. Mr. Mamo deponed that a proponent of any project specified in the 2nd Schedule of EMCA undertakes and prepares EIA Project reports and submits the same to the authority prior to being issued with an EIA licence by the Authority.

68. He deponed that the 12th Respondent received from the 1st Respondent an EIA report for L.R No 209/871/14 dated the 9th March, 2021; that in a letter to the 1st Respondent dated 4th April, 2021, the 12th Respondent indicated that it had reviewed the report and noted some issues that needed to be addressed to wit, provision of approved architectural drawings, show the relationship between Shantilal, Hirdi Shah and Bharat Premchand, provision of wider evidence of public participation and provision of change of user.

69. Further, he deposed that the 12th Respondent carried out a site inspection on the 20th May, 2021 where it made key observations being, the area is characterized by mixed use developments mainly high-rise apartments and townhouses; there exists an apartment (Anahita Apartments) of similar magnitude and character next to the site and the proposed site is not in, near, or surrounded by any sensitive ecosystem.

70. Mr. Mamo denied the allegations of inadequate public participation stating that the project in contention is a medium risk project only requiring either questionnaires or minutes of meetings held as proof of public participation as per Section 59 of EMCA and part 3 of the EIA Regulations *Legal Notice 101 of 2003*.

71. It is the 12th Respondent's case that public participation was carried out by way of questionnaires to various residents in the surrounding environment and that after all the requirements were met, it issued EIA license no NEMA/EIA/PSL/11617 for parcel 209/871/14 and no appeal against the same has ever been lodged.

72. He deponed that a project report was submitted for the development on L.R No 209/871/11 on the 28th September, 2021 by Xeonics Ltd and that the 12th Respondent wrote to various lead agencies in a letter dated 4th October, 2021 seeking their views for consideration in order to arrive at an informed decision.

73. Through its officers, he deposed, NEMA carried out a site visit on the 15th October, 2021 and produced a site visit report recommending that the proponent obtains approvals from the Nairobi City County Government for the proposed project, the proponent obtains a change of user approval for the proposed project, the proponent provides a pegging report from the Water Resources Authority, the proponent ensures that traffic (during transport of construction materials) is well managed to and from his site throughout the project cycle, and ensure strict adherence to the EMP and all approval license conditions.

74. After all the conditions were met, he stated, the 12th Respondent issued an EIA license dated NEMA/EIA/PSL/16056 for the development on parcel 209/871/11 on the 20th December, 2021; that on 20th February, 2023, they received a letter from the Water Resources Authority regarding encroachment on riparian land on L.R 209/871/11 stating that the riparian reserve of 10 metres was marked and pegged on 4th April, 2021 and they had re-visited the site on 13th March, 2023 to review the claims and that their findings were that the proponent, Xeonics Limited had complied with the imposed conditions.

75. Further, Ms Mamo averred, the 12th Respondent wrote to the Sub-basin Area Co-ordinator, Nairobi Sub-region of the Water Resources Authority in a letter dated the 9th March, 2023 requesting them to carry out a site verification exercise to determine complaints regarding encroachment on riparian land by Xeonics Limited.

76. Following complaints from one A.N Ndambiri & Co Advocates vide a letter of 14th March, 2024 alleging that the information provided by the EIA expert was wrong, incorrect and misleading citing issues such as name of the proponent, size of the plot and nature of public participation, encroachment on the NSWSC sewer line and interferences with the footpath linking parklands and Muthaiga, it was deposed that the site was revisited on 4th April, 2024.

77. Mr Mamo deposed that during the site visit, it was observed that the development has not encroached on the riparian reserve; that the blockage of the sewer line was reported to the NCWSC on the same day; that the footpath is still in use and that the proponent had authorization from the County to repair the road.

78. It is the 12th Respondent's case that it issued an Environmental Restoration Order on 4th April, 2024 to one Shantalal Raychand of Xeonics Limited directing him that that while he had been issued with a license for construction of 98 units, it was observed that they had constructed 112 units and that it was further noted that although the license was issued to Shantilal Raychand Shah, the notice board referenced Zamir as the proponent.

79. On the issue of the number of units licensed versus those constructed, the name of the proponent developer and other issues that required clarification, Mr. Mamo noted that the proponent is yet to do so despite having been directed to its offices to do the same. It was deponed that the 12th Respondent remains available and willing to support the guarantees under the bill of rights and to a clean and healthy environment.

The 14th Respondent's response

80. The 14th Respondent, vide an Affidavit dated 3rd May, 2024, deponed to by Arch Stephen Mwilu, the Manager, Compliance at the 14th Respondent, stated that the 14th Respondent is established under Section 3(1) of the *National Construction Authority Act*, is mandated to oversee the construction industry and co-ordinate its development.

81. According to Arch Mwilu, pursuant to the Regulations, the proprietor of a construction project is required to make an application for registration in writing to the 14th Respondent within 30 days of an award of tender of construction to a contractor registered under the Act and that upon receipt, the 14th Respondent is required to issue a compliance certificate within 30 days thereof.

82. Arch. Mwilu averred that vide a letter Ref: Ann/Zamil/Anahita/24, dated the 19th February, 2024, written to the officials of Nairobi City County by the Petitioners and copied to them, the Petitioners raised concerns regarding development on L.R 209/871/14 and that vide their response dated 26th February, 2024, they indicated that the proponents of the development had satisfied the requirements of project registration.

83. On receipt of this Petition, it was averred that the 14th Respondents' compliance officers in line with Sections 5(2)(g), 23A, 23(1) and (2) of the Act conducted a site inspection on the 19th April, 2024 to inspect the ongoing construction works on L.R No 209/871/11 and L.R 209/871/14 and that with respect to parcel 209/871/14, they observed that construction works were on the 16th Floor; that the site had been hoarded to prevent access by unauthorized people and the project was registered by NCA.

84. It was asserted that the 14th Respondent received a project registration application via the Online Project Registration System (OPRS) from the developer, Zamil Realtors; that they were furnished with all the requisite documents including approvals from the 9th and 12th Respondents and that this led to the issuance of a compliance certificate no 53127415710417.

85. As regards construction on property L.R 209/871/11, it was deposed that during the site visit, the construction was on the 18th floor and walling was ongoing; that the initial approval for a 17 storey building had been amended to 18 floors and that the project is duly registered by NCA.

86. He noted that the 14th Respondent received a project registration application via its Online Project Registration System(OPRS) from the developer, Xeonics Limited; that the 4th Respondent was furnished with all the requisite documents including approvals from the 9th and 12th Respondents and that this led to the issuance of a compliance certificate no 53127415710469.

87. He urged that the 14th Respondent fulfilled its mandate as set out in the *National Construction Authority Act* and that there has been no demonstration to the contrary.

The 15th, 16th and 17th Respondents' response

88. The 15th, 16th and 17th Respondents through Mr. Robinson M Kimari, the Nairobi Sub-Basin Officer deponed that the 15th Respondent is a state co-operation established under the *Water Act*, 2002 and subsequently under Section 11 of the *Water Act*, 2016.

89. It was deposed that pursuant to Section 6 of the *Water Act*, the 15th Respondent is designated as an agent of the National Government responsible for the management and use of water resources in the country and that on 13th April, 2021, Berkshire Properties Limited wrote to the 15th Respondent informing it of its intent to develop the property by constructing apartments and requested it to carry out marking and pegging so as to determine the riparian reserve with the aim of safeguarding the river.

90. Following the request, it was deposed, they visited the site on the 3rd May, 2021 and made the following observations: the parcel is located in the parklands area in Nairobi; the parcel abuts Gitahuru river and the proponent intends to demolish the old existing houses and develop modern apartments and the stretch of the river along the parcel is approximately 50 metres.

91. It was deposed that after the visit, ten metres was pegged and marked as the riparian reserve as prescribed under Rule 116 of the Water Resources Management Rules, 2007 (now repealed).

92. According to the 15th Respondent's Nairobi Sub-Basin Officer, on 4th May, 2021, the 15th Respondent informed Berkshire Properties of the findings and further informed it of the proscribed activities within the riparian reserve and the need to comply with the same; that in 2023, the 15th Respondent received a letter from the 12th Respondent informing it of a complaint received with regards to the suit property specifically that there had been encroachment on the riparian reserve and that a site visit on the 13th March, 2023 affirmed that that proponent at the time had complied with the conditions as provided in the pegging report.

93. On 19th February, 2024, it was deposed, the Petitioners' counsel wrote to the 15th Respondent complaining of the alleged encroachment and in response they informed them about the marking and pegging request by the previous owner of parcel 209/871/11 and which culminated in a determination of a 10 metres riparian reserve and the placing of two beacons on the property.

94. According to the 15th Respondent, a further site visit was made on the 11th March, 2024 in the presence of the Petitioners' counsel which revealed that plot L.R 209/871/14 does not have a river frontage to Gaithuru River as alleged, and that the riparian reserve beacons placed in May, 2021 are intact on plot L.R 209/871/11 and there was no indication of encroachment.

95. It was deponed that the allegations that the 15th Respondent is aiding the developer to undertake irregular activities is misguided and false. In any event, it was urged, by virtue of Section 137 of the *Water Act*, the 15th Respondent's officers are exempted from personal liability from actions in their duties and the present proceedings should be terminated against them.

96. The other Respondents did not file responses to the Petition.

97. Vide their Further and Supplementary Affidavits in response, the Petitioners, through Mr. Kassim, the 1st Petitioner, deposed that the documents annexed to the affidavits by the Respondents are information they had been seeking from them and which they deliberately refused to give them.

98. The Petitioners asserted that the 4th Respondent is not the legal owner of the suit properties and no valid transfer was effected and/or registered in its favour; that it is unclear how the transfer of the ½ undivided share of Priyesh Shah was conveyed to Berkshire Properties, and that whereas the titles in

respect of the two properties were converted from the original L.R No 209/871/11 and 209/871/14 to Nairobi/Block 37/25 and Nairobi/Block 37/28 as confirmed by the Gazette Notice No 8632, Vol CXXXIII no 175, no copies of the converted titles were applied for nor issued.

99. According to the Petitioners, neither the original and/or genuine owners of the two properties nor the 4th Respondent submitted any applications to the 9th Respondent for development permission whether under the original land reference numbers or the converted ones and that no applications were made for change of user, extension of user, subdivision, demolition, densification, or construction.

100. If any such applications were submitted, it was deponed, they were not accompanied by copies of the property titles to demonstrate ownership or consent of the registered owners and that the reports in support of the change of user were prepared long after development activities had been undertaken.

101. Further, it was stated, no submission certificate was issued to the 4th Respondent; that comments by NEMA and the NCA were never considered prior to the issuance of the development permissions, and that no application was made for sub-division of the units intended to be sold as per Regulations 7 and 8 of PLUPA (Development Permission and Control (General) Regulations, 2021.

102. The Petitioners deponed that Wilfred Masinde is not a party to this Petition and has not demonstrated any authority to swear the Replying Affidavit on behalf of the 9th - 11th Respondents. It was urged that he is neither the County Executive Committee Member nor the County Director for Physical and Land Use Planning.

103. With respect to the letter titled "Pegging of Gitahuru River on a Section Bordering L.R No. 209/871/11 Gitahuru River", the Petitioners assert that it is fraudulent.

104. The Petitioners further state that the Environmental Impact Assessment (EIA) license allegedly issued for L.R No. 209/871/11 is fraudulent and that the same was issued before the review of an EIA report and was granted to Xeonics Limited, a party that had long ceased to hold any interest in the property.

105. They argue that the project report extracts referenced by the 12th Respondent are reconstructions of an EIA CPR project report and that moreover, the license was issued based on false information, namely, that the property bordered the Gitahuru River and that lawful pegging had been undertaken.

106. With respect to NCA compliance certificates, it was stated that they are fraudulent having been issued to a developer who had since ceased to have any interest in the property, and that the certificates of compliance adduced by the 4th Respondent and the 14th Respondent differ; that the project registration numbers on the certificates differ with those on the notice boards and that two distinct projects were registered under the same NCC-CPF Plan No AV-209 and NCA 80894/B/1223.

Submissions

107. The Petitioners' counsel filed submissions on the 8th July, 2025. Counsel submitted that the ownership of the suit properties is questionable and that this fact was highlighted by the 12th Respondent who vide its enforcement notice asked the 4th Respondent to explain the discrepancy which they failed to do.

108. Counsel submitted that the approvals and licenses issued by the 9th, 10th, 11th, 12th and 14th Respondents with respect to the developments in the subject properties were irregular on account of the deficiencies set out in the Affidavits and that the doctrine of presumption of regularity, as explained in Export Zone Processing & 10 Others(Suing on their own behalf and on behalf of all residents of Owino Uhuru Village in Mikindani Changamwe Area vs NEMA & 3 Others[2024]KESC 75(KLR) does not lie.

109. Counsel also cited the case of Tom Brown Limited & Another vs County Executive Committee Member in Charge of Planning and 2 Others, Attorney General & 4 Others (Interested Parties) KEELC 17853(KLR) where the court restated the provisions of Section 60(1) of PLUPA with respect to considerations to be made when applications for development permissions are considered.

110. It was submitted that at the time of issuance of the permissions, there were no laws and policies allowing the construction of high rise buildings in the Parklands Area and in particular in City Park Drive and that in any event, the NIUPLAN, 2014 and the 2004 Nairobi City Ordinances did not permit the impugned developments.

111. In support, counsel referenced the cases of Millennium Gardens Management Limited vs Metricon Home Nairobi Company Limited: Nairobi City County & 2 Others(Interested Parties [2024]KEELC 6040 and Anami & 2 Others (Suing as Officials of Rhapta Road Residents Association vs County Executive Committee Member Built Environment and Urban Planning, Nairobi City County & 20 Ors[2025]KEELC 128.

112. According to Counsel, the Petitioners have established that the property, L.R No 209/871/11 is on a riparian reserve and the pegging of the riparian reserve on the basis of repealed regulations was invalid and irregular.

113. As regards the EIA license, it was submitted that the same were irregular and issued in disregard of key provisions of the EMCA(Impact Assessment and Audit) Regulations and the critical component of public participation, a constitutional imperative as discussed in British American Tobacco Kenya, PLC vs Cabinet Secretary for Ministry of Health & 2 others; Kenya Tobacco Control Alliance & Another: Mastermind Tobacco Kenya Limited[2019]eKLR and Mohamed Ali Baadi and Others vs Attorney General & 11 Others[2018]eKLR .It was urged that the failure to carry out public participation rendered the licenses void.

114. Counsel submitted that the certificates issued by the 14th Respondent show that the approvals granted to the 4th Respondent were issued long after the construction had commenced and that despite being aware of this, the 14th Respondent did not take any action against the developers as anticipated by Section 57(3) of PLUPA.

115. It was asserted that the acts, conducts and omissions of the Respondents violated the Petitioners fundamental rights including the right to a clean and healthy environment guaranteed under Article 42 of *the Constitution* and the obligations placed on all persons and entities to protect and conserve the environment as stated by Article 69 of *the Constitution*.

116. It was stated that as expressed in the case of John Muthui & 19 Others vs County Government of Kitui & 7 Others[2020]eKLR, the right to a clean and healthy environment is bestowed on every person and has to be considered by the courts and eminent authors to be essential for the existence of company. Reliance was also placed on the case of National Environment Management Authority & 3 Others vs Maraba Watingu Residents Association and 505 Others[2020]eKLR.

117. It was urged that the Petitioners have ably demonstrated that the Respondents have threatened, violated or infringed their rights to a clean and healthy environment as well as other rights.

118. The 4th Respondent filed submissions on the 1st July, 2025. Counsel submitted that the 4th Respondent has fully met all the requirements for the issuance of the respective development permits for the two subject properties having shown its change of user, planning reports for the proposed change of users and the public participation undertaken with respect to the change of user process. It was submitted that despite the public participation, the Petitioners did not object to the developments.

119. Counsel submitted that as affirmed by the court in Adrian Kamotho Njenga vs Council of Governors & 3 Others[2020]eKLR, Article 42 of *the Constitution* guarantees every person the right to a clean and healthy environment and to have it protected for the benefit of present and future generations. It was urged that in the circumstances the Petitioner has made unsubstantiated allegations that the developments on the subject properties will breach this right.

120. It was stated that it is trite that a project proponent is obligated to show that a project is environmentally sound and this can be discharged by satisfactorily going through the EIA process which is what was done herein.

121. It was urged that sufficient public participation was carried out and met the threshold set out in the cases of Mui Coal Basin Local Community & 15 Others vs Permanent Secretary Ministry of Energy & 17 Others[2015]eKLR and Legal Advice Centre & 2 Others vs County Government of Mombasa & 4 Others[2018]eKLR all of which affirmed that public participation does not dictate that everyone must give their views, however, it must show intentional inclusivity and diversity and must be undertaken in good faith.

122. Counsel submitted that concerns on various issues such as noise and dust from excavations and fire hazards were responded to vide the mitigating measures and that despite alleging violations of fair administrative action, the Petitioners ignored the existence of the County Physical and Land Use Planning Liaison Committee and the NET.

123. It was noted that the purported denial to natural light is unfounded and pursuant to Section 32 of the *Limitation of Actions Act*, for such a right to be indefeasible, the claimant should establish that they have enjoyed the right for a period exceeding 20 years. Reliance in this regard was placed on the case of Albert & 5 Others vs Mugwe & Another[2022]KEELC 15531(KLR).

124. As regards allegations of breach of the right to information, it was submitted that the same is equally unsubstantiated there being no evidence of any additional information sought with respect to the developments and which was denied. In support, the cases of Nairobi Law Monthly Company Limited vs Kenya Okiya Omtatah Okoiti & 2 Others vs Attorney General & 4 Others[2020]eKLR, Electricity Generating Company & Others[2013]eKLR and Katiba Institute vs Presidents Delivery Unit & 3 Others [2017]eKLR were relied on.

125. It was urged that the Petition does not meet the threshold in Anarita Karimi Njeru vs The Republic(1976-1980)KLR 1272 because it does not set out with the requisite precision the constitutional violations. Ultimately, it was contended, the Petitioners have approached the court with a moot and premature Petition and the same should be dismissed. None of the other parties filed submissions [As at 13th July, 2025].

The underpinning legal principles

126. The Petitioners, who are the owners, residents, and occupiers of the residential apartment units erected on L.R. No. 209/871/13 (now Nairobi Block 37/27), have brought the present Petition aggrieved by the construction of high-rise residential apartments on the neighboring parcels, L.R. Nos. 209/871/11 and 209/871/14 by the 4th Respondent.

127. The Petitioners have challenged the legitimacy of the development permissions, approvals, and licenses issued to the 4th Respondent by the 9th to 17th Respondents. It is their case that these authorizations are irregular, unlawfully granted, and therefore null and void.

128. In addition, the Petitioners assert that the manner in which the development is being carried out has led to numerous adverse environmental impacts. They contend that these impacts, coupled with the irregular development permissions issued to the 4th Respondent, have resulted in the violation of their constitutional rights, including those guaranteed under Articles 35, 42 and 69 of *the Constitution*.

129. It is trite law that a party seeking redress for an alleged violation of constitutional rights must plead such violation with clarity, specificity, and particularity. A Petitioner must identify the constitutional provision said to be infringed, describe the manner of infringement, and establish a link between the impugned action and the alleged violation. The principle is well-captured in the oft-cited case of Anarita Karimi Njeru vs Republic (1979) KLR 154.

130. Further, and importantly, the court is guided by the principles of the law of evidence. Sections 107(1) and (2) of the *Evidence Act* establish that the legal burden of proof lies on the party who asserts the existence of a fact and seeks a judgment based on it. Also, when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

131. Complementing this, Section 108 of the Act sets out the incidence of burden stating that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all was given on either side. and Section 109 of the same Act provides that the burden of proof regarding any particular fact rests on the individual who wants the court to believe in its existence, unless the law expressly places that burden on someone else.

132. Reinforcing the foregoing, the Supreme Court in Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others [2014] eKLR stated as follows:

> " Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance."

133. The Petitioners have also alleged fraud in several respects. The law is well-settled that allegations of fraud must be specifically pleaded, particularized, and strictly proved. It is not enough for a party to infer fraud from facts or imply it in broad terms. This was affirmed by the Court of Appeal in the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000]eKLR.

134. The Court of Appeal further clarified the applicable standard of proof in Kinyanjui Kamau vs George Kamau [2015] eKLR, where it held that while proof of fraud must meet a higher threshold than that of ordinary civil cases, it need not reach the level of proof beyond reasonable doubt as required in criminal trials.

135. Lastly, Article 22(3) (d) of *the Constitution* provides that in determining matters brought under Article 22, the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities. The court will be guided by the above principles in the determination of the alleged violations of the Petitioners' rights.

Analysis and determination

136. Having considered the Petition, responses and submissions, the issues that arise for determination are:

i. Whether the Petition is competent?

ii. Whether the 9th- 11th Respondents' Replying Affidavit is fatally defective?

iii. Whether the 4th Respondent is the legitimate owner of the L.R No's 209/871/11 and 209/871/14?

iv. Whether the issuance of the approvals and licenses in the names of persons other than the 4th Respondent rendered them invalid?

v. Whether the licenses and approvals allowing the construction on the suit property were issued in violation of the Petitioners' rights to a clean and healthy environment?

vi. Whether the excavation and construction activities on the suit property infringe or threaten the Petitioners' right to a clean and healthy environment.

vii. Whether the pegging and marking undertaken by the 15th Respondent on the riparian reserve next to the L.R No 209/871/11 was illegal and/or irregular?

viii. Whether the Petitioners rights to information as guaranteed under Article 35 of *the Constitution* was violated?

ix. What are the appropriate remedies, if any?

Whether the Petition is competent?

137. Vide its responses to the Petition, the 4th Respondent asserts that the issues raised in the Petition do not disclose any constitutional questions warranting the court's intervention. It argues that the grievances advanced by the Petitioners are, in substance, administrative and procedural in nature and that the Petition is essentially a disguised appeal against the development permissions granted to it.

138. On the other hand, the Petitioners maintain that the Petition has duly and clearly set out the specific constitutional violations alleged against the Respondents. Speaking to what constitutes a constitutional question, the court in the case of C N M vs W M G [2018] KEHC 8434 (KLR), expressed itself as follows:

> "A constitutional question is an issue whose resolution requires the interpretation of a constitution rather than that of a statute. When determining whether an argument raises a constitutional issue, the Court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the court to consider constitutional rights or values. The question of what constitutes a constitutional question was ably illuminated in South African Case of Fredricks & Others vs MEC for Education and Training, Eastern Cape & Others in which Justice O'Regan recalling the Constitutional Court's observation in S vs Boesak notes that: -"*The Constitution* provides no definition of "constitutional matter." What is a constitutional matter must be gleaned from a reading of *the Constitution* itself: if regard is had to the provisions of... *the Constitution*, as well as issues concerning the status, powers and functions of an organ of state..., the interpretation, application and upholding of *the Constitution* are also constitutional matters. So too...is the question whether the interpretation of any legislation or the development of the common law promotes the spirit, purport and objects of the Bill of Rights. If regard is had to this and to the wide scope and application of the Bill of rights, and to the other detailed provisions of *the Constitution*, such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested in the Constitutional Court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly an extensive jurisdiction. Put simply, the following are examples of constituting constitutional issues; The constitutionality of provisions within an Act of Parliament; the interpretation of

legislation, and the application of legislation. At the heart of the cases within each type or classification is an analysis of the same thing- the constitutionally entrenched fundamental rights. Therefore, the classifications are not discreet and there are inevitably overlaps, but the classifications are nonetheless useful theoretical tools to organize an analysis of the nature of constitutional matters arising from the cases before court."

139. Similarly, Mrima J in Dennis Gakuu Wahome vs IEBC *& 4 others; Ford Kenya & 3 others (Interested Parties) Nairobi Petition No E321 of 2022* had this to say:

> "……broadly speaking, a constitutional issue is, therefore, one which confronts the various protections laid out in *the constitution*. Such protections may be in respect to the Bill of rights or *the Constitution* itself. In any case the issue must demonstrate the link between the aggrieved party, the provision of *the Constitution* alleged to have been contravened or threatened and the manifestation of contravention or infringement."

140. The Petition has on the face of it adumbrated the various constitutional provisions which it claims have been violated. According to the Petitioners, the impugned developments have been undertaken on the strength of illegal and irregular approvals and licenses negatively impacting their right to a clean and healthy environment under Article 42.

141. Worse still, they contend, the developments have significantly compromised the environment. It is their contention that natural light has been blocked rendering their solar panels inoperative and condemning them to dark rooms during the day, ventilation obstructed and the structural integrity of their residents compromised. Further, they have alleged that a public access road has been blocked and sewage effluent has been directed into Mathare River.

142. All these, it is averred, violates the Petitioners and public's rights to a clean and healthy environment as guaranteed under Article 42 of *the Constitution*. It is also alleged that there have been violations of Articles 10, 35 and 47 of *the Constitution*. In this regard, it is contended, their views were not taken into consideration in the course of public participation prior to the undertaking of the impugned developments and that they were denied information by the relevant authorities.

143. The allegations presented in the Petition, as summarized above, do indeed raise substantive constitutional questions that warrant judicial inquiry. The issues go beyond mere procedural or administrative grievances and implicate core constitutional rights, particularly within the intersect of environmental protection, urban planning, and governance. As such, this objection is unmerited.

Whether the 9th -11th Respondents' Replying Affidavit is fatally defective?

144. Another preliminary issue, albeit one brought by the Petitioners, touches on the legitimacy of the 9th, 10th and 11th Respondents' Replying Affidavit sworn by one Wilfred Masinde on the 21st May, 2025.

145. The Petitioners contend that Mr. Masinde is not a party to the Petition and has not provided any authorization by the 9th -11th Respondents to swear the affidavit on their behalf. This, especially, as he is not an officer in the Built Environment nor does he serve as the County Director for Physical and Land Use Planning within the 9th Respondent.

146. The 9th Respondent is the Nairobi City County, while the 10th and 11th Respondents are its Chief Officer for Urban Development and Planning, and the County Urban Committee (CUC) Built Environment and Urban Planning Department, respectively.

147. These three Respondents are administratively and functionally interconnected, with the 10th and 11th Respondents operating within the 9th Respondent's institutional structure. As such, any action undertaken by the 10th or 11th Respondents forms part of the broader statutory and regulatory mandate of the 9th Respondent.

148. In his affidavit, Mr. Wilfred Masinde has expressly stated that he has the requisite authority to swear the affidavit on behalf of the 9th-11th Respondents. It is trite that where a party states that he has authority to swear an affidavit on behalf of another person or entity, it will be presumed that they have such authority unless the contrary is demonstrated.

149. Re-affirming this, the Court of Appeal in Spire Bank Limited vs Land Registrar & 2 others [2019] eKLR, noted:

> " Clarifying the position on the question of authorization in the case of Makupa Transit Shade Limited & Another vs Kenya Ports Authority & Another [2015] eKLR this Court stated thus;
>
> > "In our view, the Authority, as with other corporate bodies, has its affidavits deponed on its behalf by persons with knowledge of the issues at hand who have been so authorized by it. It was therefore sufficient for the deponents to state that "they were duly authorized." It was then up to the appellants to demonstrate by evidence that they were not so authorized." A bare statement that the plaintiff or applicant was not authorized would not be sufficient."

150. Similarly, in Smartshop Limited *vs Mutitu (Civil Appeal 76 of 2019)* [2023] KECA 737 (KLR), the court upheld an affidavit sworn by a deponent who expressly stated that she was authorized to act on behalf of a company. The court held that in the absence of evidence to the contrary, such an averment was sufficient to establish authority.

151. Applying those principles to the present case, and in the absence of any evidence rebutting Mr. Masinde's express assertion of authority, the court is satisfied that the Replying Affidavit was duly sworn on behalf of the 9th -11th Respondents. This objection is as such unfounded and dismissed.

Whether the 4th Respondent is the legitimate owner of L.R 209/871/11 and L.R 209/871/14

152. The Petitioners, through the present Petition, vehemently challenge the legitimacy of the 4th Respondent's ownership of the suit properties. They assert, in categorical terms, that the 4th Respondent is not the lawful proprietor of the parcels in question. Notably, the Petitioners do not assert any ownership claim over the properties themselves, nor do they present any competing ownership claim on behalf of a third party.

153. On its part, the 4th Respondent has maintained that it holds lawful and valid titles, and has adduced documentary evidence including certificates of title, duly executed transfers, and sale agreements to substantiate its proprietary interest.

154. The court has carefully and anxiously considered this issue and the broader framework of the Petition. It is evident from the pleadings that the Petition is not grounded on a substantive claim for revocation or rectification of the 4th Respondent's titles, nor is there a prayer seeking a declaration on ownership. Rather, the Petition is premised on alleged violations of constitutional and statutory rights arising from the planning, approval, and execution of developments on the suit properties.

155. In our adversarial legal system, the parties define the scope of the dispute through their pleadings, and the court's jurisdiction is accordingly limited to the issues properly raised therein.

156. This position was authoritatively stated in David Sironga Ole Tukai vs Francis Arap Muge & 2 Others [2014] eKLR, where the Court of Appeal emphasized that parties are bound by their pleadings and cannot raise a different or new case at trial without amending their pleadings. Pleadings serve not only to define the dispute but also to ensure fairness, legal clarity, and procedural certainty, preventing trial by ambush.

157. This principle was similarly affirmed in Independent Electoral and Boundaries Commission & Another vs Stephen Mutinda Mule & 3 Others [2014] eKLR, where the court, citing the Nigerian Supreme Court in Adeoun Oladeji (Nig.) Ltd vs Nigeria Breweries Plc, held that any issue or evidence that falls outside the scope of the pleadings must be disregarded.

158. In the circumstances, the Petitioners are inviting the court down a treacherous path by asking it to make abstract and speculative declarations in the absence of a properly grounded legal dispute. This, the court cannot do.

159. The fact that certain permissions, approvals and licenses, were issued in the names of persons other than the 4th Respondent, a fact conceded by the 4th Respondent who asserts that they were its predecessors in title, does indeed raise questions about the propriety of the said approvals and licenses. And this will be discussed hereunder. However, such concerns do not, in and of themselves, affect or impeach the legitimacy of the 4th Respondent's registered titles.

160. The Petitioners' challenge to the ongoing sale of housing units suffers the same fate. While they allege a breach of Section 43 of the *Sectional Properties Act*, which governs obligations between sellers and purchasers, they are neither parties to the transactions nor do they claim any proprietary interest in the properties.

161. Moreover, the sales involve third parties who are not before the court. Even assuming they had standing, the Petitioners have not sought any specific reliefs or declarations to invalidate the said transactions. They therefore lack both legal standing and a pleaded basis for the court's intervention.

162. In the end, the court will confine itself to the issues properly pleaded, and will not entertain abstract claims on ownership that fall outside the scope of the Petition.

Whether the issuance of the approvals and licenses in the names of persons other than the 4th Respondent rendered them invalid?

163. The Petitioners contend that the development permissions and licenses granted in the names other than that of the 4th Respondent, as the owner of the suit properties and the project proponent are, by that fact alone, invalid. This contention arises from the undisputed fact that several approvals and licenses for the developments in question were issued not in the name of the 4th Respondent, but other entities.

164. In particular, the notifications of approval for change of use in respect of the parcels were issued to Xeonics Limited and Christopher Omare; the building approval for L.R 209/871/11 was issued in the name of Xeonics Limited and the EIA licenses for the two parcels were issued to Xeonics Limited and Shantilal Raychand Shah. The certificate of compliance for L.R. 209/871/11 was issued in the name of Xeonics Limited.

165. In response, the 4th Respondent acknowledges that the licenses and approvals in question were not issued in its name but asserts that the individuals and entities referenced therein are its predecessors in title. It explains that the approvals were obtained during the transitional phase of ownership and attributes the naming inconsistencies to delays in the formal updating of public records.

166. Both the 4th Respondent and the Petitioners have adduced documents evincing some previous transactions in respect to the properties. This includes:With respect to L.R 209/871/14-an Indenture dated 25th May 1978 between Mutual Properties and Hirji Dharamashi Shah, Nileshkumar Hirji Shah, and Bharat Premchand Shah, in the presence of Shantilal Shah and Liladhar Shah; a conveyance between Hirji Dharamashi and Nileshkumar Shah dated 28th June 2001; and a conveyance from Bharat Premchand Shah to Nileshkumar Shah dated 15th October 2013.With respect to L.R 209/871/11 -an Indenture dated 26th May 1978 between Mutual Properties and Xeonics Limited and a conveyance from Xeonics Limited to Amrital Chandulal Shah and Priyesh Amrital Shah dated 15th March 1985.There is also a search adduced indicating some transfers.

167. Considering the foregoing, it is apparent that the approvals were indeed issued in the names of persons/ entities in the chain of title of the suit properties albeit not the immediate predecessors. This gives credence to the 4th Respondent's account of delays in the updating of official records. It is noted that the 4th Respondent was duly registered as the owner of the suit properties in 2024.

168. Apart from the fact that the 4th Respondent's ownership of the suit property has not been impugned, it has also not been alleged that the developments were carried out on parcels other than the ones in issue. There is also no evidence before the court to show that the use of other names was a deliberate attempt to mislead the public or regulatory authorities.

169. The Petitioners allege a breach of Section 58(4) of the PLUPA, which requires that where a development permission is sought by a person who is not the registered owner of the land, such application must be accompanied by the written consent of the registered owner.

170. However, it is apparent that the 4th Respondent was not the "registered owner" hence the fact of the permissions being sought in the names of other parties. In any event, as persuasively held in Sosplashed Limited & Another vs Pwani Maoni Limited & 3 Others (ELC 12 of 2021) [2023] KEELC 22487 (KLR), the absence of consent under Section 58(4) does not render the approval null and void, rather, such an omission renders the approval voidable at the discretion of the authorizing planning authority.

171. Ultimately, the Petitioners have not laid a foundation for the claim that the approvals and licenses are invalid for not having been issued in the 4th Respondent's name. The court takes the position that at most, any procedural irregularities arising therefrom render the approvals voidable at the discretion of the relevant regulatory authorities. Accordingly, this challenge must fail.

Whether the licenses and approvals allowing the construction on the suit property were issued in violation of the Petitioners' rights to a clean and healthy environment?

172. The right to a clean and healthy environment has been recognized as indispensable for the survival of humanity. Its formal recognition on the international stage can be traced back to 1972 during the United Nations Conference on the Human Environment held in Stockholm, where it was first explicitly acknowledged in the Stockholm Declaration.

173. The global recognition of this right has since been significantly reinforced through subsequent international efforts, notably by the United Nations Human Rights Council in October 2021 and

the United Nations General Assembly in June 2022, both of which adopted resolutions formally recognizing the right to a healthy environment as a fundamental human right under international law.

174. In Kenya, Article 42 of *the Constitution* guarantees every person the right to a clean and healthy environment and to have the environment protected for the benefit of present and future generations. Article 69, sets outs the state's obligations with respect to the environment, including protecting genetic resources and biological diversity and eliminate processes and activities that are likely to endanger the environment.

175. Article 69 of *the Constitution* further provides for the obligation of every citizen to cooperate with the government and any other person to conserve and protect the environment as well as use natural resources and ensure ecologically sustainable development.

176. In enforcing environmental rights, Article 70 (1) provides that one may apply to court for redress if the right to a clean and healthy environment under Article 42 has been, is being or is likely to be denied, violated, infringed or threatened. Article 70 (1) thus gives every Kenyan access to the court to seek redress in environmental matters.

177. Article 70 (3) of *the Constitution* provides that an applicant does not have to demonstrate that any person has incurred loss or suffered injury before seeking redress for breach of the right to a clean and healthy environment. This provision is replicated in Section 3(3) of the EMCA which allows any person who alleges that the right to a clean and healthy environment has been, or is being infringed or violated to apply to the Environment and Land Court in the public interest.

178. Indeed, Section 13 of the *Environment and Land Court Act* gives this court the jurisdiction to hear and determine applications on redress of a denial, violation or infringement of, or threat to, rights or fundamental freedoms relating to the environment and the use and occupation of, and title to, land.

179. The right to a clean and healthy environment is broad and foundational, deeply intertwined with others rights. The court in Peter K Waweru vs Republic [2006] eKLR speaking to this position noted:

> " The right of life is not just a matter of keeping body and soul together because in this modern age, that right could be threatened by many things including the environment. The right to a clean environment is primary to all creatures including man; it is inherent from the act of creation, the recent restatement in the Statutes and the Constitutions of the world notwithstanding. This right and the other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible."

180. In Adrian Kamotho Njenga vs Council of Governors & 3 Others [2020] eKLR, the court persuasively stated thus:

> " Article 42 of *the Constitution* guarantees every person the right to a clean and healthy environment and to have the environment protected for the benefit of present and future generations through the measures prescribed by article 69. The right extends to having the obligations relating to the environment under article 70 fulfilled. Unlike the other rights in the bill of rights which are guaranteed for enjoyment by individuals during their lifetime, the right to a clean and healthy environment is an entitlement of present and future generations and is to be enjoyed by every person with the obligation to conserve and protect the environment."

181. Under this head, it is the Petitioners' contention that the development permissions, licenses, and approvals issued in relation to the developments undertaken on the suit properties, to wit, the

Nairobi City County Approvals, NEMA EIA licenses and NCA certificates of compliance, were issued irregularly, unlawfully, or without due process, thereby exposing them to environmental harm, and that the court should so find.

182. This concern finds legal reinforcement in Moffat Kamau & 9 Others vs Actors of Kenya Ltd [2016]eKLR where the court was categorical that where the procedures for the protection of the environment are not followed, then an assumption may be drawn that the right to a clean and healthy environment is under threat.

183. As such, the court must scrutinize the legality and procedural regularity leading to the issuance of the approvals. In doing so, the court will examine the various acts complained of vis-à-vis the applicable legal and regulatory frameworks.

184. Beginning with the aspect of development permissions, the same is a requirement of the *Physical and Land Use Planning Act* (PLUPA) 2019. The Act makes provision for the planning, use, regulation and development of land and for connected purposes. The power to undertake development control is donated under Section 56 of the PLUPA.

185. The Act defines development as the means of carrying out any works on land or making any material change in the use of any structures on the land. Aspects of development control as set out under the Third Schedule of the PLUPA include issues relating to change of user; extension of user; extension of leases; sub-division schemes; amalgamation proposals; building plans, among others.

186. Section 57(1) of the Act is categorical that a person shall not carry out development within a county without a development permission granted by the respective county executive committee member. The same constitutes an offence as per Section 57(2).

187. And then there is Section 58 of the PLUPA. It prescribes that a person shall apply for development permission from the county executive member in the prescribed form and after paying the prescribed fees.

188. The 4th Respondent adduced into evidence the following permissions/approvals from the 9th -11th Respondents:Notifications of Approval for Change of Use: PPA-CU-AAE125, dated 11th March 2021, for L.R. No. 209/871/14 issued to Christopher Nicholas Omare.Notification of Approval of for Change of Use and PPA-CU-ADC342, dated 15th September 2021, for L.R. No. 209/871/11 issued to Xeonics Limited.Notification of Approval of permission to develop 1 additional level for previously approved plan on L.R 209/871/14.Approval for proposed 18 level residential development on plot L.R 209/871/11.Authority to excavate and transport soil on plot L.R 209/871/11 to Dandora Dumpsite dated the 15th February, 2022.Authority to excavate and transport soil on plot L.R 209/871/14 to Dandora Dumpsite dated the 5th June, 2021.

189. Despite the Petitioners' contention that these are not development permissions, they undoubtedly are. The court will consider the challenge to their legitimacy on account of the allegations, to wit, that the approvals were issued under the repealed law, and regulations long superseded by PLUPA 2019; absence of formal applications and proof of payment of requisite fees; failure to comply with public notification requirements; lack of evidence showing the approval process met all statutory conditions and failure to issue a submission certificate.

190. The Petitioners further assert that the absence of a County Director of Physical Planning or a County Physical and Land Use Development Plan at the time of their issuance renders them void and that the law in place at the time did not permit the construction of high-rise residential apartments on the suit parcels.

191. The 4th Respondent asserts that the approvals were duly issued. This position is supported by the 9th-11th Respondents.

192. At the onset, the Petitioners state that the 4th Respondent commenced developed prior to the issuance of any permissions having begun the construction in January, 2021. This is denied by the 4th Respondent, who states that they begun preparations for construction on or about July, 2021 for L.R No 209/871/14 and January, 2022 for L.R. 209/871/11.

193. Although the 4th Respondent did not provide demolition permits in the form prescribed under Section 32 of the Physical and Land Use Planning (Building) Regulations, it furnished excavation authorizations dated 5th June 2021 for L.R 209/871/14 and 15th February 2022 for L.R 209/871/11.

194. The Petitioners have not adduced any evidence proving that developments by the 4th Respondent began before these dates. In the absence of such proof, the court finds no basis to conclude that the developments were commenced without development approvals.

195. Moving next to the nature of the forms, in particular the approvals for change of user, the Petitioners point out, and it is indeed apparent, that the same have ostensibly issued under the Physical Planning Act, 1996 (repealed).

196. The heading of the approvals reads "Form P.P.A. 2 – The Physical Planning *Act No. 6 of 1996*." It is indeed correct that the cited legislation had been repealed by the time of their issuance, as the applicable legal framework at the time was the (PLUPA), 2019, which came into effect on 5th August 2019.

197. While this is indeed an irregularity, the court does not consider that it is sufficient to invalidate the approvals. This is especially where, as here, the issuing authority has not disowned or impugned their legitimacy. Further, courts are enjoined to administer justice without undue regard to technicalities, as provided under Article 159(2)(d) of *the Constitution*.

198. Unless a procedural misstep affects the substance or outcome of a decision, causes prejudice, or contravenes a mandatory statutory requirement, it cannot be the basis for nullifying an otherwise regular process. The Petitioners have not demonstrated that the misdescription of the governing law resulted in any substantive prejudice or breach of their constitutional or statutory rights.

199. As to the reliance on the County Government (Adoptive By-law) Building Order 1968, it is noted that this was the applicable law in 2021. The same has since been replaced by the National Building Code 2024. The new code was officially launched and published as Legal Notice No. 47 on February 20, 2024, and became effective on March 1, 2025

200. Moving to the lack of applications for the development permissions, it is not in dispute that the 4th Respondent did not adduce formal application documents for development permission or receipts evidencing payment of the prescribed statutory fees. The receipts referenced are for 2024.

201. While reference was made to a 2017 public notice suggesting that applications ought to be submitted through an online portal, it is evident that the said notice was issued under the framework of the now-repealed Physical Planning Act.

202. Under Regulation 15(2) of the Physical and Land Use Planning (General Development Permission and Control) Regulations, 2020, applications for development permission may be made either electronically or in hard copy, provided they comply with the prescribed format.

203. In the present case, despite the absence of documentary proof of the applications and the requisite documents accompanying the same or payment, the 9th to 11th Respondents, being the lawful

regulatory authorities, have unequivocally affirmed that they received the applications and, upon due consideration, issued the impugned approvals.

204. Further, although the Petitioners have rightly pointed out that Sections 60, 61, and 62 of the PLUPA outline the procedures and considerations required in the issuance of development permission, the fact that the 9th -11th Respondents have not demonstrated each step does not, in and of itself, invalidate the approvals. Nor does it demonstrate non-compliance with the provisions aforesaid and all other relevant regulations. Further, the fact that an EIA license was issued after the development permissions were granted cannot impugn the same.

205. In the circumstances enumerated above, this court invokes the doctrine of presumption of regularity. This doctrine was explained by the Supreme Court in the case of Export Processing Zone Authority & 10 others (Suing on their own behalf and on behalf of all residents of Owino-Uhuru Village in Mikindani, Changamwe Area, Mombasa) vs National Environment Management Authority & 3 others [2024] KESC 75 (KLR) thus:

> " In general, the presumption of regularity presupposes that no official or person acting under an oath of office will do anything contrary to their official duty, or omit anything which their official duty requires to be done. The doctrine provides a degree of deference to the actions or decisions made by government officials or institutions. It is grounded in the assumption that these officials act within the bounds of the law, follow established procedures, and operate in good faith when performing their duties. This presumption also relieves courts or reviewing bodies from conducting a deep, thorough review of every action or decision unless there is specific evidence to suggest wrongdoing, procedural lapses, or irrational behavior. (See The Presumption of Regularity In Judicial Review Of The Executive Branch Harvard Law Review pg. 2432). The idea is that, in the absence of clear evidence to the contrary, administrative actions should be presumed to be regular, lawful, and reasonable."

206. In Kibos Distillers Limited & 4 others v Benson Ambuti Adega & 3 others [2020]eKLR, the Court of Appeal was categorical that the evidence required to rebut the presumption of regularity must be cogent, clear and uncontroverted and that the presumption of regularity cannot be rebutted through conflicting interpretation of a statutory or regulatory provision.

207. No evidence has been adduced rebutting this presumption.

208. There is also the aspect of whether the public participation requirements were fulfilled. In this regard, Sections 58(7) and (8) of the PLUPA are instructive. They provide thus:

> " (7) A person applying for development permission shall also notify the public of the development project being proposed to be undertaken in a certain area in such a manner as the Cabinet Secretary shall prescribe.
>
> (8) The notification referred to under sub-section (7), shall invite the members of the public to submit any objections on the proposed development project to the relevant county executive committee member for consideration"

209. Speaking to this, the court in Nzomo ((Suing on Behalf of Kunde Road Residents Welfare Association))vs Ontime Real Estate Limited & 2 others (Environment & Land Petition E004 of 2023) [2024] KEELC 6011 (KLR) (19 August 2024) (Judgment) while conceding that Section 58 of PLUPA does not express the manner in which the public participation is to be undertaken, guided by the

decision in British Tobacco PLC versus Cabinet Secretary of Health (2019) eKLR, the Respondents had a duty to ensure public participation took place.

210. In the present circumstances, the 4th Respondent produced copies of public notices published in the Standard Newspapers on 13th February 2021 in respect of parcel L.R 209/871/14 and the 15th July 2021 with respect to parcel L.R 209/871/11 published by the Director General, Nairobi Metropolitan Services, notifying the public of the proposed change of user and inviting them to send any objections.

211. The 4th Respondent also adduced sign boards indicating the same. Indeed, the Petitioners too have referenced these signboards in their Affidavits. Unfortunately, the contention that the same were placed on the site in August, 2023 and not before the issuance of the change of user has not been substantiated. Ultimately, the court finds that the notification requirements under PLUPA have been met and there was sufficient public participation in this regard.

212. The Petitioners also contend that, in the absence of a County Director of Physical and Land Use Planning, a County Physical and Land Use Development Plan, and a Local Physical and Land Use Development Plan, any development approval purportedly issued is unlawful. This argument is premised on the statutory framework established under the PLUPA, 2019, which governs the regulation and orderly development of land within counties.

213. Specifically, Section 18 mandates the establishment of the office of the County Director of Physical and Land Use Planning, Section 37 mandates the preparation of a County Physical and Land Use Development Plan, which is intended to guide land use decisions at the county level and Section 45 which provides for the preparation of the Local Physical and Land Use Development Plan.

214. It is not in dispute that Nairobi City County, like many other counties, has yet to formulate and implement its County Physical and Land Use Development Plan. This court addressed this very deficiency in Millennium Gardens Management Limited v Metricon Home Nairobi Company Limited; Nairobi City County Government & 2 others (Interested Parties) (Environment & Land Petition E121 of 2023) [2024] KEELC 6040 (KLR) (Judgment), where it unequivocally expressed concern over the planning vacuum.

215. In the aforesaid case, this court underscored the urgent necessity for Nairobi City County to establish the County Physical and Land Use Development Plan envisioned under PLUPA. The court observed that such a plan is critical in ensuring that development decisions are consistent with a framework agreed upon by the County's residents.

216. The court is also alive to the fact that many localities within Nairobi similarly lack Local Physical and Land Use Development Plans. However, the absence of these plans, while regrettable, cannot be interpreted to mean that the impugned development herein should be suspended, especially considering that by the time this Petition was filed, the challenged development was almost complete.

217. The Petitioners' further assertion that the absence of a County Director of Physical Planning renders the development permissions invalid is also misplaced. A contextual reading of Section 18 of the PLUPA clarifies that the power to issue development permissions lies with the County Executive Committee Member (CECM) responsible for physical and land use planning.

218. While the County Director of Physical Planning is tasked with technical implementation, approvals are issued under the authority of the CECM. Therefore, the absence of a County Director, cannot legally nullify the authority of the CECM to issue development permissions.

219. In sum, the court finds that the absence of a County Director of Physical Planning, or the lack of a County or Local Physical and Land Use Development Plan, does not by itself render the almost already complete development unlawful.

220. Another contention is that there are no laws, development policies or guidelines permitting construction and development of high rise buildings in the Parklands area and in particular in the area along City Park Drive.

221. This court has had occasion to delve into the question of the relevance of the 2004 Guidelines, A Guide of Nairobi City Development Ordinances and Zones, 2004 in the context of the present development in Nairobi. In Millennium Gardens Management Limited vs Metricon Home Nairobi Company Limited; Nairobi City County Government & 2 Others (Interested Parties) [2024] KEELC 6040 (KLR) this court noted:

> "214. It is abundantly clear from the foregoing that the 2004 Zoning Guidelines in question have long been superseded by events that were unforeseen at the time of their formulation. These guidelines, once relevant, fail to account for the dynamic and evolving nature of urban and environmental planning, a phenomenon recognized by the NIUPLAN and Nairobi City County Development Control Policy, 2021.
>
> 215. The Court recognizes that the application of these outdated guidelines (2004) without consideration of the current realities and the operative Master Plan (2014-2030) and Nairobi City County Development Control Policy, 2021 may result in unjust outcomes that do not reflect the needs and contexts of contemporary society.
>
> 216. Nonetheless, it is clear from the foregoing excerpts that the 1st Interested Party has at all times been alive to the conflict between the 2004 Zoning Guidelines in place and the Nairobi Integrated Urban Development Plan, and Nairobi City County Development Control Policy, 2021 which identified the need for review of the zoning policy."

222. In its subsequent decision in Anami & 2 Others (Suing as Officials of Rhapta Road Residents Association) vs County Executive Committee Member(CECM) Built Environment and Urban Planning, Nairobi City County & 20 Others [2025] KEELC 128 (KLR), this court upheld the position that the unapproved Nairobi City County Development Control Policy is a clear, unambiguous, and lawful communication by the County Government of Nairobi on the zonal guidelines and restrictions, and until the contents therein change, the Nairobi City County is bound by it.

223. Under the 2021 Development Control Policy alluded to above, City Park Estate is under Zone 3E which is described as a mixed development area, commercial, residential apartments, market and recreational. The number of floors in this zone are limited to 20. As the development permission for the impugned developments allowed the construction of 17 levels, the same is within the prescribed limit therein.

224. The next issue concerns the validity and regularity of the certificates of compliance issued under the National Construction Authority (NCA) Regulations. Regulation 17(6) the National Construction Authority Regulations provides that:

> "(6) The Authority shall, within thirty days from receipt of the duly completed application form in terms of paragraphs 10(2) and (3), register the construction works contract or project and issue a compliance certificate."

225. The 4th Respondent adduced into evidence two certificates of compliance in respect of the suit properties. With respect to L.R. No. 209/871/14, the certificate identifies the project registration number as 53127415710417 issued on 10th August, 2021 to Zamil Realtors Limited. For L.R. No. 209/871/11, the certificate indicates that the project registration number is 5327415710469 and was issued on the 14th December 2021 to Xeonics Limited. These certificates were affirmed by the 14th Respondent.

226. The Petitioners have raised concerns regarding inconsistencies in the project registration numbers. For instance, they assert that for L.R. No. 209/871/14, the signboard next to the property reflects registration number 5327415710469, whereas the 14th Respondent's documents reference 53127415710860.

227. Upon scrutiny, it is evident that 53127415710860 pertains to an additional floor approved as a modification to an existing development. Similarly, the number 53127415710469, identified on a signboard by the Petitioners, corresponds to L.R. No. 209/871/11. KSK 2 for L.R 209/871/14 sets out the number as 53127415710417. As such, there is no inconsistency.

228. It is also contended by the Petitioners that the certificates adduced by the 14th Respondent differs from those adduced by the 4th Respondent. Upon consideration, it is noted that the 14th Respondent adduced a certificate of compliance with respect to L.R 209/871/11.

229. The only difference between it and the certificate adduced by the 4th Respondent is the additional fields of Architect and Engineer. It also sets out the period of validity being between 14th Feb, 2024 and 14th Feb, 2026. The versions adduced by the 14th Respondent merely contain additional fields for the project architect and engineer, which were not provided in the initial certificates.

230. It is also alleged that the certificate of compliance with respect to the additional floor is fraudulent. However as aforesaid, there are stringent parameters for fraud. Merely stating so without any proof is insufficient.

231. There is also the fact that the two projects have been issued with the same NCC-CPF Plan No AV-209. It has not been demonstrated that this renders the same invalid. It has also not been demonstrated how, statutorily or otherwise, the 5th to 8th Respondents' failure to display their professional or membership registration numbers on the project signage constitutes an irregularity.

232. Accordingly, the court finds no legal, factual, or evidentiary basis to impugn the validity of the NCA compliance certificates or to conclude that they were obtained fraudulently. The Petitioners' challenge under this head is therefore unmeritorious and must fail.

233. Moving now to the propriety of EIA licenses. The legal regime for the issuance of EIA licenses is anchored on *the Constitution* of Kenya, where Article 69 (f) requires the State to establish systems of environmental impact assessment, environmental audit and monitoring of the environment.

234. These systems are set out in EMCA. In particular, Part VI of the EMCA as read with the relevant provisions of the Environmental (Impact Assessment and Audit) Regulations 2003 ("the Regulations") made thereunder have set out the framework of environmental impact assessment, environmental audit and monitoring of the environment and the procedures and processes involved in securing the same.

235. Specifically, Section 58 of the EMCA stipulates the procedure to be followed when applying for an Environmental Impact Assessment license. It provides as follows:

> " 58(1).Notwithstanding any approval, permit or license granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall before for an financing, commencing, proceeding with, carrying out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the Second Schedule to this Act, submit a project report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee."

236. The nature of the report required by NEMA depends on the categorization of the nature of the risk as set out in the second schedule of the EMCA. The 4th Respondent has adduced into evidence:NEMA EIA License no NEMA/EIA/PSL 11617 dated the 28th May, 2021 with respect to the development on L.R 209/871/14 issued to one Shantilal Raychand Shah for the construction of 15 level residential buildings comprising of 98 units.NEMA license no NEMA/EIA/PSL 16056 dated the 20th December, 2021 with respect to the development on L.R 209/871/11 for the proposed development of a 15 level residential building compromising of 98 units issued to Xeonics Limited.

237. As aforesaid, the process of application for an Environmental Impact Assessment Licence is set out in Section 58 of the EMCA. Regulation 72 of the Environmental (Impact Assessment and Audit) Regulations 2003 stipulate what the project report should identify.

238. Regulation 9 requires NEMA to submit the project report to each of the relevant lead agencies, the relevant District Environment Committee for their written comments, which comments shall be submitted to the Authority within twenty-one days from the date of receipt of the project report from the Authority, or such other period as the Authority may prescribe.

239. Thereafter, on determination of the project report, the decision of the Authority, together with the reasons thereof, should be communicated to the proponent within forty-five days of the submission of the project report.

240. The 4th Respondent presented copies of the Environmental Impact Assessment Project Reports dated the 8th March, 2021 in respect to L.R 209/871/14 and another one with respect to L.R 209/871/11, dated the 22nd September, 2021.

241. The 12th Respondent acknowledged receipt of the same stating that that it reviewed the Reports, shared them with the lead agencies for submissions, made recommendations and carried out site visits. Upon satisfaction, they issued the impugned EIA license.

242. It has been alleged with respect to the EIA license for plot L.R 209/871/14 that the same was not issued in the name of the 4th Respondent. This issue has however been resolved. It is also contended that the project report contained false information because it describes the area of the property as 3 acres rather than 0.0203 hectares and states that the proposal is for 60 rather than 98 units, and that it similarly states that public participation was undertaken when it was not.

243. With respect to parcel L.R 209/871/11, it is alleged that it was not issued in the name of the 4th Respondent; that it was issued before the review of an EIA report and that the project report extracts referenced by the 12th Respondent are reconstructions of an EIA CPR project report. Moreover, it was argued, the license was issued based on false information, namely, that the property bordered the Gitathuru River and that lawful pegging had been undertaken.

244. Beginning with the issue of the licenses having been issued in the name other than that of the 4th Respondent, this issue has been determined. There is no misdescription of units as alleged and with respect to the acreage, the court does not consider this renders the license invalid.

245. As to the contentions that the license for L.R 209/871/11 was issued before the review of the project report and that the report is merely a construct of an EIA CPR report, the same have not been substantiated. As to the aspect of pegging, the 14th Respondent affirmed to the 12th Respondent that the same was lawfully done.

246. Both reports, it is contended by the Petitioners, state that all necessary physical planning regulations were taken into account during the design of the projects, and yet the NEMA licenses were issued before the proposed residential apartments had been approved by the 9th -11th Respondents.

247. This position is not factual. The EIA licenses were issued after the approvals. Indeed, the 12th Respondent noted that the issuance of the licenses was upon their satisfaction that their recommendations, including that the proponent obtains a change of user and approvals from the 9th -11th Respondents, should be met.

248. It is also urged that the construction of 112 residential units on L.R. No. 209/871/14 elevated the project from a medium-risk to a high-risk undertaking, thereby requiring a more comprehensive Environmental Impact Assessment (EIA) study rather than a project report. As aforesaid, the EIA licenses were granted for the development of 98 units.

249. Pursuant to Schedule 2 of the EMCA, developments involving the establishment of multi-dwelling housing units not exceeding 100 units fall under the category of medium-risk urban development projects. Such projects are required to submit a project report, and not a full EIA study report, which is reserved for high-risk projects.

250. Under EMCA's regulatory framework, low- and medium-risk projects undergo an initial screening through a project report, while high-risk projects necessitate a more detailed environmental study.

251. The 12th Respondent indicated that upon a site visit conducted on the 4th April, 2024, it was noted that the 4th Respondent had constructed 112 units. This is a violation of the license condition for which an enforcement order has been issued. It does not retroactively convert the original development into a high-risk project, nor does it invalidate the licence itself.

252. Moving next to the issue of public participation, under Article 10 of *the Constitution*, public participation is a fundamental principle of governance. Article 69 (1) (d) specifically references public participation in environmental management by requiring the State to encourage public participation in the management, protection and conservation of the environment.

253. These constitutional dictates are reinforced by the provisions of the EMCA and the ELC Act, both of which require the Environment and Land Court to be guided by the requirements for public participation in development of policies, plans and processes for the management of the environment.

254. Other than *the Constitution* and the EMCA, Principle 10 of the Rio Declaration on Environment and Development, which is applicable by dint of Article 2(5) and 2(6) of *the Constitution*, provides that:

> "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

255. A five-judge bench of the High Court in the case of Mohamed Ali Baadi and others vs Attorney General & 11 others [2018] eKLR, succinctly explained the rationale of having public participation as a constitutional imperative as follows:

> "It may be tempting to ask why the law and indeed *the Constitution* generally imposes this duty of public participation yet the State is generally a government for and by the people. The people elect their representative and also participate in the appointment of most, if not all public officers nowadays. The answer is, however, not very far. Our democracy contains both representative as well as participatory elements which are not mutually exclusive but supportive of one another. The support is obtained even from that singular individual. We also have no doubt that our local jurisprudence deals at length with why *the Constitution* and statute law have imposed the obligation of public participation in most spheres of governance and generally we take the view that it would be contrary to a person's dignity (see Article 28) to be denied this constitutional and statutory right of public participation."

256. Setting out the parameters for effective public participation, the Supreme Court of Kenya in British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) vs Cabinet Secretary for the Ministry of Health & 2 Others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party) [2019] eKLR after consideration of several judicial pronouncements noted:

> "From the foregoing analysis, we would like to underscore that public participation and consultation is a living constitutional principle that goes to the constitutional tenet of the sovereignty of the people. It is through public participation that the people continue to find their sovereign place in the governance they have delegated to both the National and County Governments. Consequently, while Courts have pronounced themselves on this issue, in line with this Court's mandate under Section 3 of the *Supreme Court Act*, we would like to delimit the following framework for public participation:
>
> Guiding Principles for public participation
>
> (i) As a constitutional principle under Article 10(2) of *the Constitution*, public participation applies to all aspects of governance.
>
> (ii) The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.
>
> (iii) The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.

(iv) Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to 'fulfill' a constitutional requirement. There is need for both quantitative and qualitative components in public participation

(v) Public participation is not an abstract notion; it must be purposive and meaningful.

(vi) Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis.

(vii) Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.

(viii) Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis.

(ix) Components of meaningful public participation include the following;

a. clarity of the subject matter for the public to understand;

b. structures and processes (medium of engagement) of participation that are clear and simple;

c. opportunity for balanced influence from the public in general;

d. commitment to the process;

e. inclusive and effective representation;

f. integrity and transparency of the process;

g. capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter."

257. From the foregoing, it is not enough for a proponent to simply allege and demonstrate that public participation was conducted. One must go further and demonstrate that the views expressed during this exercise were duly considered, and if not, the reasons why.

258. The 12th Respondent contends that sufficient public participation was undertaken noting that this being a medium risk project, questionnaires are sufficient. It is indeed conceded that the level of public participation required in medium risk projects is not as intensive as that set out for high risk projects as anticipated by Regulation 17 of the Environmental (Impact Assessment and Audit) Regulations 2003.

259. With respect to L.R. No. 209/871/11, the project report submitted to NEMA indicates that approximately seven members of the public participated in the public consultation process by completing and returning questionnaires.

260. Although no objections or concerns were raised in the returned forms, the project report nonetheless comprehensively outlined mitigation measures during both the construction and decommissioning

phases. These measures addressed potential impacts relating to security, traffic congestion, oil leaks and spills, strain on electricity supply, fire risks, and health hazards.

261. Similarly, for L.R. No. 209/871/14, the project report confirms that about eleven questionnaires were filled and returned during the public participation exercise. Unlike in the previous case, the responses did raise substantive concerns, including dust pollution, stress on water and other utilities, and risks of sewage leakages. These concerns were documented in the report and responded to through proposed mitigation strategies.

262. The Petitioners have cast doubt on the authenticity and legitimacy of the public participation questionnaires, stating amongst others, that the telephone numbers provided thereon are unreachable and that there is no evidence that the respondents are area residents. However, no concrete evidence has been provided to substantiate these allegations.

263. As to the sufficiency of public participation, the court finds that the same was sufficient. The legal requirement is not that every member of the public must respond, but that the opportunity to participate must be meaningfully afforded. Given that the questionnaires were distributed within the locality most likely to be affected by the proposed developments, and that the content of the project reports provided sufficient disclosure for informed input, the participation process met the threshold of legal sufficiency anticipated under the law.

264. The Petitioners allege that the manner in which the developments on the suit properties have been undertaken has adversely affected the natural light to their premises, thus rendering their solar panels unusable and forcing them to rely entirely on electricity.

265. They further allege that ventilation has been compromised, with kitchen and bedroom windows blocked by construction debris, and that a previously accessible fire escape route has been rendered unusable.

266. In addition, they assert that water seepage from the ongoing developments enters their apartments regularly, causing progressive structural damage. They also raise safety concerns over the proximity of structural walls and beams, claiming that any disaster would simultaneously affect both buildings.

267. It is also contended that blocked drains and manholes have resulted in foul smells and discharge of effluents into the Mathare River. Moreover, the Petitioners allege that the developers have encroached on public land, including an access road and a footbridge between Parklands and Muthaiga Estates.

268. To support these assertions, the Petitioners have primarily relied on photographic and video evidence. The court has carefully examined the photographs of sewer effluents, darkened rooms, blocked access routes, and the alleged damage to property. While the images raise general concern, they do not establish a causal connection between the developments in question and the alleged environmental and structural harm.

269. Specifically, the photographs showing effluent discharge into the Mathare River do not demonstrate that the effluent originated from the developments undertaken by the 4th Respondent.

270. Similarly, allegations of beacon to beacon construction, structural damage, light obstruction, and lack of ventilation are inherently technical in nature. Such claims require substantiation through expert opinion or professional reports from structural engineers, architects, or other relevant experts. None were provided.

271. The fact of encroachment on a public access road is also a serious allegation and a photograph cannot without more, establish this.

272. The report relied on by the Petitioners dated the 24th March, 2025 by Arch S.K. Kahinga is admittedly inconclusive. The report recommends:The complainant should write to the County Government of Nairobi so as to get approval(if at all) plans or drawings for both properties to ascertain what was approved or not.The complainant should provide a copy of the site plan and the and a copy of the deed plan for L.R 209/871. Further, they should facilitate access to both properties to enable me establish the nature and the extent of the construction.

273. Ultimately, in the absence of cogent expert-backed evidence establishing a clear nexus between the 4th Respondents actions and the alleged environmental violations and/or impacts, the court is unable to make a conclusive finding in the Petitioners' favour.

Whether the pegging and marking undertaken by the 15th Respondent on the riparian reserve next to the L.R No 209/871/11 was illegal and/or irregular

274. The Black's Law Dictionary, 8th Ed. Thomson/West, 2004 defines the word "riparian" to mean:

> " Of, relating to, or located on the bank of a river or stream (or occasionally another body of water, such as a lake)."

275. These lands are important components of functioning, healthy aquatic and terrestrial ecosystems. Healthy riparian lands provide environmental, economic, cultural and recreational benefits.

276. As regards riparian reserves, the same is a designated strip of land along a river, stream or other water body that is subject to environmental regulations and management obligations to protect the water body and its surrounding ecosystem. The Water Resources Regulations 2025 defines it as:

> " land which by virtue of its proximity to a water body, management obligations shall be imposed on the landholder by the Authority"

277. According to the Petitioners, L.R No. 209/871/11 lies within a riparian reserve along Mathare River. They contend that the 15th Respondent irregularly and illegally reduced the extent of the riparian reserve contrary to law. Specifically, they challenge the legality of the pegging exercise conducted by the 15th Respondent on grounds that it was done pursuant to the repealed Water Management Rules, 2007.

278. The 15th Respondent is established pursuant to Section 11 of the *Water Act*. It is an agent of the National Government vested with the mandate to regulate the management and use of water resources. It is not disputed that the 15th Respondent is the sole body lawfully mandated to delineate and mark riparian boundaries.

279. On the 13th April, 2021, the 15th Respondent was requested to carry out a pegging and marking exercise on L.R 209/871/11. The pegging in question was conducted on 3rd May, 2021 and documented in a report. The report noted, inter-alia:The parcel of land is located in parklands area in Nairobi County.The parcel of land abuts Gitathuru River on the right bank.The stretch of the river along the parcel of land is approximately fifty(50)metres.

280. The report notes that the pegging was done at 10 metres as prescribed under Rule 116 of the Water Resources Management Rules, 2007. Rule 116(2) provided:

> " Unless otherwise determined by a Water Resources Inspector, the riparian land on each side of a watercourse shall be defined as a minimum of six metres or equal to the full width of the watercourse up to a maximum of thirty metres on either side of the bank"

281. It is indeed noted that the Water Management Rules, 2007 were revoked by the Water Resources Rules, 2021 which commenced on 7 April 2021. It is however noted that these rules, which have also since been revoked by the Water (Resources) Regulations, 2025 had no provision for the delineation of riparian reserves.

282. Regulation 91(2) of the Water Resources Regulations, 2025 now speaks to this and provides that:

> " Unless otherwise determined by an inspector, the riparian reserve on each side of a watercourse is defined as a minimum of ten metres or equal to the full width of the watercourse up to a maximum of thirty metres on either side of the bank."

283. Based on the foregoing, while it is acknowledged that the pegging exercise by the 15th Respondent on L.R No. 209/871/11 was undertaken pursuant to the repealed Water Resources Management Rules, 2007, no illegality has been demonstrated. At the material time, the Water Resources Rules, 2021 then newly in force contained no express provision governing the delineation of riparian reserves.

284. It is only with the enactment of the Water (Resources) Regulations, 2025 that a clear standard similar to the repealed Rule 116 was reinstated. Further, the 15th Respondent acted within its statutory mandate as the sole agency empowered to delineate riparian boundaries, and its decision to apply a 10-metre reserve was consistent with both the repealed Rule 116 and the now prevailing Regulation 91(2) of the 2025 Regulations.

285. It is also on record that the 15th Respondent undertook follow-up site visits on 13th March 2023, and 11th March, 2024 during which time it confirmed that all the conditions previously set out had been adhered to. As to the fact that the pegging report references Gitathuru River, nothing falls on this. The court notes that the Gitathuru River flows into Mathare River and the same are interconnected.

286. The Petitioners also make reference to a Cabinet press release dated 2nd May 2024, which announced the adoption of a 30-metre riparian corridor for the Nairobi Rivers Basin. This policy direction was issued in response to flooding caused by heavy rainfall and was accompanied by Public Security (Vacation or Mandatory Evacuation) Orders targeting persons at immediate risk. The Orders were prospective in nature and were not intended to retrospectively invalidate pegging exercises lawfully conducted prior to their issuance. They were also general policy measures and did not constitute legal directives affecting the subject property.

287. In the end, there is no basis upon which the court can impugn the pegging and marking exercise undertaken by the 15th Respondent. This claim falls.

Whether the Petitioners rights to information as guaranteed under Article 35 of *the Constitution* was violated?

288. The right to access to information is one of the rights that underpins the values of good governance as set out in Article 10 of *the Constitution*. In the context of environmental law, it serves as a crucial

mechanism for promoting transparency, and accountability in matters related to the environment and is necessary to meet the goals of environmental information and promote sustainable development.

289. The right to information is enshrined under Article 35(1) of *the Constitution* as follows:

> "(1) Every citizen has the right of access to -
>
> a. information held by the State; and
>
> b. information held by another person and required for the exercise or protection of any right or fundamental freedom."

290. In furtherance to this, Parliament enacted the *Access to Information Act*. It provides at Section 4 that subject to the provisions of the Act and any other written law, every citizen has the right of access to information. The right to access information is not affected by any reason the person gives for seeking access or the public entity's belief as to the person's reasons for seeking access. Additionally, access to information held by a public entity or a private body is to be provided expeditiously at a reasonable cost.

291. Section 3A of the EMCA equally provides that every person has a right to access any information that relates to the implementation of the Act that is in the possession of the Authority, lead agencies or any other person. Section 3A (2) states that a person desiring information should apply to the National Environmental Management Authority, NEMA, or the relevant lead agency and may be granted access on payment of a prescribed fee.

292. Speaking to this right, the Supreme Court in Njonjo Mue & Another vs Chairperson of Independent Electoral and Boundaries Commission & 3 Others [2017] eKLR stated thus:

> "Article 35(1)(a) and (b) of *the Constitution*, read with section 3 of the *Access to Information Act* would thus show without equivocation that all citizens have the right to Access Information held by the state, or public agencies."

293. The Petitioners sought a declaration that their rights to information were violated. This limb however appears to have been abandoned not having been submitted on. Nonetheless, the evidence by the 9th-11th, 12th, 14th and 15th Respondents as well as the Petitioners themselves indicate that there has been substantial correspondence between them and the aforesaid entities who have undertaken to provide them with information sought with respect to the impugned developments.

294. As such, there is no basis upon which the court can find that this right has been violated.

295. In conclusion, this court finds that the Petition dated 28th March, 2024 wholly lacks merit and the same is dismissed.

296. As this is a public interest matter, each party shall bear their costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 17TH DAY OF JULY, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Ndambiri for Petitioners

Ms Asli for 4th Respondent

Ms Kahuria holding brief for Gitonga for 12th Respondent

Court Assistant: Tracy