



**Dennis Pritt Residents Association & 4 others v Nairobi City
County Government & 6 others (Environment & Land Petition
E037 of 2024) [2025] KEELC 948 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 948 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E037 OF 2024
AA OMOLLO, J
FEBRUARY 27, 2025**

BETWEEN

**DENNIS PRITT RESIDENTS ASSOCIATION 1ST PETITIONER
LAVENDER NAMDIERO 2ND PETITIONER
IRUNGU HAUGHTON 3RD PETITIONER
MOSES WAIHARO 4TH PETITIONER
YUSUF AHMED 5TH PETITIONER**

AND

**NAIROBI CITY COUNTY GOVERNMENT 1ST RESPONDENT
GODFREY AKUMALI 2ND RESPONDENT
PATRICK ANALO AKIVAGA 3RD RESPONDENT
PATRICK MBOGO 4TH RESPONDENT
NEMA AUTHORITY 5TH RESPONDENT
NATIONAL CONSTRUCTION AUTHORITY 6TH RESPONDENT
GIRINI COMPANY LIMITED 7TH RESPONDENT**

RULING

1. The first application for determination is the Petitioners notice of motion dated 16th October, 2024 brought pursuant to article 70 of *the constitution* and Rules 3, 4, 13 and 23 of *the Constitution* of Kenya Practice and Procedure Rules 2013. The applicants seek orders that;



1. Spent
 2. Spent
 3. Spent
 4. That a Conservatory Order be and is hereby given stopping, halting and discontinuing the 7th Respondent, their servants/agents/proponents, or any other person, from undertaking any further development and construction activities on the property known as Nairobi/Block 19/696 – Turbo Road, Kilimani Area, Nairobi pending the hearing and determination of this Petition.
 5. That Conservatory Order be and is hereby given, compelling the 1st, 2nd, 3rd, 4th and 5th Respondents to take immediate measures to stop, prevent or discontinue any construction and development activities, or any act or omission deleterious to the environment on the property known as Nairobi/Block 16/696 – Turbo Road, Kilimani Area, Nairobi including arresting and prosecuting any person or equipment being used to undertake further construction and development on the said properties by the 7th Respondent, their agents/proponents, or any other person, pending the hearing and determination of this Petition.
 6. That this Honourable Court do give any further orders and/or directions deemed just, fair and necessary.
 7. That the costs of the application be provided for.
2. The application is premised on the grounds listed on its face inter alia;
- a. The 1st to 4th Respondents are in the know that no physical and land use development plan and/or local physical and land use development plan for Kilimani Area, Nairobi has been prepared, developed or published by the 1st and 4th Respondents as required and mandated under the Physical and Land Use and Planning Act, 2019.
 - b. Development and construction on the subject property is in out-right breach, and in violation of *the Constitution* of Kenya 2010, PLUPA, and the Development and Control Regulations made thereunder, the EMCA and the NCA Act.
 - c. Despite knowledge of the ongoing illegal and irregular developments and construction activities, the 1st, 2nd, 3rd and 4th Respondents have deliberately refused and or failed to stop and halt the excavation and construction activities. They have also refused/failed to arrest and prosecute the 7th Respondent, including their equipment and machines used in the ongoing illegal activities and further, failed to ORDER the 7th Respondent to restore the subject property land to its original condition as at July, 2024, as obligated under Section 57 of PLUPA.
 - d. The 1st to 6th Respondents are institutions and public officers with statutory power and authority to arrest the situation, more so the mandatory statutory duties to prohibit or control the use and development of land and buildings in the interest or proper and orderly development, and further, to issue and serve on any person, in respect to any matter relating to the management of the environment, restoration orders requiring the person/s to restore the environment to as near as it may be, to the state it was before the taking of the action which is subject to the order.
 - e. Efforts by the Petitioners/Applicants to have the illegal development stopped, halted or discontinued by the 1st to 6th Respondents have been futile, and there are clear indications that



the said Respondents are aiding and abetting the 7th Respondent undertake the illegal and irregular development to completion and occupation.

- f. The development and construction activities have, and will continue breaching, denying, violating and infringing upon or threatening the Petitioners/Applicants' and the general public's right to life and to a clean and healthy environment.
 - g. The acts and omissions are deleterious to the environment and are out of character with planning and land use of the area. They are also denying, violating, infringing or threatening the Petitioner/Applicants' and the general public's right to life and to a clean and healthy environment and also subjecting the Applicants to inhumane and degrading treatment.
 - h. The loss and damage, including the environmental loss caused and subjected to the Applicants and to the general public, is and shall be immeasurable, irreversible and irreparable.
 - i. Grant of the Conservatory orders prayed for will be in furtherance of the pre-cautionary principle.
3. The application is further supported by the affidavits of Lavender Namdiero sworn on 16th October, 2024 and 16th December, 2024 respectively. Ms. Namdiero deposes that she and the other Petitioners occupy plots neighbouring the plot of the 7th Respondent's land title No. NBI/Block/19/699 located at Turbo Road, Kilimani and it is where the impugned development is alleged to have commenced in July, 2024.
 4. The Petitioners assert that the Kilimani area is zoned for development of single dwelling residential per plot and that the 1st – 4th Respondents have not prepared local physical and land use development plan as provided in sections 36 – 40 and 46 – 50 of PLUPA. They add that the 7th Respondents' development is being undertaken without the requisite approvals obtained from the 1st – 6th Respondents.
 5. That their efforts to have the illegal development stopped or halted by the 1st – 6th Respondent has been futile. They contend that the 1st – 6th Respondents were aiding the 7th Respondents to undertake the illegal and or irregular development as exhibited in annex LN – 9 in the affidavit in support of the Petitioner. They depose that the construction activities have and will continue breaching, violating and infringing upon the general public's right to life and to a clean and healthy environment.
 6. They contend that the development is deleterious to the environment and the damage caused or likely to be caused is immeasurable irreversible and irredeemable. That it will render the petition an academic exercise unless the conservatory orders prayed for are granted.
 7. In the latter affidavit sworn to counter the issues raised in the further affidavit, the Petitioners reiterated the earlier facts and law deponed and in particular on the provisions of PLUPA on preparation of the local physical and land use development plan effective 5th August 2019. Ms Namdiero refers to the gazette notice issued on 20th November, 2021 by the CS Lands and Physical Planning on the meaning of the term "change of use, development permission and zoning."
 8. She continued to state that part VI and VII of the General Regulations 2021 provides for the format of making submissions for development applications and processing of the same. That in this case, the development commenced in July 2024 with demolition of the existing house and felling of trees/flora long before the 1st to 4th Respondents had given their approval dated 27th June 2024. At paragraph 19, the Petitioners set out the illegalities of the so-called development approval given to the 7th Respondent.



In a nutshell, the supplementary affidavit has gone to great lengths to discredit the licenses issued to the 7th Respondent.

9. All the Respondents have opposed the application vide the various affidavit filed. The 1st – 4th Respondents filed a replying affidavit sworn by Patrick Analo Akivaga who introduced himself as the chief officer, Urban Development and Planning of the 1st respondent. He deposed that the suit property did not require a change of user license as the Lease presented to them had special conditions stating the land and buildings was to be used for office and residential.
10. He confirms receipt of application for development approval from the 7th Respondent submitted on 21st March, 2024 for residential building apartments. That after reviewal of the application by their technical experts, they granted the approval on 27th June, 2024. It is the 1st – 4th Respondents' averment that the 7th Respondent's development is not out of character with its surroundings.
11. In response to the zoning regulations, the 1st – 4th Respondents averred that the 2004 zoning policy which restricts developments to 4 floors around Kilimani is outdated for failing to take into account the growing population, Mr. Akiwaga further deposes that the Zoning policy is under review at the County Assembly. He further avers to the 7th Respondent engaging the residents during the E.I.A process.
12. The 5th Respondent filed its replying affidavit sworn on 30th November, 2024 by Godfrey Wafula. In its introductory paragraphs, he sets out the mandate of the 5th Respondents (NEMA). In regard to the matters in issue, he deposes that they lawfully issued the 7th Respondent with a license on 31st October, 2024. That the issuance of the licence was after the 7th Respondent fulfilled their requirements.
13. The 5th Respondents set out the requirements met in paragraph 8 – 20 of the Replying Affidavit inter alia;
 - a. Submitting on EIA study report
 - b. Publishing a notice in the print media via star newspaper & Kenya Gazette and Radio classic.
 - c. Meaningfully engaging the neighbours.
14. He deposed that the 5th Respondents received complaints and concerns of the residents which they considered during the review of the study report and the decision-making process. That the EIA license was granted after following due process.
15. The 6th Respondent in its replying affidavit confirmed issuing a licence (Certificate of compliance) after the 7th Respondent presented the relevant approvals from the respective government agencies.
16. The 7th Respondent filed a Replying Affidavit sworn by Wang Maoyong who deposed inter alia that the petitioner's application is an abuse of the court process and a misrepresentation of facts. The 7th Respondent avers that its development is consistent with the permitted user and that they have procured all the necessary licenses. That any inaction on the part of the 1st – 4th Respondents cannot be attributed to it.
17. The 7th Respondent argues that the allegation contained in paragraphs 6 and 9 of the supporting affidavit are suppositions, presumptions and awareness which do not constitute evidentiary material, it is asserted for the 7th Respondent that their licenses remain unchallenged by the Applicants as their claim was premised on the non-existence of the licenses.
18. The 7th Respondent also addressed itself on the grounds for grant of conservatory orders by deposing that the Applicants must clearly particularize the specific provisions of the law which the 7th



Respondent has breached. That the Applicants have failed and or neglected to state such specific provisions.

19. The 7th Respondent deposed that on the face of the application, there are no substantive issues raised for consideration warranting further consideration by the court due to lack of evidentiary material. It accused the petitioners of malice and urged the court to dismiss the application as it has already incurred significant costs.

Analysis and Determination:

20. The parties agreed to prosecute the application by filing of written submissions and to which all the parties complied. I have read and considered the submissions as filed. I will cite the relevant parts in the body of this determination. For the determination of whether or not to grant the conservatory orders sought, I have framed the following questions;
- a. Whether or not the 7th Respondent began the construction without the requisite development approvals.
 - b. Whether or not there is grounds put forth for granting the conservatory orders.
21. In submitting on the purpose of conservatory orders, the petitioners cited the case of *Gatirau Peter Munya vs. Dickson Mwenda & 20 Others (2014) KLR* where the Supreme Court of Kenya held thus;
- “86. Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.
22. The 7th Respondent also cited the Nairobi High Court case in Constitutional Pet. No. 154 of 2016, *Wilson Kaberia Nkunja vs The Magistrates and Judges Vetting Board & Others (2016) eKLR* which stated the principles for consideration as follows;
- i. An applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*;
See *Jimaldin Adan Ahmed & 10 Others vs Ali Ibrahim Roda and 2 Others (2015) eKLR*.
 - ii. Whether, if a conservatory order is not granted, the petition alleging violation of, or threat of violation of rights will be rendered nugatory; and
 - iii. The public interest must be considered before grant of a conservatory order.
23. Juxtaposing the holding in above case, I now proceed to consider whether the applicants have demonstrated the three principles stated hereinabove. The gist of the grounds pleaded in support of the application was that the construction on the subject property is an outright breach and violation of *the Constitution*, and the Statutory provisions contained in PLUPA, EMCA, NCA and the Development Control Regulations.



24. The Petitioners accuse the 1st – 6th Respondents of failing to stop the illegal development being undertaken on the impugned premises by the 7th Respondent. The particulars of the illegality are not stated on the face of the application. Both affidavits sworn in support of the application has cited in detail the failures by the 1st – 4th Respondent to comply with sections of PLUPA and specifically to sections 45 to 50 that requires them to prepare a local physical and land use development plan (PLAN). That the 7th Respondent's development approval is irregular and illegal because of the non-compliance by the 1st -4th Respondents to prepare the stated PLAN. They also aver that the development on the suit property started on 10th July 2024 when the 7th Respondent demolished the then existing single residential house and the felling of trees and other flora.
25. It is my interpretation of the Petitioners' prayer at this interlocutory stage that the 1st to 4th Respondents have no business licensing development of third parties until they shall have prepared and passed their local physical & land use development plan as provided for in the Act. Their argument is discerned from their deposition that the area is zoned as a single residential house per plot and yet there are several high -rise buildings so far constructed and built in the area without compliance of the law by the 1st to 4th Respondents.
26. In light of the above position, have the Applicants demonstrated a prima facie case with a likelihood of success? My answer would be yes particularly as against the 1st – 4th Respondent. This is so because the 1st – 4th Respondents admits to approving the 7th Respondent's development application, and they have also admitted that the current local physical and land use plan is under review at the County Assembly. Thus, as at the time of filing of this petition, the local physical and land use plan to be used for approving any development must be the one sought to be reviewed.
27. Would the omission by the 1st to 4th Respondents form a basis to issue the conservatory orders sought to stop the development of the 7th Respondent? The wording of the orders is directed against the 7th Respondent to stop their development for want of compliance of the law by the 1st to 4th Respondents. At the same the Applicants have deposed that despite the absence of the local physical and land use plan, there are constructed in the area several high-rise buildings and this is visible from the photograph annexed as L-N I by them.
28. The 7th Respondent has submitted if the orders are granted, it would be discriminatory as against it as provided for in article 27 of Constitution. They have also annexed copies of all requisite licenses issued to it to undertake development on the suit plot. Given that the Petitioners pleadings posit that there is already in existence constructed high-rise buildings done in violations of the law, issuing interlocutory conservatory orders as against the 7th Respondent on account of non-compliance may not cure the prejudice the Applicants are likely to suffer if the orders are not issued.
29. The Petitioners submitted on the flaws of the development plan of the 7th Respondent as approved following comments made by the Ministry of Lands, Public Works and Housing vide their letter to the 5th Respondent which flaws include; the size of ventilation provided for the rooms, the cantilever floor projecting beyond the required building lines et al contrary to the Building Code. The Petitioners accuse NEMA of taking the place of the place of the 4th Respondent contrary to section 60 of PLUPA and proceeding to issue license despite the objection.
30. There are other several issues submitted on by the Petitioners including the special conditions of the lease providing for residential and offices yet the approval is only for residential. These are matters which in my view require the court to review the documents presented by the parties to confirm such flaws which evidence touches on the merits of the Petition. It is my considered view that despite the pertinent matters pointed out by the Petitioners, refusal to grant the orders would not render the



Petition nugatory as most of the issues are administrative and can be corrected by granting appropriate reliefs if the Petition succeeds.

31. Further, the Petitioners have not pleaded with clarity what actions of the 7th Respondent if the conservatory orders are not confirmed is likely to cause harm to the clean environment or the right to life. The 7th Respondent describes the averments of the Applicants to consists of suppositions and assumptions. The prima facie case was premised mainly on the omissions of the 1st to 4th Respondents approving the 7th Respondent's development without a local physical and land use plan in place. Therefore, the Applicants ought to demonstrate how the development of the 7th Respondent is likely or threatens their rights that would invite the application of the pre-cautionary principle (see the case of Anarita Karimi vs R (1979)eklr).
32. The result of the foregoing analysis is my holding that the orders sought in the present application is declined for two reasons. First, there is already an approved development plan in favour of the 7th Respondent which cannot be withdrawn at this interlocutory stage since the conservatory orders sought were not in the nature of a mandatory temporary injunction. Secondly, the Applicants have not pleaded on the grounds in support of the motion and the affidavits thereto how the intended development was going per se to be deleterious to the environment and or violates the rights to life and to a clean environment of the Petitioners and the general public.
33. Consequently, the application is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025

A. OMOLLO

JUDGE

