



**Association & another v Nairobi City County & 6 others (Environment and Planning
Petition E038 of 2024) [2025] KEELC 5942 (KLR) (21 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5942 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND PLANNING PETITION E038 OF 2024**

**AA OMOLLO, J
AUGUST 21, 2025**

BETWEEN

DENIS PRITT RESIDENTS ASSOCIATION 1ST PETITIONER

DAVID KIMUTAI BARGORIA 2ND PETITIONER

AND

NAIROBI CITY COUNTY 1ST RESPONDENT

GODFREY AKUMALI 2ND RESPONDENT

PATRICK ANALO AKIVAGA 3RD RESPONDENT

PATRICK MBOGO 4TH RESPONDENT

NEMA 5TH RESPONDENT

NATIONAL CONSTRUCTION AUTHORITY 6TH RESPONDENT

IMARASELKIM LIMITED 7TH RESPONDENT

RULING

1. For determination is the application dated 17th March 2025 filed by the Petitioners under the provisions of Rule 3, 20, and 21 of the *Constitution of Kenya Practice and Procedure Rules, 2013*; order 11 and 16 of the *Civil Procedure Rules*. In it, the Petitioners are seeking orders:
 - a. Extension of time within which to file their written submissions by 30 days from the date of the order.
 - b. The 1st to 4th Respondents to provide the Petitioners with the requested particulars of approvals/permits and certified copies of documents referred to paragraphs 4 and 7 of the replying affidavit sworn by Wilfred Masinde inter alia;



- i. Prescribed form Plupa/DC/1A on planning application duly submitted to the CECM by the owner of the subject property with a clear date of submission.
 - ii. Planning brief with a clear date of submission
 - iii. A copy of the report of the proposed demolition.
 - iv. A copy of the development permission (subdivision).
 - v. Prescribed form Plupa/DC/3 on notification of proposed subdivision/densification of use issued by the CECM.
 - vi. Prescribed form Plupa/DC/5 (Submission certificate) issued
 - vii. Prescribed form Plupa/DC/1G (authority to issue development permission and other development control instruments).
 - viii. License from NEMA to CECM approving and or giving conditions for demolition on the existing building/structures.
 - ix. Gazette notice or any other development circulated by the developer of the subject property.
 - c. From the 5th Respondent, the documents required inter alia;
 - i. Copy of letters from CECM requesting its comments on the application for permission (demolition/building)
 - ii. Copy of Plupa/DC/14 (commencement notice for development)
 - d. From the 7th Respondent,
 - i. Planning brief on LR No 209/12270 prepared by a registered planner.
 - ii. Gazette notice on the proposed densification and or subdivision of the subject property.
 - iii. Minutes of meetings with members of the public on densification.
 - iv. Documents from NLC showing their comments on the application for development permission on densification and or subdivision.
 - v. Legible civil, structural, electrical, mechanical and plumbing engineers' drawing.
 - e. Costs of the application abide the petition.
2. The application was based on several grounds stated on its face inter alia;
- a. No details and particulars of the alleged approvals and clearances were provided by the 1st, 5th and 7th Respondents in the said Replying Affidavits, and/or no copies of documents in respect to the alleged approvals and clearances were, or have been, produced by the deponent.
 - b. The Petitioners gave notice to the 1st, 5th and 7th Respondents to produce copies of the documents and particulars of the alleged approvals, licences, permits and clearances, with no responses received from these Respondents.



- c. It is of utmost importance that particulars of the alleged approvals and clearances, and/or copies of documents in support of the same, be made available to the Petitioners, and also to this court, to enable and facilitate a fair and just hearing and determination of the complaints and issues raised by the Petitioners in the Petition.
 - d. The particulars, and also copies of documents requested, are necessary to meet the ends of justice, and also to prevent abuse of the process of the Court.
 - e. This Honourable Court has inherent power to give directions, and to make orders in respect to requests for particulars of any and all alleged facts in respect to approvals and clearances, and/or production of copies of documents regarding the Petition filed herein.
3. The application is vehemently opposed by the 1st to 4th Respondents and the 7th Respondent. The 1st Respondent deposed that the 7th Respondent has already supplied the Court with relevant and sufficient documents to enable it to arrive at a fair and just determination.
 4. The 7th Respondent deposed that this application is misconceived and an abuse of the Court process for the following reasons:
 - a. The document sought by the Petitioner under paragraph 4 (a) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
 - b. The documents sought by the Petitioner under paragraph 4 (c) contain personal protected data that cannot be shared with the Petitioner without a valid basis and mechanisms to protect the same;
 - c. The document sought by the Petitioner under paragraph 4 (d) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
 - d. The document sought by the Petitioner under paragraph 4 (e) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
 - e. The document sought by the Petitioner under paragraph 4 (f) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
 - f. The document sought by the Petitioner under paragraph 4 (g) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
 - g. The document sought by the Petitioner under paragraph 4 (h) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
 - h. The document sought by the Petitioner under paragraph 4 (i) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
 - i. The documents sought by the Petitioner under paragraph 4 (j) are neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
 - j. The document sought by the Petitioner under paragraph 4 (k) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
 - k. The document sought by the Petitioner under paragraph 4 (l) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
 - l. The documents sought by the Petitioner under paragraph 4 (m) are neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;



- m. The documents sought by the Petitioner under paragraph 4 (n) are neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
- n. The documents sought by the Petitioner under paragraph 4 (o) are neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
- o. The documents sought by the Petitioner under paragraph 4 (p) are neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
- p. The documents sought by the Petitioner under paragraph 4 (q) are neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
- q. The documents sought by the Petitioner under paragraphs 4 (r) are neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
- r. The document sought by the Petitioner under paragraph 4 (s) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
- s. The document sought by the Petitioner under paragraph 4 (t) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
- t. The document sought by the Petitioner under paragraph 4 (u) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
- u. The document sought by the Petitioner under paragraph 4 (v) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
- v. The documents sought by the Petitioner under paragraphs 4 (w • aa) are neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;
- w. The document sought by the Petitioner under paragraphs 4 (cc) is neither relevant to the determination of the Petition nor in the possession and control of the 7th Respondent;

Analysis and Determination:

5. I have analysed the prayers sought in this motion vis-à-vis the response in opposition thereto. The 1st Respondent, in a brief response to the application, stated that the documents requested were already provided by the 7th Respondent. On the other hand, the 7th Respondent said that for the documents not produced, they were not in their possession and they were not relevant to the determination of this petition.
6. In considering whether or not to grant the orders sought, there are principles that an Applicant must demonstrate. In the case of *Odinga & another v Independent Electoral and Boundaries Commission & 2 others* (Election Petition 1 of 2017) [2017] KESC 31 (KLR) (Election Petitions) (28 August 2017) (Ruling), the Supreme Court of Kenya held inter alia;

“The access and supply of a large number of software and hardware could occasion possible security and software integrity issues that could militate against a blanket grant of all the orders sought. Some of the orders sought were outside the relevance and purview of the petitioners’ case. Consequently, any order granted concerning that prayer had to be practical, timeous and relevant to the issues in contest. Hence, orders of access and supply of information that met the above criteria would be granted at the end of the ruling. The information would also assist the court in reaching a fair decision in the petition and



without jeopardising or compromising any party's stated position in it." (underline mine for emphasis).

7. While I take cognisance that it is not the duty of parties to determine what is and is not important in a dispute such as this, it is also necessary to demonstrate that the documents requested for a party to produce are in that party's possession. In this instance, 1st to 4th Respondents stated that the 7th Respondent had produced all the necessary documents, while the 7th Respondent denies having the documents which are requested and which they have not filed.
8. The 5th and 7th Respondents have produced documents in support of their defence. Some of the documents requested touch on issues that are not directly pleaded in the petition, for instance, the question of subdivision and or densification. The 7th Respondent has denied having some of these documents. The viable way will be for the petitioner to take up the matter in a separate cause of action, where they can demonstrate by way of evidence that the said Respondents indeed hold the impugned documents.
9. Consequently, this court, in exercising its inherent powers, does allow the orders to be limited to documents that ordinarily should be in the possession of the Respondents by the nature of the transactions forming the subject of this dispute. These are as follows:
 - i. As against the 1st to 4th Respondents to produce the documents under paragraphs c, g and r within 30 days of this order, (c) Prescribed Form Plupa/DC/IA on Application for Development Permission (Demolition) was duly submitted to the CECM by the owner of the subject property, with a clear date of the submission and a copy of the report on the proposed demolition.
 - (g) Prescribed Form Plupa/DC/IG (Authority to Issue Development Permission and Other Development Control Instruments) as issued by the CECM to the County Director of Physical and Land Use Planning.
 - (r) Prescribed Form PLUPAJDC/8 (Notification of Approval of Development Permission (Demolition) from the CECM to the Owner of the subject property) form Plupa/DC/14 (Commencement Notice for Development) (Demolition) to the CECM by the owner/developer/contractor of the approved proposed development on the subject property
 - ii. The 7th Respondent shall, within 30 days of this order, serve the Petitioner with the documents pleaded under paragraph (u), the prescribed Form Plupa/DC/IB (Application for Development Permission) (Building Plan) by the owner/developer/agent of the subject property. with a clear date of submission to the CECM.
 - iii. Costs of the application to the 1st, 5th and 7th Respondents.

DATED, SIGNED AND DELIVERED AT NAIROBI, THIS 21ST DAY OF AUGUST, 2025.

A. OMOLLO

JUDGE

