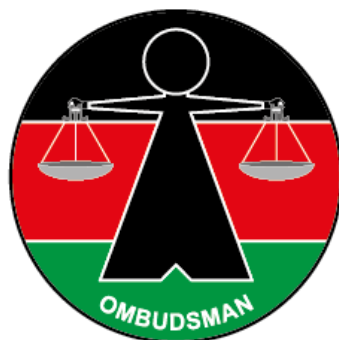


# THE COMMISSION ON ADMINISTRATIVE JUSTICE (Office of the Ombudsman)



*Hata Mnyonge ana Haki*

## INVESTIGATION REPORT

### INVESTIGATION REPORT ON ALLEGED IRREGULAR BUILDING APPROVALS AND REGULATORY FAILURES IN NAIROBI CITY COUNTY: THE CASE OF L.R. NO. 36/VII/234



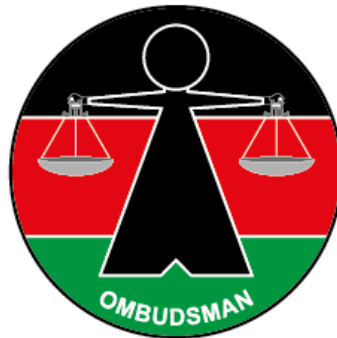
FEBRUARY 2026





# THE COMMISSION ON ADMINISTRATIVE JUSTICE

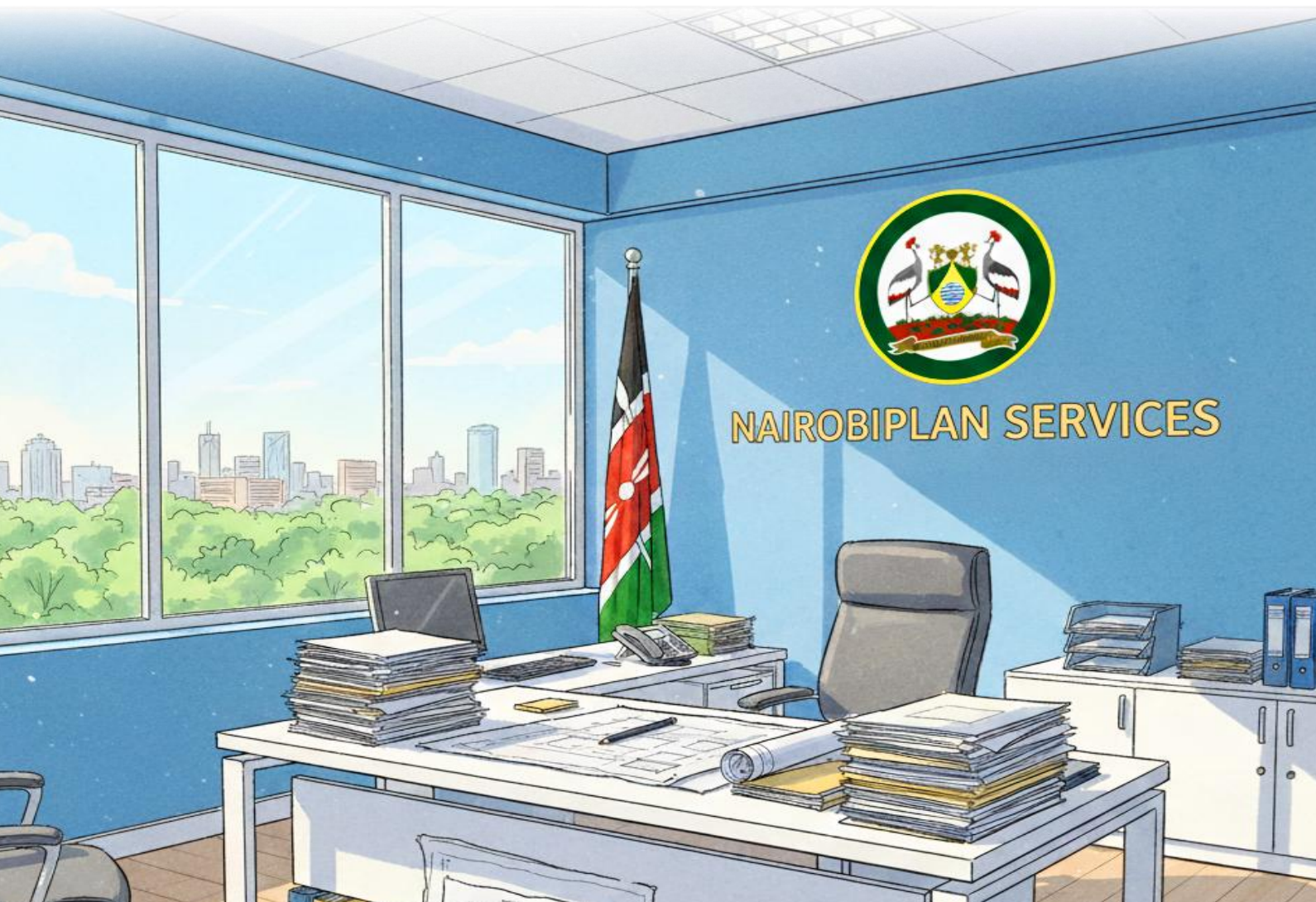
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## INVESTIGATION REPORT

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CAJ/90/2025

## Foreword

This report presents the outcome of a detailed investigation conducted by the Commission on Administrative Justice (CAJ) following a formal complaint by Coldstone Investment Limited regarding the high-rise development on L.R. No. 36/VII/234 by Khaleej Towers Limited in Eastleigh, Nairobi City County. The investigation focused on allegations, including irregular approval of building plans, misrepresentation by the Nairobi City Water and Sewerage Company (NCWSC) regarding the existence of a public sewer wayleave between plots L.R. No. 36/VII/234 and L.R. No. 36/VII/235, and the failure of County officials to enforce planning regulations despite the issuance of enforcement notices and revocation orders.

The findings reveal systemic weaknesses in Nairobi City County's planning and development oversight, with procedural irregularities and enforcement failures that allowed non-compliant construction to proceed, ultimately infringing on the rights of neighboring property owners. Notably, although a public sewer wayleave exists between L.R. No. 36/VII/234 and L.R. No. 36/VII/235, the land upon which it lies remains private. The reliance on the existence of the wayleave to justify construction activities directly contributed to the unlawful development encroaching onto the complainant's property boundary.

These lapses highlight the urgent need to strengthen the urban development regulatory framework that governs urban development, intended to safeguard both public and private interests. The consequences of weak oversight are not merely procedural but tangible, as evidenced by recent incidents of building collapses in Nairobi and other urban centers, which highlight the potentially catastrophic human, economic, and environmental costs of non-compliance.

This report, therefore, serves not only as an administrative record of investigative findings but as a call to action for strengthened enforcement, improved inter-agency coordination, rigorous professional oversight, and institutional reforms. It provides recommendations to promote compliance, protect property rights, and restore public confidence in Nairobi City County's development control processes.

The Commission extends its appreciation to all stakeholders who cooperated during the investigation and reiterates its commitment to upholding integrity, accountability, and the rule of law in public administration.

Signed this 6<sup>th</sup> day of February, 2026.



Charles Dulo, EBS

**Chairperson, Commission on Administrative Justice**

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## Acronyms

CAJ	Commission on Administrative Justice
NCWSC	Nairobi City Water and Sewerage Company
NPDMS	Nairobi Planning and Development Management System
PLUPA	Physical and Land Use Planning Act
UPTC	Urban Planning Technical Committee
AAK	Architectural Association of Kenya
EBK	Engineers Board of Kenya
NEMA	National Environment Management Authority
KCAA	Kenya Civil Aviation Authority
CECM	County Executive Committee Member
DCO	Development Control Officer
NMS	Nairobi Metropolitan Services
EIA	Environmental Impact Assessment
NLC	National Land Commission
CPSB	County Public Service Board
ODPP	Office of the Director of Public Prosecutions

## Executive Summary

In October 2023, the Commission received a formal complaint from **Coldstone Investment Limited**, owner of L.R. No. 36/VII/235 in Eastleigh, Nairobi City County, concerning a dispute with **Khaleej Towers Limited**, owner of the adjoining property, L.R. No. 36/VII/234. The complainant alleged that the construction on L.R. No. 36/VII/234 was irregularly approved, violated planning, zoning, building, and environmental laws, and infringed on the rights of Coldstone Investment Limited and its tenants.

Key allegations included:

1. **Irregular Approval of Building Plans** – The building approvals contravened the Physical and Land Use Planning Act (PLUPA), 2019, the Building Code, and Nairobi zoning Regulations. Setback requirements were not observed, resulting in encroachment into the complainant's property.
2. **Violation of Environmental and Construction Laws** – The construction allegedly breached the Environmental Management and Coordination Act (EMCA), 1999, and the National Construction Authority Act by failing to comply with environmental and construction standards.
3. **Encroachment and Harassment** – The complainant reported unauthorized demolition of its boundary wall, installation of sewer connections by NCWSC, encroachment through scaffolding and hoarding, dumping of debris, harassment of staff, and reduced natural light.
4. **Failure of Enforcement** – Nairobi City County officials allegedly failed to enforce zoning and building regulations, allowing non-compliant construction to continue despite enforcement notices.

In response, **Khaleej Towers Limited** claimed that it had obtained all requisite approvals and accused Coldstone of interfering with a public sewer wayleave. Given these conflicting claims, the Commission initiated a detailed investigation to determine:

- The existence of a registered sewer wayleave between the two properties.
- Irregularities in the approval of building plans for L.R. No. 36/VII/234.
- Enforcement of building regulations by Nairobi City County.
- Culpability of public officers involved in the approval and oversight of the construction.

## Key Findings:

1. **Sewer Wayleave** – The investigation established that while a public sewer wayleave exists and serves a public utility function under the operation of the Nairobi City Water and Sewerage Company (NCWSC), the land on which it is situated remains privately owned by Coldstone Investment Limited. The wayleave was not shown to have been lawfully registered or to vest ownership in the public. Accordingly, the existence of the sewer line does not convert the affected portion of land into public land, nor does it justify encroachment, non-compliance with statutory setbacks, or construction along the common boundary by Khaleej Towers Limited.
2. **Irregular Building Approvals** – Approvals CPF-AW765 and PLUPA-BPM-022413-Q were irregular, procedurally flawed, and non-compliant with PLUPA, the Building Code, and zoning Regulations. Failures included premature issuance of approvals, misrepresentation by the architect, inadequate technical review, and weak enforcement by the County.
3. **Enforcement Failures** – Despite issuance of an Enforcement Notice and revocation of approvals, Nairobi City County failed to halt construction, reflecting serious lapses in regulatory oversight.
4. **Culpability of Public Officers** – County officials, including senior and technical officers, were found culpable for dereliction of duty, irregular approvals, disregard of technical objections, misrepresentation of a sewer wayleave, and failure to enforce regulatory measures.
5. **Systemic Weaknesses** – The investigation revealed significant gaps within the Nairobi Planning and Development Management System (NPDMS), including unregulated officer discretion, inactive enforcement modules, poor inter-departmental coordination, and widespread non-compliance among surrounding developments.

## Recommended Actions and Reforms:

- **Legal and Disciplinary Action** –The DPP to Initiate legal proceedings against culpable officers and the Nairobi City County Public Service Board to institute disciplinary action against senior and technical County officials, as well as administrative action against NCWSC management and representatives.
- **Institutional and System Reforms** –The County Government of Nairobi to reconstitute the Urban Planning Technical Committee (UPTC) for inclusivity, strengthen internal controls in NPDMS, mandate multidisciplinary reviews, track repeat offenders, operationalize enforcement modules, and establish joint verification protocols for infrastructure claims.

- **Policy and Oversight** – The County Government of Nairobi to fast-track the development of Nairobi City County Development Control Policy, conduct a public inquiry into systemic failures, and enhance inter-agency coordination and public participation.
- **Professional Accountability** – the Architectural Association of Kenya (AAK) and the Engineers Board of Kenya (EBK) to investigate and sanction professionals who submitted misleading or non-compliant plans, including targeted action against Rayplan Architects.
- **Damages** - The Commission recommends General and special damages to be paid jointly and severally by the Nairobi City County Government and Khaleej Towers Limited as compensation to Coldstone Investment Limited to redress for unlawful administrative action and interference with property rights.

This investigation highlights both individual culpability and systemic weaknesses within Nairobi City County's planning, approval, and enforcement mechanisms. The recommendations aim to restore accountability, strengthen regulatory compliance, and prevent recurrence of similar disputes, while providing redress to the affected complainant.

## CHAPTER 1: INTRODUCTION

### 1.1 Background to the investigation

In October 2023, the Commission received a formal complaint from Coldstone Investment Limited, the registered owner of L.R No. 36/VII/235 in Eastleigh, Nairobi City County, concerning a construction dispute with Khaleej Towers Limited, the registered owner of the adjoining property, L.R No. 36/VII/234.

Coldstone Investment Limited alleged that the development on L.R No. 36/VII/234 was irregularly approved and violated various planning, zoning, building, and environmental laws, resulting in infringement of their property rights and those of their tenants. The complainant specifically averred that:

1. Irregular Approval of Building Plans – The approval of building plans contravened the Physical and Land Use Planning Act, 2019, the Building Code, zoning Regulations, and the Nairobi City County By-Laws. The development allegedly failed to meet statutory setback requirements, including:
  - Bedroom windows not recessed at least 2.4 meters from the complainant's boundary.
  - Sitting rooms and balconies not recessed at least 6 meters from the complainant's boundary.
2. Violation of Environmental and Construction Laws – The construction allegedly breached provisions of the Environmental Management and Coordination Act (EMCA), 1999 (as amended), and the National Construction Authority Act, by proceeding without due regard for environmental and construction standards.
3. Encroachment and Harassment – The complainant claimed that Khaleej Towers Limited unlawfully asserted the existence of a public sewer wayleave within L.R No. 36/VII/235. This allegedly resulted in:
  - Demolition of part of Coldstone's boundary wall.
  - Authorization by the Nairobi City Water and Sewerage Company (NCWSC) for Khaleej to construct an inspection chamber and sewer connection within L.R No. 36/VII/235.
  - Encroachment into Coldstone's property through scaffolding and hoarding (ranging from 1 to 1.9 meters).
  - Malicious dumping of construction debris in Coldstone's backyard.

- Harassment of Coldstone's staff by Nairobi City County Inspectorate and Public Health officers from Kamukunji Sub-County, purportedly on grounds of encroachment into a "non-existent sewer wayleave."
  - Reduction of natural light to Coldstone's property due to inadequate building recess.
4. Failure by County Officials to Enforce the Law – The complainant accused Planning, Compliance, and Enforcement officials of the Nairobi City County Government of dereliction of duty by failing to enforce zoning and building regulations, thereby enabling the continuation of noncompliant construction works.

The complainant further indicated that they had raised concerns with multiple offices, including:

- The Governor, Nairobi City County.
- The Chief Officer, Urban Planning and Development.
- The Director, Planning, Compliance, and Enforcement.
- The Director, City Inspectorate.
- The Managing Director, NCWSC.
- The Director, Development, Management, and Planning.
- The National Environment Management Authority (NEMA).

Despite these efforts, the complainant averred that no effective intervention was taken. Coldstone therefore petitioned the Commission to investigate the matter and take remedial action against Nairobi City County for the alleged irregular approval of building plans and failure to enforce an Enforcement Notice issued against Khaleej Towers Limited.

In response, Khaleej Towers Limited separately submitted a complaint to the Commission, accusing Coldstone Investment Limited of interfering with the implementation of its duly approved project. Khaleej asserted that it had obtained all requisite approvals from the relevant government authorities and accused Coldstone of encroaching on a public sewer wayleave.

Given these conflicting claims, the Commission initiated an investigation to determine:

- The veracity of the allegations made by both parties.
- Whether the Nairobi City County Government and NCWSC acted in accordance with applicable laws, regulations, and professional obligations.

- Whether the alleged sewer wayleave was legally established under the relevant land, planning, and survey laws.

## 1.2 Issues under Investigation

The following key issues guided the investigation:

- To determine the legal status and nature of the sewer line situated between L.R. No. 36/VII/234 and L.R. No. 36/VII/235, including whether it constitutes an easement or a wayleave under applicable law.
- To examine the process through which building plans for the construction project on L.R. No. 36/VII/234 were submitted, reviewed, and approved, and to assess compliance with applicable laws, policies, and procedures.
- To examine whether Nairobi City County Government officials discharged their regulatory and oversight responsibilities in enforcing applicable building and planning regulations during the construction of the project on L.R. No. 36/VII/234.
- To establish whether any loss or damage arose in connection with the approval and execution of the construction project on L.R. No. 36/VII/234, and, if so, the nature and extent of such damage.
- To determine, based on the evidence, whether any acts or omissions by public officers involved in the approval, supervision, or oversight of the project give rise to administrative or disciplinary responsibility.

This investigation, therefore, sought to establish the relevant facts, determine accountability, and recommend appropriate remedial and preventive measures

## 1.3 Investigation Process

### 1.3.1 Notification

The Governor, Nairobi City County Government, was notified of the Commission's decision to undertake the investigation vide a letter Ref: CAJ/CG/NRB/060/398/23 (1) dated 9th January, 2024.

### 1.3.2 Offices Visited

CAJ investigators visited the County Government Offices at City Hall and Nairobi Water and Sewerage Company at Kampala Road and Eastleigh to conduct interviews and recover relevant documents. The following documents were recovered:

1. Survey of Kenya Map (F/R 56/79)
2. Nairobi County Lands Section-Boundary Dispute Report
3. Nairobi Public Health Department Inspection Report
4. Sewer Layout Map
5. Architectural Drawings for Application CPF-AW/765

6. NDMS Application History for PLUPA-BPM-022413-Q
7. Approval Letter (DC8) for PLUPA-BPM-022413-Q
8. Urban Planning Technical Committee (UPTC) Meeting Minutes (February 3, 2022)
9. Urban Planning Technical Committee (UPTC) Meeting Minutes (August 31, 2023)
10. Revocation Letter (Ref: UPD/DC/36/VII/234/0057/F00/24, dated March 14, 2024)
11. Enforcement Notice (Serial Number 1851, dated January 31, 2023)
12. Zoning Policy for Nairobi (Extract)
13. Agenda (List of evaluated applications recommended for approval)

### 1.3.3 Officials Interviewed

- a) Mr. Stephen Mwangi – CECM, Built Environment and Urban Planning
- b) Mr. Patrick Analo – Chief Officer, Urban Development and Planning
- c) Mr. Dominic Mutegi- Director Development Management
- d) Mr. Tom Achar – Director, Planning, Compliance, and Enforcement
- e) Eng. Manore, Technical Director and Innocent Muthama, Land Surveyor, representing Eng. Nahashon Muguna (Managing Director), Nairobi City Water and Sewerage Company (NCWSC)
- f) Mr. Jassan N. Njani, Retired Deputy Director of Development Control
- g) Mr Philip Mbithi Kiswii-Ag. Assistant Director, Lands, Nairobi City County
- h) Mr. Fredrick Ochanda – Assistant Director, Development Control
- i) Mr. Ronald Mulema-Administrator, Kamukunji Subcounty
- j) Mr. Simon Omondi – Development Control Officer
- k) Mr. Erick Okuku – Planning, Compliance and Enforcement Officer
- l) Urban Planning Technical Committee (UPTC)
- m) Mr. Stanley Kimani (UPTC Representative), NCWSC
- n) Mr. Kipngetch Langat, Development Control Officer
- o) Khaleej Investment Limited Directors
- p) Mr. Noel C. Bwibo- Development Control Officer

## 1.4 Legal Framework

The investigation was guided by the following constitutional and statutory provisions, which define the mandate, powers, and obligations of the Commission on Administrative Justice (CAJ), as well as the applicable sectoral legislation governing land use, planning, and building control in Kenya.

### 1.4.1 The Constitution of Kenya, 2010, and the CAJ Act, 2011

The Commission on Administrative Justice (CAJ) derives its investigative mandate from:

- **Article 40** of the Constitution protects property ownership and ensures no one is deprived of it without due process, fair compensation, and access to justice
- **Articles 59(2) (h–j) and 59(4)** of the Constitution, which empower the Commission to investigate any conduct in state affairs or acts or omissions in public administration, including complaints relating to abuse of power, unfair treatment, manifest injustice, or unlawful, oppressive, unfair or unresponsive official conduct.
- **Article 252(1)(a)** of the Constitution, which further empowers commissions to conduct investigations on their own initiative or upon complaint.

The **Commission on Administrative Justice Act, 2011**, operationalizes these powers and obligations. Specifically:

- **Section 8(a)** investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice;
- **Section 8(g)** empowers the Commission to recommend compensation or other remedies.
- **Sections 26–29** empower the Commission to investigate, summon witnesses, administer oaths, compel production of information, and adjudicate matters relating to administrative justice.
- **Section 41** authorizes the Commission to take appropriate action, including referral of matters disclosing criminal offences to competent authorities.
- **Section 42** requires the Commission to prepare and submit investigation reports, including findings, recommended actions, and reasons thereof. Where its recommendations are not implemented, the Commission may escalate the matter to the National Assembly under **Section 42(4)** for appropriate action.

Together, these provisions establish CAJ's jurisdiction, investigative powers, remedial authority, and reporting obligations.

#### 1.4.2 The Physical and Land Use Planning Act, 2019

The Physical and Land Use Planning Act, 2019 (No. 13 of 2019) provides the legal framework for orderly land development and planning in Kenya. Relevant provisions include:

- **Section 4:** Obligates state organs and officers to uphold constitutional values (Articles 10, 60, 73, 75, and 232) in land use and physical planning.
- **Sections 20, 56–61, 67, 72:** Confer powers on county governments to regulate development, grant or revoke development permissions, enforce compliance, and issue enforcement notices for unauthorized developments.
- **Section 57:** Prohibits any development without permission, creating criminal liability for contravention.
- **Third Schedule (s.55):** Sets out detailed requirements for development control, including change of use, subdivisions, and building standards.

These provisions regulate the approval process, establish penalties for non-compliance, and empower counties to enforce development control.

#### 1.4.3 The Local Government (Adoptive By-Laws) (Building) Order, 1968

The Building By-Laws, 1968, continue to provide standards and obligations in building development. Key provisions include:

- **By-laws 7, 10, 17–18, 26, 91, 152:** Govern approval of building plans, siting of buildings, open spaces, frontage, windows, and external walls.
- **By-laws 242 and 252:** Create offences for erecting buildings contrary to approved plans or without approval.
- **By-law 256:** Grants council officers' authority to inspect buildings and plots.
- **By-law 257:** Prescribes penalties for contravention, including fines and imprisonment.

These provisions ensure structural integrity, safety, and compliance with urban development standards.

#### 1.4.4 The Physical and Land Use Planning (General Development Permission and Control) Regulations, 2021 (Legal Notice No. 253 of 2021)

These regulations operationalize the Physical and Land Use Planning Act by setting detailed procedures for development applications. Relevant provisions include:

- **Regulations 15–21:** Prescribe the process for submission, circulation, review, and approval of development applications, including public participation requirements under section 58 of the Act.
- **Regulation 22:** Defines classes of permitted development.
- **Part V:** Provides standards for easements and wayleaves.

- **Part IX, Regulation 29:** Obligates County governments to maintain registers of all development applications and decisions.
- **First Schedule:** Outlines mandatory conditions of development approvals, such as timelines for completion, compliance with zoning, and provision of infrastructure.

These rules ensure transparency, accountability, and public participation in land development decision-making.

#### 1.4.5 The Physical and Land Use Planning (Development Control Enforcement) Regulations, 2021 (Legal Notice No. 251 of 2021)

These regulations strengthen the enforcement of planning laws by establishing:

- **Enforcement Teams (Reg. 4–5)** comprising county physical planners, inspectors, and enforcement officers.
- **Authority of inspectors** to issue stay orders, inspect works, and report non-compliance.
- Enforcement procedures, penalties, and responsibilities of county governments in ensuring compliance with planning approvals.

#### 1.4.6 Land Registration Act, 2012

**Section 28** recognises easements and analogous rights as overriding interests in land, but only where they have been lawfully created.

**Section 107 (1)** – which states that any right, interest, or obligation acquired before the Act continues to exist under the old law that created it.

#### 1.4.7 Registered Land Act (Cap. 300) (Repealed)

**Section 30** lists overriding interests affecting registered land. It included: “Easements acquired or in the process of being acquired under the Limitation of Actions Act.”

#### 1.4.8 Limitation of Actions Act (Cap. 22)

**Section 32** allowed a person to acquire an easement through 20 years of uninterrupted use. Such easements did not need registration to be valid.

Under Kenyan law, the doctrine of **adverse possession** does **not apply** to public utility wayleaves situated on private land, as the occupation or use by entities such as Kenya Power, Nairobi Water, or Safaricom is carried out pursuant to statutory authority under the **Land Act, 2012**, the **Energy Act, 2019**, or the **Water**

**Act, 2016.** Such possession is therefore lawful and not adverse to the landowner's title. Nonetheless, the Limitation of Actions Act (Cap 22) still governs the timeframe within which a landowner may pursue claims arising from the establishment of a wayleave. Claims for compensation or damage must be brought within six years under Section 4(2), while actions to challenge or remove unauthorized installations must be instituted within twelve years under Section 7. Failure to act within these statutory periods may render the claim time-barred, thereby securing the continued occupation of the public utility on the affected land.

#### 1.4.9 The Wayleaves Act (Cap 292, Laws of Kenya)

- **Section 3** empowers the Government to construct and maintain public utility infrastructure such as sewers, drains, and pipelines across any land, provided that such works do not interfere with existing buildings.
- Under **Section 4(1)**, the Government is required to give at least one month's notice before carrying out any such works on private land without the owner's consent. This notice may be published in the Kenya Gazette or in any other manner directed by the Minister.
- Further, **Section 6** obliges the Government to make good any damage occasioned during the execution of works and to compensate the landowner for any trees, crops, or property destroyed or damaged in the process.
- In addition, **Section 7** authorizes government officers, contractors, and their agents to enter upon any land at any time for purposes related to surveying, marking, inspection, repair, removal, or maintenance of government-owned sewers, drains, or pipelines, provided such entry is in furtherance of the objectives of the Act.

#### 1.4.10 Survey Act (Cap. 299)

The Act mandates that all boundaries, subdivisions, and wayleaves must be surveyed and authenticated by the Director of Surveys.

- **Section 30** – Provides that no survey shall be accepted or used in connection with the registration of land unless it has been carried out and authenticated in accordance with the Act and regulations.
- **Section 32** – States that every survey plan must be authenticated by the Director of Surveys before it is filed or used in connection with land registration

#### 1.4.11 Land Act, Cap 280

An easement is a non-possessory right in another person's land, which allows the holder to use that land for a specific purpose, require the proprietor to take a certain action regarding the land, or restrict how the proprietor uses it. It does not include the right to extract or take away resources (a profit).

Key Provisions (Part X – Easements and Analogous Rights):

**Dominant tenement and Servient tenement (s.136):** The land that benefits from an easement is called the *dominant land*. The land that bears the burden of the easement is called the *servient land*.

**Duration (s.136(2)):** Easements exist only for as long as the land or lease out of which they were created subsists, unless otherwise provided by law.

**Nature of Easements (s.138):**

- Easements may grant the right to:
- do something over, under, or upon the servient land;
- prevent something from being done;
- require the servient owner to perform an act on the land; or
- graze livestock.

Easements **cannot** confer exclusive possession or rights to take resources away from the land.

**Continuity (s.138(3)):** Unless created for a fixed period or tied to a specific event, easements run with the land and burden the servient land for as long as the dominant land or lease exists.

**Wayleaves (s.144)**

- **Application:** Applications for wayleaves are made to the National Land Commission (NLC) by a State Department, County Government, public authority, or corporate body, using prescribed forms.
- **Notice Requirements:** The applicant (or NLC acting on its own motion) must serve notice on:
  - persons occupying the land (including those with customary pastoral rights),
  - the relevant County Government,
  - persons in actual occupation in urban/peri-urban areas, and
  - any other interested persons.
- **Publicity:** Notices must be clearly posted along the proposed route to inform all affected land users.

#### 1.4.12 Land Regulations, 2017

**Application Process (Reg. 51):** Applications for wayleaves are made using Form LA 52 and must include survey maps, drawings, and supporting documents.

**Notice and Public Participation (Reg. 52):**

The NLC must serve notices (Form LA 54) to affected landowners and occupiers. Notices must also be:

- posted visibly along the proposed route,
- announced on nationwide radio stations, and
- followed by an inspection of the proposed site.

**Registration (Reg. 61):** Once granted, an order for a public right-of-way or wayleave is forwarded to the County Land Registrar for entry into the land register.

#### 1.4.13 Nairobi City Development Ordinances and Zones (Zone 2: Eastleigh)

**Coverage:**

- Eastleigh District Centre
- Eastleigh Commercial/Residential Zone

**Permitted Ground Coverage:**

- District Centre: **80%**
- Commercial/Residential: **60%**

**Permitted Plot Ratio (building intensity):**

- District Centre: **250**
- Commercial/Residential: **240**

**Minimum Plot Size:** 0.05 hectares (approx. 0.125 acres).

**Reference Map Number:** CP/FP/XXX.

**Permitted Development:** High-rise commercial/residential flat

#### 1.4.14 County Governments Act, 2012

**Section 40** provides that while the Governor may dismiss a County Executive Committee (CEC) member, the County Assembly can also initiate their removal through a motion citing grounds such as incompetence, abuse of office, misconduct, absenteeism, incapacity, or violation of the law. If at least one-third of MCAs support the motion, a select committee investigates within 10 days, giving the CEC member a chance to respond. If the allegations are proven and a majority of the assembly votes in favor, the Governor is required to dismiss the member.

## CHAPTER 2: ANALYSIS AND FINDINGS

### 2.1 Status and Nature of the Sewer Line Between L.R. No. 36/VII/234 and L.R. No.36/VII/235

#### 2.1.1 Allegation

Coldstone Investment Limited, while refuting the existence of a public wayleave, alleged that Khaleej Towers Limited relied on the assumed existence of a public wayleave corridor as the primary justification for constructing its building on L.R. No. 36/VII/234 up to the boundary line, without observing the requisite setback requirements. The same assumption, according to Coldstone, was used to justify the incorporation of windows opening directly onto the adjoining property, L.R. No. 36/VII/235, owned by Coldstone Investment Limited.

Coldstone further alleged that during the construction of Khaleej Towers, hoarding and scaffolding were erected in a manner that encroached into L.R. No. 36/VII/235 by approximately 1 to 1.9 metres, and that the boundary wall separating the two parcels was demolished during excavation and construction works on the erroneous assumption that the affected area constituted a public wayleave.

In view of these allegations, the Commission undertook this investigation to determine whether the sewer line located between L.R. No. 36/VII/234 and L.R. No. 36/VII/235 constitutes an easement or a wayleave, and to assess the impact of this distinction on the respective rights and obligations of the two property owners.

#### 2.1.2 Analysis of Evidence

##### **a) Ownership and Boundary Confirmation for LR No. 36/VII/235**

The ownership of L.R. No. 36/VII/235 is registered in the name of Coldstone Investment Limited under Certificate of Title Serial No. 0008109, corresponding to Title Number Nairobi/Block/49/112, measuring approximately 0.1156 hectares. Pursuant to a request by Coldstone Investment Limited, the Nairobi Regional Survey Office, through its letter dated 1st March 2023, conducted a boundary re-establishment exercise and confirmed that the parcel's boundaries are consistent with the approved survey plan F.R. No. 56/79. The survey further established that a sewer line easement traverses L.R. No. 36/VII/235.

### b) Survey of Kenya Map (F/R 56/79)

A review of the Survey of Kenya Map (F/R 56/79) indicates that there is no registered public sewer wayleave between L.R No. 36/VII/234 and L.R No. 36/VII/235. The map (Figure 1), clearly marking the two parcels in red, shows a distinct boundary separating the plots, with no indication of a designated wayleave corridor between them.

In an interview with CAJ investigators, the Nairobi County Land Surveyor asserted that no registered public wayleave exists between the two properties. Instead, an unregistered sewer easement runs through L.R. No. 36/VII/235, which is owned by Coldstone Investment Limited.

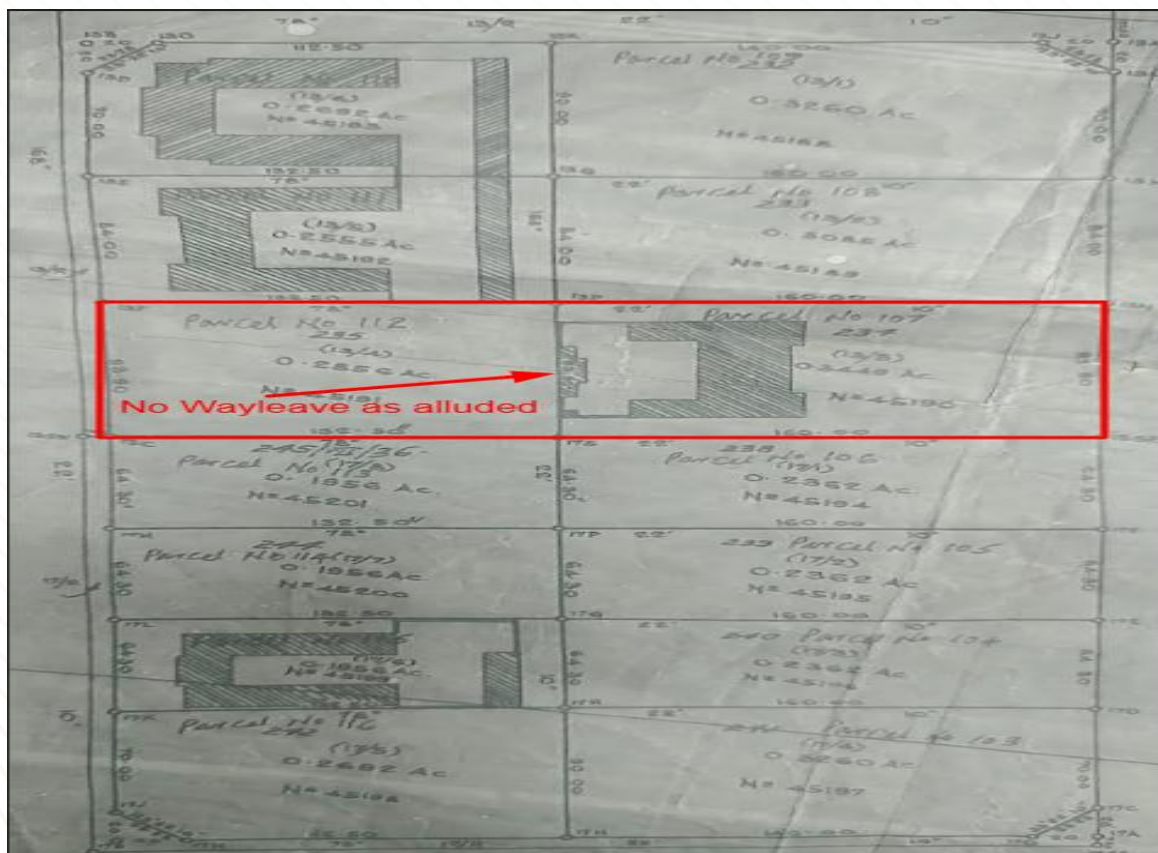


Figure 1: Survey of Kenya Map F/R 56/79

### c) Nairobi County Lands Section-Boundary Dispute Report

Following a complaint by Coldstone Investment Limited dated March 22, 2023, the Nairobi County Lands Department conducted a land boundary dispute resolution on June 21, 2023. The meeting was attended by representatives from Coldstone Investment Limited, Khaleej Towers Limited, NCWSC, Nairobi City County Lands Department, Subcounty Commander, and Subcounty Administrator.

The objective, according to the report dated 11<sup>th</sup> July 2023, was to determine whether a registered public sewer wayleave existed between the two plots and to investigate allegations of encroachment by the permanent building on L.R. No. 36/VII/234 into L.R. No. 36/VII/235.

Key findings from the report include:

- There is no registered public sewer wayleave between L.R. No. 36/VII/234 and L.R. No. 36/VII/235. Instead, the sewer line easement runs within L.R. No. 36/VII/235, a parcel owned by Coldstone Investment Limited. The portion of land occupied by the sewer is legally part of L.R. No. 36/VII/235 and does not constitute public land.
- The permanent building on L.R. No. 36/VII/234 has not encroached into L.R. No. 36/VII/235 as alleged. However, the hoarding and scaffolding used during construction on L.R. No. 36/VII/234 encroached into L.R. No. 36/VII/235 by approximately 1 to 1.9 meters.
- The boundary wall of L.R. No. 36/VII/235 was demolished by Khaleej Towers Limited during excavation and construction activities on their property.

#### **d) Nairobi Public Health Department Inspection Report**

In its inspection report dated 12<sup>th</sup> February 2024, the Nairobi Public Health Department indicated that there is no registered sewer wayleave between L.R. No. 36/VII/234 and L.R. No. 36/VII/235. Instead, the report identified a sewer easement within the backyard of L.R. No. 36/VII/235, which is part of Coldstone Investment Limited's property. This finding was verified through survey maps and ownership documents.

The report further noted that the boundary wall of L.R. No. 36/VII/235 had been demolished by Khaleej Towers Limited's contractor during excavation activities, worsening the ongoing dispute between the two property owners.

#### **e) Response from Nairobi Water and Sewerage Company on the issue**

As part of this investigation, the Commission reviewed the response issued by the Nairobi City Water and Sewerage Company (NCWSC) regarding its assertion on the alleged existence of a registered public sewer wayleave between L.R. No. 36/VII/234 and L.R. No. 36/VII/235.

In a letter dated 26 April 2023 (Ref: NCWSC/TEC/ENG/61/Vol.XI/92/DMM/imn), the NCWSC Managing Director responded to Realtor Guru (property managers of Coldstone Limited) Limited's complaint regarding an illegal sewer connection. The MD indicated that a sewer wayleave implemented in the 1980s, as per the

Wayleave Act CAP 292, existed between the two parcels. Further, during an interview with the Commission's investigators on 28 August 2024, the NCWSC Acting Technical Director, together with Company land surveyor, reiterated that a public sewer line exists between L.R. No. 36/VII/234 and L.R. No. 36/VII/235 and claimed that the land in question was a public land a property of the Nairobi City County Government, held and occupied by NCWSC.

The Sewer Layout Map provided by NCWSC shows the sewer line running exclusively within L.R. No. 36/VII/235.

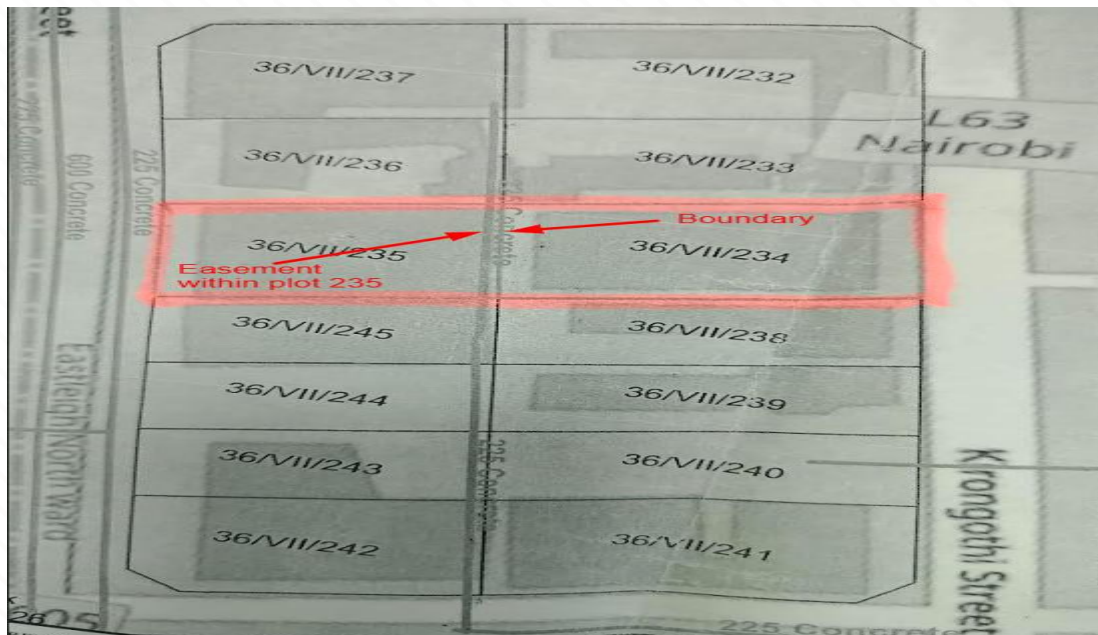


Figure 2: Sewer Layout Map

#### f) Easement vs Wayleave

From the foregoing analysis, there appears to be a divergence of opinion among the concerned public officers regarding whether the sewer line traversing L.R. No. 36/VII/235 constitutes a wayleave or an easement. It is therefore necessary to review the legal definitions and distinctions between an easement and a wayleave under Kenyan law to determine the true nature of the sewer line.

#### Easements under Kenyan Law

An easement is a legal right that allows one landowner to use another's land for a specific purpose without acquiring ownership. It creates a non-possessory interest, enabling limited use or benefit over another's property. Under the Land Act, 2012, and the Land Registration Act, 2012, an easement exists where there are two distinct parcels: the dominant tenement, which benefits, and the servient tenement, over which the right is exercised.

Easements must benefit the dominant land, be lawfully grantable, and are usually held between different owners. They commonly cover rights of way, drainage, laying of pipes or cables, and rights to light or support.

Easements may arise through express grant or reservation, implication (where necessary for reasonable enjoyment of land), or prescription through continuous and lawful use, typically for at least twenty years under the Limitation of Actions Act (Cap. 22)

### **Wayleaves under Kenyan Law**

A wayleave is a legal right that permits the installation and maintenance of public utility infrastructure, such as pipelines, cables, power lines, and sewers, over, under, or across private or public land. As defined under Section 2 of the Land Act, 2012, it grants a right of use, not ownership, to the Government, a public authority, or another entity for public benefit.

The Land Act (Sections 143–150) regulates the creation, use, and termination of wayleaves, requiring prior notice and consultation with landowners, and providing for full compensation for any disturbance or damage. When the wayleave ceases to serve its purpose, the right is extinguished, and full ownership reverts to the landowner.

Before 2012, wayleaves were governed by the Wayleaves Act (Cap. 292), which remains in force and continues to validate wayleaves created under its provisions.

In essence, a wayleave allows public utilities to use private land for essential infrastructure while ownership remains with the landowner. Common examples include electricity transmission lines (KPLC), petroleum pipelines (KPC), sewer and water lines, and telecommunication cables.

### **Is the Contested Sewer Line an Easement or a Wayleave?**

Upon analysis, it is evident that while easements and wayleaves both confer limited rights of use over another person's land, they differ in their legal character, purpose, and mode of creation. An *easement* constitutes a private proprietary right benefiting a specific parcel of land, known as the dominant tenement, and is ordinarily created through agreement between private parties. In contrast, a *wayleave* represents a public right of use established by the Government, a public authority, or a utility service provider to facilitate the installation, operation, and maintenance of public infrastructure such as pipelines, power lines, or sewer systems.

Ownership of the affected land remains vested in the registered proprietor in both cases; however, a wayleave serves a public utility function, while an easement exists primarily for the benefit of a private landowner. Based on the review of Kenyan law, the Commission finds that the sewer line traversing L.R. No. 36/VII/235 was established, maintained, and operated by the Nairobi City Water and Sewerage Company (NCWSC) for public use. Accordingly, the sewer line constitutes a wayleave and not a private easement.

### **g) Status of Land under a Wayleave**

Article 62 of the Constitution of Kenya, 2010 defines *public land* and lists categories such as government forests, game reserves, rivers, lakes, the territorial sea, and other lands vested in or acquired by the State. The Article further provides that public land is held by the national or county governments in trust for the people of Kenya, depending on the nature and location of the land.

A wayleave, however, is not classified as public land. It merely imposes a public utility right over private land without transferring ownership. The land, therefore, remains private property, even where public infrastructure such as a sewer line or power cable runs across it. A wayleave grants a non-possessory right of use, enabling a public authority or utility company, such as a county government or a sewerage service provider, to install, access, and maintain infrastructure without acquiring ownership of the affected land.

Accordingly, a neighboring landowner (LR.36/VII/234) cannot claim the portion of land where a sewer line passes as public land, since the underlying ownership remains with the registered proprietor (LR.36/VII/235). NCWSC merely holds a right of use, while Coldstone retains legal title and all other rights, subject only to the wayleave's limited purpose.

#### **2.1.3 Findings**

The investigation established that a sewer line runs exclusively within L.R. No. 36/VII/235, the registered property of Coldstone Investment Limited. The sewer line was implemented in the 1980s for public sewerage purposes pursuant to the Wayleaves Act (Cap. 292) and is operated and maintained by the Nairobi City Water and Sewerage Company (NCWSC).

However, the investigation further established that the said wayleave was neither formally surveyed nor registered and is not reflected in the Survey of Kenya plan F/R No. 56/79. In addition, no gazette notice, registered survey plan, deed of wayleave, or other documentary evidence was produced to

demonstrate its lawful creation or registration. Consequently, the wayleave does not appear in official cadastral or land registration records.

In light of the absence of formal registration and supporting documentation, it is understandable that public offices other than NCWSC, including the Nairobi City County Lands and Public Health Departments, were unaware of the existence of the wayleave and regarded the sewer line as an unregistered utility easement within private land.

Notwithstanding its public utility function, the presence of the sewer line does not alter the ownership status of the land. The portion of land traversed by the sewer line remains private property vested in Coldstone Investment Limited, subject only to NCWSC's limited right of use for sewerage purposes. A sewer wayleave does not convert private land into public land, nor does it create a development buffer upon which an adjoining landowner may lawfully rely to relax statutory setback requirements or modify building orientation. Accordingly, the presumed existence of a public wayleave could not lawfully justify construction on L.R. No. 36/VII/234 up to the boundary line, the omission of prescribed setbacks, or the installation of windows opening directly onto the adjoining property, L.R. No. 36/VII/235.

## **2.2 Evaluation of the Building Plan Approval Process and Regulatory Compliance for L.R. No. 36/VII/234**

Coldstone Investment Limited alleged that the development on L.R. No. 36/VII/234 was irregularly approved in violation of planning, zoning, building, and environmental laws, thereby infringing on their property rights and those of their tenants. They claimed the building plans were approved contrary to the Physical and Land Use Planning Act, 2019, the Building Code, zoning regulations, and Nairobi City County By-Laws, citing failure to meet statutory setback requirements specifically, bedroom windows not recessed 2.4 metres, and sitting rooms/balconies not recessed 6 meters from their boundary

The investigation sought to determine whether the approval process for the building plans of L.R. No. 36/VII/234 complied with the Building Code of Kenya, the Physical and Land Use Planning Act, No. 13 of 2019, applicable zoning policies, and established operating procedures. The investigation focused on potential irregularities, including procedural lapses and non-compliance with legal requirements during the approval process.

### **2.2.2 Analysis of Evidence**

## **a. Prescribed Procedure under the Physical and Land Use Planning Act, 2019 (Sections 58, 60 & 61)**

The Physical and Land Use Planning Act, 2019 (PLUPA) establishes a structured procedure for processing development applications within counties. The process follows these sequential steps:

### **i. Submission of Application (Section 58(1))**

An applicant seeking development permission must:

- Submit a formal application to the County Executive Committee Member (CECM) responsible for physical and land use planning;
- Use the prescribed application form; and
- Pay the requisite fees set by the county.

### **ii. Submission of Supporting Documents (Section 58(2)– (3))**

The application must be accompanied by:

- Architectural drawings, site plans, and design documents;
- A description of the proposed land use;
- The projected population density, and
- Details of land to be reserved for easements (e.g., sewer lines, power lines).

### **iii. Public Notification and Participation (Section 58(7)– (8))**

The applicant is required to notify the public and invite comments or objections. Such feedback must be considered by the CECM before making a final decision.

### **iv. Circulation to Relevant Authorities (Section 60(1)– (2))**

Within seven (7) days of receiving an application, the CECM shall circulate it to relevant agencies for technical review, including: Land Survey, Roads and Transport, Health, Environment and Natural Resources, Public Works and Utilities Urban Development, Agriculture and Livestock, National Security (if land is near protected areas), and any other relevant authority

These agencies must submit their comments and recommendations within fourteen (14) days.

### **v. Consideration of the Application (Section 61(1))**

The CECM reviews the application, taking into account technical feedback from the relevant departments and agencies, and Public comments received during the notification period.

#### **vi. Decision and Communication (Section 61(2))**

Within thirty (30) days, the CECM must: Approve the development, with or without conditions, and issue the prescribed approval form; or Refuse approval, providing written reasons for the refusal.

#### **vii. Compliance with Other Laws (Section 58(5))**

All approved developments must comply with other applicable laws and regulations, including the Building Code, environmental laws, and health and safety standards.

### **b. Current Practice in Nairobi City County**

The investigation established that the approval of building plans in Nairobi City County follows a multi-stage process managed through the Nairobi Planning and Development Management System (NPDMS). The following is a step-by-step breakdown of the process, including observations made during the investigation.

#### **Step 1: Preparation and Submission of Plans**

The process begins with a developer engaging licensed professionals (registered architects and engineers) to prepare building plans in accordance with applicable planning laws and technical standards.

Submissions are made electronically through the NPDMS and must include:

- Architectural and structural drawings (signed by registered professionals)
- Certified copy of title deed or lease agreement
- Survey plan from Survey of Kenya
- Change of user approval (where applicable)
- KCAA height clearance (for buildings exceeding designated heights)
- Environmental Impact Assessment (EIA) reports (for large-scale projects)
- Any other documentation required under planning regulations

#### **Step 2: Pre-Vetting Stage**

Submitted applications are placed in a centralized pool within NPDMS (Pre-Vetting Module). Development Control Officers (DCOs) independently select applications for review.

The DCO verifies:

- Completeness of the documentation
- Basic compliance with zoning and design requirements
- Whether applicable approvals (e.g., change of user or KCAA clearance, when applicable) have been included

Applications deemed incomplete or non-compliant are returned to the applicant with comments for revision. Once the application passes pre-vetting, the system issues an invoice, and the applicant must pay statutory fees before the application proceeds to the technical review stage.

### **Step 3: Circulation (Technical Review)**

As required under **Section 60 of PLUPA**, the County Executive Committee Member (CECM) must circulate each development application to relevant departments within seven days of receipt. These include: Public Health, Roads and Transport, Land Survey, Fire Department, Urban Planning, Environment and Natural Resources, NCWSC, and National Security (if applicable)

Each department is required to provide written comments within 14 days. Areas of review include:

- Architectural and Structural Integrity: Plot ratio, ground coverage, setbacks, building height, parking, and safety compliance
- Public Health: Drainage, sanitation, lighting, water supply, waste disposal
- Fire Safety: Escape routes, hydrant systems, fire exits
- Roads & Drainage: Accessibility, stormwater management, traffic impact
- Land Survey: Plot boundaries, encroachments, zoning alignment

**Observation made:** The system allows applications to progress to the next stage even where technical comments remain unaddressed. This undermines the integrity of interdepartmental review and may result in the approval of noncompliant projects.

### **Step 4: Pre-Technical Committee (Pre-PTC) Review**

Following circulation, each application undergoes a review by a DCO who decides whether to escalate it to the Urban Planning Technical Committee (UPTC) or return it for further action.

The Assistant Director, Development Control, compiles a Pre-PTC agenda, listing applications recommended for Urban Planning Technical Committee (UPTC) deliberation. This includes details such as:

- Plan registration number
- Developer and architect names
- Parcel and location data
- Zoning classification
- Project value and duration
- Application status and comments

The agenda is distributed to UPTC members at least one day before the meeting.

### **Step 5: Urban Planning Technical Committee (UPTC) Deliberation**

The UPTC is the central decision-making body for plan approvals. It comprises representatives from:

- Nairobi County departments (Planning, Health, Fire, Roads, Survey, Environment)
- Professional bodies (AAK, KIP, EBK)
- Utility agencies (NCWSC)
- NEMA (for EIA assessments)
- Resident associations and licensed surveyors

Applications are presented by the Assistant Director, Development Control. The committee discusses each case and recommends one of the following three actions:

- Approval
- Conditional approval (subject to compliance with comments)
- Deferral or rejection (pending clarification or revision)

**Observation:** Committee members from professional associations and service agencies do not have direct access to the NPDMS. Their reliance on printed documents provided by county officers during the meeting compromises their ability to independently verify submissions.

### **Step 6: Final Ratification and Approval Letter (DC8)**

After UPTC deliberations, the final agenda is updated (“cleaned”) to reflect decisions. The updated agenda is forwarded to:

1. Director, Development Management
2. Chief Officer for Urban Development and Planning
3. County Executive Committee Member (CECM) for ratification

Once approved, the Assistant Director generates the Approval Letter (DC8), which includes:

- Project and parcel details
- UPTC decision date
- Conditions of approval
- A Q-code enabling digital verification (e.g., application number, developer name, approval date, expiry date)

### c. Review of the Approval of building plans for the project on L.R 36/VII/234

The investigation established that the development on L.R No. 36/VII/234 has two approved building plans: **CPF-AW765** and **PLUPA-BPM-002413-Q**.

#### i. CPF-AW765:

The investigation established that the application for Building Plan CPF-AW765 was processed during the tenure of the Nairobi Metropolitan Services (NMS). However, the approval system used during this period, according to the county, is no longer operational, making it impossible to retrieve critical application history and how it was processed.

However, an examination of relevant documents obtained during the investigation revealed that the approval of the application CPF-AW765 was deliberated during an Urban Technical Planning Committee (UPTC) meeting held on February 3, 2022. A list of one hundred and eleven (111) building plan applications were presented, out of which 97 were approved, while 14 were deferred.

On February 9, 2022, the agenda containing the approved applications (including the one in question) was presented to Mr. Patrick Analo, the then Deputy Director of Urban Planning and Development Control, for verification. On February 10, 2022, Mr. Analo signed and forwarded the applications to Mr. Stephen G. Mwangi, the then Director of Lands, Housing, Urban Renewal, Urban Planning, and Development, who approved it on February 16, 2022.

However, it was noted that a memo dated February 9, 2023, from Mr. Patrick Analo indicated that 103 plans had been approved, contradicting the 97 approvals recorded in the official meeting minutes.

The architectural drawings submitted with the application showed that the building would extend to the edge (boundary) of L.R No. 36/VII/234, with windows facing the neighboring plot, L.R No. 36/VII/235.

A site visit by CAJ investigators confirmed that the building was constructed up to the boundary, with openings directly facing the adjacent property, further supporting the reported violations.

## **ii. PLUPA-BPM-022413-Q**

According to the NDMS Application History obtained from the County, the application PLUPA-BPM-022413-Q was submitted by the developer to seek permission for the construction of additional floors. According to documents in the Commission's possession, the application was submitted by the architect, Arch. Raymond Wanjau Maina, on May 16, 2023, at 1:17 PM.

It was pre-vetted the same day at 2:50 PM by Mr. Simon Omondi Onyango, Development Control Officer, after which the system generated an invoice. Mr. Onyango explained during the investigation that he did not observe any issues with the application at the pre-vetting stage.

On May 22, 2023, at 12:20 PM, the application progressed to the Circulation Stage for review by technical officers as required by the law (PLUPA 2019). Development Control Officer Mr. Noel Bwibo reviewed the application and returned it with the following comments:

- All lounge windows must maintain a clear frontage of 6 meters.
- A height clearance letter from the Kenya Civil Aviation Authority (KCAA) was required.

When asked whether the issues he raised were addressed, Mr. Bwibo stated that he was not aware whether the architect responded to his comments before the application moved to the Pre-Planning Technical Committee (Pre-PTC) stage. Additionally, there is no evidence that the application was circulated to key technical departments, such as Public Health, as the application history contains no corresponding comments or inputs from these departments.

The application was reviewed at the Pre-PTC stage on July 14, 2023, at 8:58 AM by Mr. Fredrick Ochanda, who returned it to the architect with additional comments, which largely echoed those raised by Mr. Bwibo at the circulation stage. These included:

- Provision of a 3-meter setback.
- Submission of a Change of User application.

- Ensuring all lounge windows maintain a 6-meter clear distance.
- Ensuring all bedroom windows maintain a 2.4-meter setback.

This suggests that the issues initially raised by Mr. Bwibo during the Circulation Stage were not resolved, as they were reiterated by Mr. Ochanda at the subsequent stage of the approval process.

The application was at the Pre-PTC stage, on August 22, 2023, where Mr. Simon Omondi reviewed the application and submitted it for inclusion in the agenda of the Urban Planning Technical Committee (UPTC) meeting scheduled for August 31, 2023. When asked whether he verified that the issues raised by Mr. Bwibo and Mr. Ochanda had been addressed, Mr. Onyango stated that he did not confirm this. He submitted the application based on verbal instructions from Mr. Ochanda that all the applications be forwarded for inclusion in the agenda.

The Assistant Director, Development Control, is responsible for downloading and printing the draft agenda (list of recommended applications), which is then circulated to UPTC members a day before the meeting. Any concerns can be raised during the UPTC session. According to the UPTC Minutes, the application was approved on August 31, 2023. There are no indications that the aforementioned issues were brought to the attention of the committee by the responsible planning officials.

After the UPTC meeting on August 31, 2023, Mr. Kipngetich Langat, Development Control Officer, “cleaned” the agenda on September 7, 2023, at 4:01 PM to reflect the outcomes of the committee deliberations. This involved removing applications that were not approved and retaining those that were approved, in readiness for printing the final list for ratification by the CECM before approval letters (DC8) are generated from the system and released to the applicants.

According to the application history, the subject application reached the final stage of the approval process on 14th September 2023 at 2:10 PM, this being the procedural point at which the official approval letter (DC8) is generated following ratification by the County Executive Committee Member (CECM). However, the approval letter for the application in question (PLUPA-BPM-022413-Q) was issued earlier, on 30th August 2023, contrary to the documented sequence of approval.

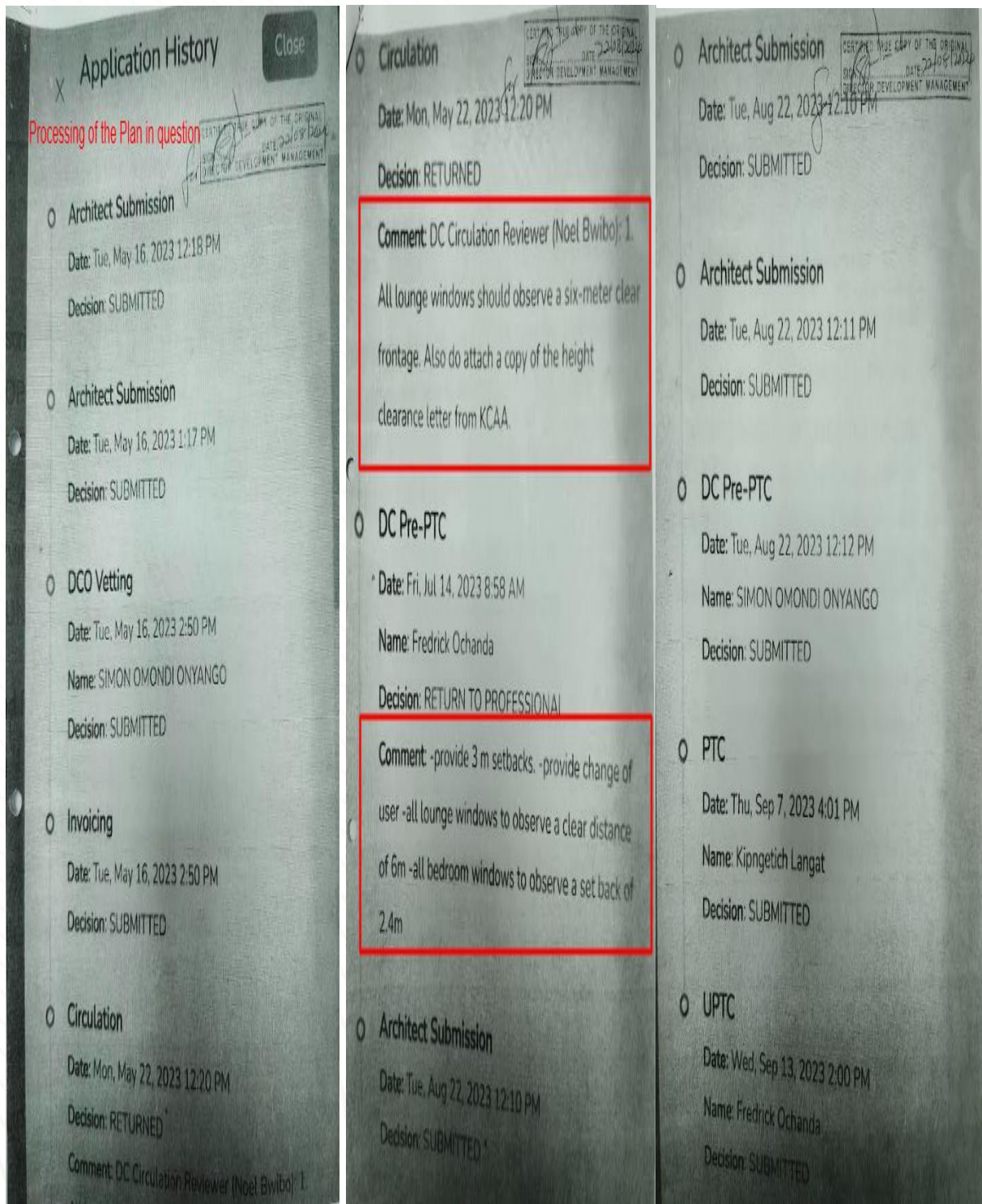


Figure 3: Analysis of the system application history for PLUPA-BPM-022413-Q granted to the developer for additional floors.

FORM PLUPA/DC/8

SN: SUB-007499

City Hall Way, City Hall  
www.nairobi.go.ke



P.O.Box 30075-00100  
Nairobi, KENYA

NAIROBI CITY COUNTY

CERTIFIED TRUE COPY OF THE ORIGINAL  
SIGN: [Signature] DATE: 22/08/2024  
DIRECTOR DEVELOPMENT MANAGEMENT

THE PHYSICAL AND LAND USE PLANNING ACT (No. 13 of 2019)

Registered Number of Application PLUPA-BPM-002413-Q

**NOTIFICATION OF APPROVAL OF APPLICATION**

TO **OMAR HASSAN HUSSEIN**

Through **ARCH. RAYMOND WANJAU MAINA**  
Architect, Reg. No: A817

Your plan Reg. **PLUPA-BPM-002413-Q** submitted on **16th, May 2023**

For permission to develop **PROPOSED ADDITIONAL FLOORS WITH 36 NO. UNITS TO APPROVED PLAN NO. CPF-AW765 ON PLOT L.R NO. 36/VII/234, EASTLEIGH, NAIROBI COUNTY.** on

L.R. / Parcel No **36/VII/234 (NAIROBI BLOCK 49/107)** with Coordinates **-1.2696, 36.8450**

Situated in **Eastleigh Comm/Residential, Eastleigh North** in **Kamkunji Sub-county**

Along **KIRONGOTHI STREET** has been **APPROVED** on **30th, August 2023**

By the Urban Planning Technical Committee tabled under Item No **70**

For the following reasons/subject to the conditions appended overleaf.



Date **30th, August 2023**

For **CECM Built Environment and Urban Planning**

CC:  
The National Land Commission, Nairobi  
The Land Registrar  
The Director General - Physical and Land Use Planning, Nairobi  
The Director of Surveys, Nairobi  
The Secretary, State Department of Lands, Ministry of Lands & Physical Planning

Figure 4: Approval letter for the application (PLUPA-BPM-022413-Q) issued on 30th August 2023, earlier than 14 September 2023, when the application reached the CECM for ratification.

According to the attached letter of approval, application PLUPA-BPM-022413-Q was submitted on May 16, 2023, and is indicated to have been approved on August 30, 2023, for the construction of additional floors.

However, the minutes of the Urban Planning Technical Committee (UPTC) meeting held on August 31, 2023, show that multiple building plans, including PLUPA-BPM-022413-Q, were approved during that meeting. This reveals that the approval was printed on August 30, 2023, and was regularized on August 31, 2023.

Furthermore, the system application history analyzed above indicates that the approval process for the application in question was completed on September 14, 2023, while the approval letter had been generated on August 30, 2023.

This sequence of events indicates a discrepancy; the approval letter appears to have been dated August 30, 2023, a day before the committee actually deliberated and approved the application. This raises concerns that the approval was issued before the formal approval process was fully completed on September 14, 2023.

The facts demonstrate procedural inconsistencies in the approval of both building plans. For CPF-AW765, contradictions in official records and the disregard of statutory setback requirements point to irregular approval. For PLUPA-BPM-022413-Q, unresolved technical objections, failure to ensure circulation to all relevant departments, and the premature issuance of the approval letter before committee deliberation and ratification highlight serious lapses in adherence to the statutory process under the Physical and Land Use Planning Act, 2019. These irregularities raise concerns over the credibility, transparency, and integrity of the approval process for the development in question.

#### **d. Analysis of Correspondence and Approval Process**

On 1 September 2023, the then Deputy Director of Development Control, Mr. Jassan N. Njani, forwarded to the Chief Officer for Urban Development and Planning, Mr. Patrick Analo, a list of building plan applications deliberated by the Urban Planning Technical Committee (UPTC) on 31 August 2023. Mr. Analo subsequently forwarded the plans on 7 September 2023 to the County Executive Committee Member (CECM) for Built Environment and Urban Planning, Mr. Stephen G. Mwangi, who approved them on 12 September 2023.

However, the approval letter (DC8) for the disputed development was dated 30 August 2023, one day before the UPTC convened and weeks before approval by both the Chief Officer and the CECM. This raises serious concerns about premature issuance and procedural irregularities in the granting of development permission.

It is worth noting that the Director of Urban Planning does not feature in the approval process, yet the Urban Planning and Land Use Act, 2019 recognizes this office as the authority mandated to approve building plan applications in liaison with the relevant CECM.

## Responses from Key Officials

### **Stephen G. Mwangi (Former CECM)**

Mwangi confirmed that, as Director and later CECM, his role was limited to signing applications already approved by the UPTC. He acknowledged inconsistencies in approval records (e.g., differences between the number of applications approved by UPTC and those he ratified) and attributed them to omissions or commissions by technical staff, particularly the Chief Officer. He admitted that approval of PLUPA-BPM-002413-Q before his formal signature was a procedural error and accepted that it should not have been approved due to an existing enforcement notice. He further acknowledged the need for clear policies, stronger internal accountability, and an improved online system with built-in safeguards.

### **Patrick Analo (Chief Officer)**

Analo admitted that the Khaleej Towers plans did not comply with key planning requirements on setbacks, ground coverage, and plot ratio. He attributed non-compliance to misleading submissions by the architect and emphasized the duty of the technical vetting team to verify compliance. His role in forwarding the approved lists for ratification places him at the center of the approval process.

### **Jassan Njani (Former Deputy Director)**

Njani outlined his role in compiling agendas and forwarding UPTC approvals for ratification. He noted procedural flaws in the second application, including misrepresentation by the architect regarding a wayleave. He confirmed that these irregularities contributed to the unlawful approval of non-compliant plans.

### **Fredrick Ochanda (Assistant Director, Development Control)**

Ochanda participated in evaluating the second application and flagged compliance issues, including setbacks and window clearance, but confirmed that an approval letter was erroneously dated before the UPTC meeting. He also confirmed systemic weaknesses in the online system, including a lack of checks, poor enforcement tracking, and weak accountability mechanisms.

### **Development Control Officers (Simon Omondi & Noel Bwibo)**

The officers admitted to procedural lapses. Bwibo raised concerns about setbacks and aviation clearance, which were never addressed. Omondi acknowledged forwarding the application for approval without verifying compliance, citing instructions from supervisors. Both confirmed that the DC8 approval letter was issued before UPTC deliberations, contrary to procedure.

### **Dominic Mutegi (Director, Development Management)**

Mutegi stated he was bypassed in the approval chain despite the law requiring his involvement. He confirmed the premature issuance of the approval letter, manipulation of approval lists, and irregular ratification that contravened the Physical and Land Use Planning Act, 2019. He suggested that undue influence may have shaped the approvals.

### **Urban Planning Technical Committee (UPTC)**

The Committee admitted it lacked access to critical documents and relied solely on summaries provided shortly before meetings, limiting its capacity to independently verify compliance. Its legal basis is also unclear, as it is not anchored in any statute or county legislation.

### **Key Issues Identified**

- i. **Premature and Irregular Issuance of Approval Letters** – DC8 was generated before UPTC approval and ratification, undermining legality.
- ii. **Bypassing of Statutory Procedures** – The Director of Development Management was excluded from the workflow, contrary to the law.
- iii. **Failure to Address Compliance Issues** – Setbacks, window clearance, and aviation clearance requirements were disregarded.
- iv. **Systemic Weaknesses** – The online planning system allows progression of applications despite unresolved technical objections, lacks an enforcement module, and undermines accountability.
- v. **Legal Ambiguity of UPTC** – The committee operates without statutory foundation, weakening its authority and accountability.

### **f. Analysis of the Public Health Department Inspection Report**

The investigation established that the Public Health Department conducted an inspection on November 20, 2023, following complaints lodged by Coldstone Investment Limited against the construction by Khaleej Towers Limited on L.R. No. 36/VII/234.

The inspection confirmed that the development extended to the boundary shared with L.R. No. 36/VII/235, in violation of Building Code setback requirements. The building also failed to meet the minimum clearance distances for windows necessary to guarantee adequate natural lighting and ventilation in key living spaces such as lounges, bedrooms, and kitchens. Additionally, several windows were found to directly overlook the neighboring property, thereby breaching both Building Code provisions and privacy and safety standards.

The inspection report further highlighted a procedural lapse: the application PLUPA-BPM-002413-Q had not been circulated to the Public Health Department for review, contrary to the requirements of the Physical and Land Use Planning Act, 2019 (PLUPA). A review of the application history by CAJ investigators confirmed that no comments or inputs were recorded from the Public Health Unit, corroborating the department's claim of exclusion. This omission raises serious concerns about the integrity and legality of the approval process.

During interviews, public health officers produced internal correspondence addressed to the Department of Built Environment and Urban Planning, pointing to systemic weaknesses in the plan approval process. They reported that the Development Control Section routinely fails to circulate applications to the Public Health Department. Further, even when health officers raise objections or recommend modifications, approvals often proceed without verification that these issues have been resolved.

CAJ investigators independently verified this claim, establishing that the current approval system permits applications to advance through multiple approval stages despite unresolved technical objections. These operational weaknesses undermine interdepartmental review and expose the approval process to irregularities.

#### **g. Evaluation of Development on L.R. No. 36/VII/234 Against Zoning and Planning Policy**

Zoning regulations are a key planning tool designed to control land use and promote orderly urban growth. They establish standards for land utilization, including ground coverage, plot ratio, building height, permissible land use, and minimum plot sizes.

The zoning framework for Nairobi is set out in tabular policy guidelines (Below), with each zoning area defined by specific development control parameters. For purposes of this investigation, the critical parameters are:

- **Ground Coverage (GC):** maximum proportion of the plot that may be built upon at ground level.
- **Plot Ratio (PR):** total permissible built-up area in relation to the plot size.
- **Minimum Plot Size:** threshold for allowable development.
- **Permitted Use:** types of developments. The zoning policy for Nairobi (extract attached below) is organized in tabular format, where each row corresponds to a zoning area and each column outlines specific development control standards. Of importance to this investigation are the following columns:

ZONE	AREAS COVERED	GC %	PR %	Dept Ref. Map	TYPE (S) OF DEVELOPMENT ALLOWED	MIN. AREA (Ha.)	REMARKS/POLICY ISSUES
1A	<b>Central Business District (CBD)</b>			CP/PP/XXX XX	Commercial/Residential/Light Industry	0.05	
	• Core CBD	80	600				
	• Peri-CBD	80	500				
	• West of Tom Mboya St	60	600				
	• East Of Tom Mboya St	80	350				
• Uhuru H/W/ University Way/Kipande Rd	80	500					
1E	<b>Upper Hill Area</b>			CP/PP/XXX XX	Commercial/Offices/ Residential	0.05	
	• Block 1 - Offices (Community)	60	300				
	• Block 2 - Comm/Off	60	250				
	• Block 3 - Offices	60	300				
	• Block 4 - Residential	35	150				
	• Block 5 - Institutional (KNH)						
• Block 6 - (Mixed: Inst;Htls;Offs)							
2	<b>Eastleigh</b>			CP/PP/XXX XX	Commercial/Residential (High-rise Flats)	0.05	
	• Eastleigh District Centre	80	250				
	• Eastleigh Comm/Residential	60	240				
	<b>Pumwani/California</b>	60	240				
	<b>Ziwani/ Starehe</b>						
• Commercial	80	150					
• Residential	35	75					

**Figure 5: An Extract of the zoning and planning policy for Nairobi**

The subject development is located in **Eastleigh**, which is governed by the following zoning policy standards:

Policy Parameter	Standard
Ground Coverage (GC)	60% of the plot area
Plot Ratio (PR)	240% (i.e., 2.4 times the plot area)
Minimum Plot Size	0.05 hectares
Permitted Use	Commercial/High-Rise Flats

The investigation assesses the development of **L.R. No. 36/VII/234** against these parameters to determine whether the project adhered to the planning controls in place at the time of approval.

## Plot Details and Building Parameters

The plot and building characteristics, as established through analysis of documentation provided by the county, are as follows:

- **Plot Size:** 0.14 hectares (1,400 m<sup>2</sup>)
- **Number of Floors:** 19 storeys
- **Building footprint (Per Floor):** 1,310.56 m<sup>2</sup> (45.768m × 28.620m)

### 1. Ground Coverage Analysis

Ground coverage refers to the portion of land area covered by the building at the ground level. The Eastleigh zoning policy permits a maximum ground coverage of **60%**.

#### Calculation:

##### Formula:

$$\text{Ground Coverage (\%)} = \left( \frac{\text{Building Footprint (m}^2\text{)}}{\text{Plot Area (m}^2\text{)}} \right) \times 100$$

Where:

**Building Footprint** = Area covered by the building at ground level

**Plot Area** = Total land area of the plot

Therefore,

- **Permitted Coverage:** 60% × 1,400 m<sup>2</sup> = **840 m<sup>2</sup>**
- **Actual Ground Coverage:** **1,310.56 m<sup>2</sup>**

**Assessment:** The footprint exceeds the allowable coverage by 470.56 m<sup>2</sup>, representing 93.6% coverage against the 60% limit. This is a clear breach of zoning policy, demonstrating overutilization of land.

### 2. Plot Ratio (PR) Analysis

Plot ratio refers to the total floor area of a building in relation to the size of the plot on which it stands. It limits the bulk and density of development.

## Calculation:

### Formula:

$$\text{Plot Ratio (\%)} = \left( \frac{\text{Total Built-up Area (m}^2\text{)}}{\text{Plot Area (m}^2\text{)}} \right) \times 100$$

Where:

- **Total Built-up Area** = Sum of all floor areas (including all storeys)
- **Plot Area** = Total land area of the plot

Therefore:

- **Permitted Plot Ratio:** 240% × 1,400 m<sup>2</sup> = 3,360 m<sup>2</sup> (Maximum allowable total built-up area)
- **Total Built-up Area:** 1,310.56 m<sup>2</sup> × 19 = 24,900.64 m<sup>2</sup>
- **Actual Plot Ratio:** (24,900.64 m<sup>2</sup> ÷ 1,400 m<sup>2</sup>) × 100 = **1779%**

**Assessment:** The total built-up area exceeds the permitted limit by more than 11 times. The achieved PR of 1779% is grossly non-compliant with the 240% cap, evidencing excessive density and bulk.

## Minimum Plot Size Requirement

### 3. Zoning Requirement:

- **Permitted:** 0.05 hectares
- **Actual:** 0.14 hectares
- **Assessment:** The plot size meets the minimum requirement and is therefore compliant.

## Summary of Compliance

The table below summarizes the plot's compliance status in relation to the policy benchmarks:

Parameter	Policy Limit	Actual	Compliance
<b>Ground Coverage (GC)</b>	80%(840 m <sup>2</sup> )	93.6% (1,310.56 m <sup>2</sup> )	✗ Exceeds limit
<b>Plot Ratio (PR)</b>	240% (2.4× plot area)	1,779% (17.78× plot area)	✗ Exceeds by ~7.4 times
<b>Minimum Plot Size</b>	0.05 ha	0.14 ha	✓ Compliant

The analysis demonstrates that although the plot meets the minimum size requirement, the development grossly violates both the ground coverage and plot ratio limits prescribed for Eastleigh. These breaches represent substantial non-compliance with Nairobi's zoning policy and planning control frameworks. Notably, despite these anomalies, the applications were approved by the Urban Planning Technical Committee and ratified by senior county officials, raising serious concerns about regulatory oversight and enforcement.

#### **h. Revocation of the Plans CPF-AW765 and PLUPA-BPM-002413-Q**

The investigation established that Nairobi City County revoked the building plans **CPF-AW765** and **PLUPA-BPM-002413-Q** through a letter dated 14 March 2024 (Ref: UPD/DC/36/VII/234/0057/F00/24), addressed to the developer. The revocation was triggered by a complaint from Coldstone Investment Limited, which prompted the County to review the approvals.

The revocation letter cited the submission of erroneous architectural plans as a key ground for cancellation. The plans had falsely indicated the existence of a registered public sewer wayleave between L.R. No. 36/VII/234 and L.R. No. 36/VII/235, misleading the approval process. This misrepresentation was significant because it resulted in the approval of openings (windows) facing a neighboring private property, contrary to the Building Code and applicable regulations.

The letter further explained that the misleading information led to the approval of non-compliant designs. Consequently, on 30 November 2023, the Urban Planning Technical Committee disapproved both plans and struck them from the official records. The developer was directed to stop all construction and to submit revised plans meeting the statutory setbacks, 2.4 meters for bedroom windows and 6 meters for lounge windows, concerns that had earlier been raised by Development Control officials during evaluation but disregarded in the approval process.

However, the investigation found that the County had already identified the non-compliance much earlier. An Enforcement Notice (Serial No. 1851) had been issued on 31 January 2023, citing violations of the approved plans. Despite this early intervention, no substantive action was taken to revoke the approvals until November 2023, and formal notification was only issued in March 2024, over one year after the initial enforcement notice.

Critically, despite the revocation, the County failed to enforce the stop order. Construction continued unabated, and by the time of the Commission's investigation, the building was nearly complete. This reflects a serious failure in

enforcement and accountability by Nairobi City County, allowing a project with known violations to proceed unchecked.

### **i. Submission by Khaleej Towers Limited (L.R No. 36/VII/234)**

Interviews with the company directors and project manager, supported by a review of relevant documentation, established that Khaleej Towers Limited applied to the defunct Nairobi Metropolitan Services (NMS) on December 7, 2021, seeking approval for its building plan. The company subsequently paid KSh. 2,335,100 to Nairobi City County (NCC) as the requisite building plan approval fee.

According to company officials, the building plan was approved on February 3, 2022, under reference number CPF-AW765. Before commencing construction, the company obtained a National Construction Authority (NCA) Compliance Certificate on June 14, 2022 (Project Reg. No. 53128815710215), and an Environmental Impact Assessment (EIA) License from NEMA on February 8, 2022 (Ref: NEMA/EIA/PSL/16851). Additional approvals included authorization from NCC for the installation of a temporary site toilet on May 16, 2022 (Ref: KAM/SCA/01/14/2022), and approval by the Nairobi Water and Sewerage Company (NWSC) for a sewer connection on August 8, 2022.

Officials indicated that construction commenced after obtaining all the required approvals. Subsequently, the company submitted another application to NCC seeking authorization to add extra floors to the ongoing development. An additional fee of KSh. 216,527 was paid, and the application was approved on August 30, 2023.

When questioned on the legitimacy of the statutory documents obtained, company officials maintained that all approvals were duly issued by the relevant public institutions upon payment of the prescribed fees.

### **2.2.3 Findings**

**1. Weaknesses in the Statutory Approval Process:** The Physical and Land Use Planning Act, 2019 (Sections 58–61) prescribes a sequential procedure for development approvals, including circulation to relevant technical departments, public participation, and consideration of both technical and public input. The investigation established gaps in Nairobi City County's implementation of this process. The Nairobi Planning and Development Management System (NPDMS) allows applications to advance despite unresolved technical comments, and members of the Urban Planning Technical Committee (UPTC); particularly professional association and utility agency

representatives, lack direct access to the system, relying instead on printed extracts. These shortcomings undermine the integrity, transparency, and robustness of the statutory approval process, increasing the likelihood of irregular or non-compliant developments being approved.

**2. Procedural and Substantive Irregularities in Building Plan Approvals:** The approval of development on L.R. No. 36/VII/234 was marred by significant procedural and substantive irregularities, contrary to the Physical and Land Use Planning Act, 2019 and the Nairobi City County By-Laws:

- **Building Plan CPF-AW765:** Processed under the Nairobi Metropolitan Services without a functional system record, undermining transparency and accountability. Inconsistencies were noted between official UPTC minutes (97 approvals) and a subsequent memo (103 approvals). Architectural drawings and site verification confirmed encroachment on statutory setback requirements, including windows directly overlooking the neighboring property, in violation of the Building Code and zoning regulations.
- **Building Plan PLUPA-BPM-002413-Q:** Substantive planning concerns, including setbacks, frontage, and aviation clearance, were raised at circulation and Pre-PTC stages but were not resolved before approval. Furthermore, the approval letter was dated 30 August 2023, one day before the UPTC convened on 31 August 2023, and weeks before ratification by the Chief Officer and CECM on 14 September 2023. This demonstrates irregular issuance of approvals outside the statutory framework.

These irregularities reveal disregard for statutory requirements, undermining the credibility of the approval process.

**3. Premature and Procedurally Defective Approvals:** The investigation found that the approval letter (DC8) for application PLUPA-BPM-002413-Q was issued on 30 August 2023, before the UPTC deliberated on 31 August 2023 and well before ratification in September 2023. This contravenes Section 61 of the Physical and Land Use Planning Act, 2019 which requires approvals to follow sequential deliberation and ratification. Technical concerns regarding setbacks, aviation clearance, and misrepresentation of a wayleave were ignored. The Director of Development Management, mandated to oversee approvals under Section 72 of PLUPA, was bypassed. The Commission finds that the approval was irregular, procedurally defective, and unlawful, highlighting systemic weaknesses in transparency and accountability.

**4. Breach of Statutory Planning and Public Health Requirements:** The development on L.R. No. 36/VII/234 was approved and constructed in violation of the Building Code (1968), zoning regulations, and the Public Health Act (Cap 242). The building encroaches on the boundary, fails to provide required setbacks and clearance distances, and compromises natural lighting, ventilation, privacy, and safety. The application PLUPA-BPM-002413-Q was not circulated to the Public Health Department as required by PLUPA, 2019, denying technical officers the opportunity for review. This omission, together with systemic failures allowing unresolved objections to be bypassed, rendered the approval procedurally defective and unlawful.

**5. Gross Non-Compliance with Zoning and Planning Policy:** The Nairobi Zoning Policy for Eastleigh prescribes a maximum ground coverage of 60% and a plot ratio of 240%. The development on L.R. No. 36/VII/234 exceeds both limits significantly, with ground coverage at 93% and a plot ratio of 1779%. This represents gross overutilization of land, unlawful densification, and a material breach of zoning controls. Despite these clear violations, the plans were approved contrary to PLUPA, 2019 (Section 57) and the Nairobi Zoning Policy. This undermines the integrity of planning controls and public trust in the enforcement of development regulations.

**6. Revocation and Enforcement Failures:** The County revoked building plans CPF-AW765 and PLUPA-BPM-002413-Q through a letter dated 14 March 2024, citing erroneous architectural drawings, including a false representation of a public sewer wayleave. While an Enforcement Notice had been issued in January 2023, formal revocation was delayed until March 2024, and the stop order was never enforced. Construction continued to near completion. These failures reflect serious institutional weaknesses in enforcement, contrary to PLUPA, 2019 (Section 72), which mandates monitoring and enforcement of approved developments.

**7. Developer's Compliance with Statutory Approvals:** The investigation confirmed that Khaleej Towers Limited obtained statutory approvals from mandated institutions, including NCA compliance certification (National Construction Authority Act, 2011), NEMA licensing (Environmental Management and Coordination Act, 1999), sanitation authorization, and sewer connection approval. The developer also paid the prescribed fees for supplementary approvals. While these actions indicate prima facie compliance with statutory obligations, the legitimacy of the approvals is undermined where the responsible authorities failed to ensure compliance with zoning, planning, and building control regulations. Regulatory agencies, particularly Nairobi City County, retained the legal duty to enforce compliance under PLUPA, 2019, and the Building Code.

## 2.3 Enforcement of Building Regulations during Construction by Nairobi City County in Respect of LR No. 36/VII/234

### 2.3.1 Allegation

The complainant alleged that Nairobi City County officials, particularly within Planning, Compliance, and Enforcement, failed to enforce zoning and building regulations, thereby allowing Khaleej Towers Limited to proceed with non-compliant construction on L.R. No. 36/VII/234 despite an Enforcement Notice. The complainant stated that concerns were raised with multiple county and national offices, including the Governor, senior county officials, NCWSC, and NEMA, but no effective action was taken.

Consequently, the complainant petitioned the Commission to investigate the irregular approval and enforcement failures. The investigation assessed whether Nairobi City County officials adequately enforced compliance with building regulations in respect to the project in question (L.R No. 36/VII/234).

### 2.3.2 Analysis of Evidence

#### a. Procedure for Enforcement of Development Control

The Physical and Land Use Planning Act, 2019, together with its enforcement regulations, prescribes a structured procedure for addressing unauthorized developments. The process is as follows:

- i. **Lodging of Complaints** – Any person or institution may file a written or online complaint regarding unauthorized or irregular developments.
- ii. **Verification & Stay Order** – The County Executive Committee Member (CECM) verifies the complaint and, if valid, issues a **Stay Order (Form PLUPA-DC-19)** to suspend ongoing works.
- iii. **Issuance of Enforcement Notice** – If the developer fails to comply, an **Enforcement Notice (Form PLUPA-DC-20)** is issued, directing cessation of works, demolition, or restoration of the site.
- iv. **Service of Notice** – The Notice may be served by registered mail, email, personal delivery, publication, or posting on the property.
- v. **Enforcement Action** – If the Notice is ignored, the County is empowered to enter the property and enforce compliance, including demolition of illegal structures.
- vi. **Certification of Compliance** – Where the developer complies, the County issues a **Compliance Certificate (Form PLUPA-DC-21)**.
- vii. **Appeals** – Developers have the right to appeal an Enforcement Notice within 14 days, during which enforcement action is paused.

- viii. **Cost Recovery** – The County may recover enforcement costs directly from the developer.
- ix. **Record-Keeping** – For transparency, the County Director is required to maintain an **Enforcement Register (Form PLUPA-...)**

#### **b. Enforcement Lapses in respect to the construction project on L.R No. 36/VII/234**

The investigation established that the Department of Planning, Compliance, and Enforcement of Nairobi City County issued Enforcement Notice Serial Number 1851 to the developer of L.R No. 36/VII/234 on January 31, 2023. The notice cited deviations from the approved building plan (CPF-AW765) and directed the developer to:

- Immediately cease all construction activities; and
- Submit the approved plans together with a structural integrity report prepared by a registered engineer within seven days.

The notice was to take effect on February 6, 2023.

Evidence revealed, however, that the developer failed to comply with the notice and instead continued construction works. More than a year later, on March 14, 2024, the County formally revoked the approved building plans, citing irregularities in the approval process. Despite this revocation, construction continued uninterrupted.

When questioned, the Department of Planning, Compliance, and Enforcement could not provide a clear account of the measures taken to enforce the revocation order.

This sequence of events demonstrates serious lapses in enforcement and regulatory oversight. By failing to act decisively and within the framework of the Physical and Land Use Planning Act, 2019, the Building Code, and Nairobi's Zoning Policy, the County allowed a non-compliant development to proceed unchecked.

#### **2.3.3 Findings**

The investigation finds that the Nairobi City County Department of Planning, Compliance, and Enforcement failed to enforce Enforcement Notice Serial No. 1851, issued on 31 January 2023, against the developer of L.R No. 36/VII/234. Despite directing the developer to halt construction and provide a structural integrity report, the notice was disregarded, and construction continued.

The County delayed formal revocation of the building plans until 14 March 2024, more than a year after the enforcement notice, and even after revocation, no further enforcement action was taken. This inaction allowed the unlawful development to proceed to near completion in violation of the Physical and Land Use Planning Act, 2019, the Building Code, and Nairobi's Zoning Policy.

The failure to act decisively highlights systemic weaknesses in Nairobi City County's compliance and enforcement mechanisms, raising serious concerns about accountability, regulatory oversight, and the integrity of the development control system.

## **2.4 Determination of Loss or Damage Associated with the Approval and Execution of the Construction Project on L.R. No. 36/VII/234.**

### **2.4.1 Allegation**

The complainant claimed that Khaleej Towers Limited unlawfully asserted the existence of a public sewer wayleave within L.R.No. 36/VII/235. This allegedly resulted in:

- Demolition of part of Coldstone's boundary wall.
- Authorization by the Nairobi City Water and Sewerage Company (NCWSC) for Khaleej to construct an inspection chamber and sewer connection within L.R No. 36/VII/235.
- Encroachment into Coldstone's property through scaffolding and hoarding (ranging from 1 to 1.9 metres).
- Malicious dumping of construction debris in Coldstone's backyard.
- Harassment of Coldstone's staff by Nairobi City County Inspectorate and Public Health officers from Kamukunji Sub-County, purportedly on grounds of encroachment into a "non-existent sewer wayleave."
- Reduction of natural light to Coldstone's property due to inadequate building recess.

### **2.4.2 Analysis of Facts and Determination of Damages**

The complainant alleged that the rear boundary wall on Plot L.R. No. 36/VII/235, owned by Coldstone Investment Limited, was maliciously demolished by Khaleej Towers Limited, proprietors of the adjoining Plot L.R. No. 36/VII/234. Khaleej Towers Limited claimed that the wall had been erected on a Nairobi Water and Sewerage Company (NWSC) public sewer wayleave.

However, this investigation has already established that the sewer line constitutes a public utility wayleave, as it serves a public sewerage function and

is operated by NCWSC, but the underlying ownership of the land remains private, vested in Coldstone Investment Limited. Accordingly, the portion of land traversed by the sewer line does not constitute public land, and Khaleej Towers Limited cannot rely on its existence to justify encroachment, setback violations, or construction along the boundary.

Furthermore, it has also been established that the development on L.R. No. 36/VII/234 was approved and constructed in violation of the Building Code (1968), zoning regulations, and the Public Health Act (Cap. 242). The building encroaches on the boundary, fails to provide requisite setbacks and clearance distances, and compromises natural lighting, ventilation, privacy, and safety of the neighboring property.

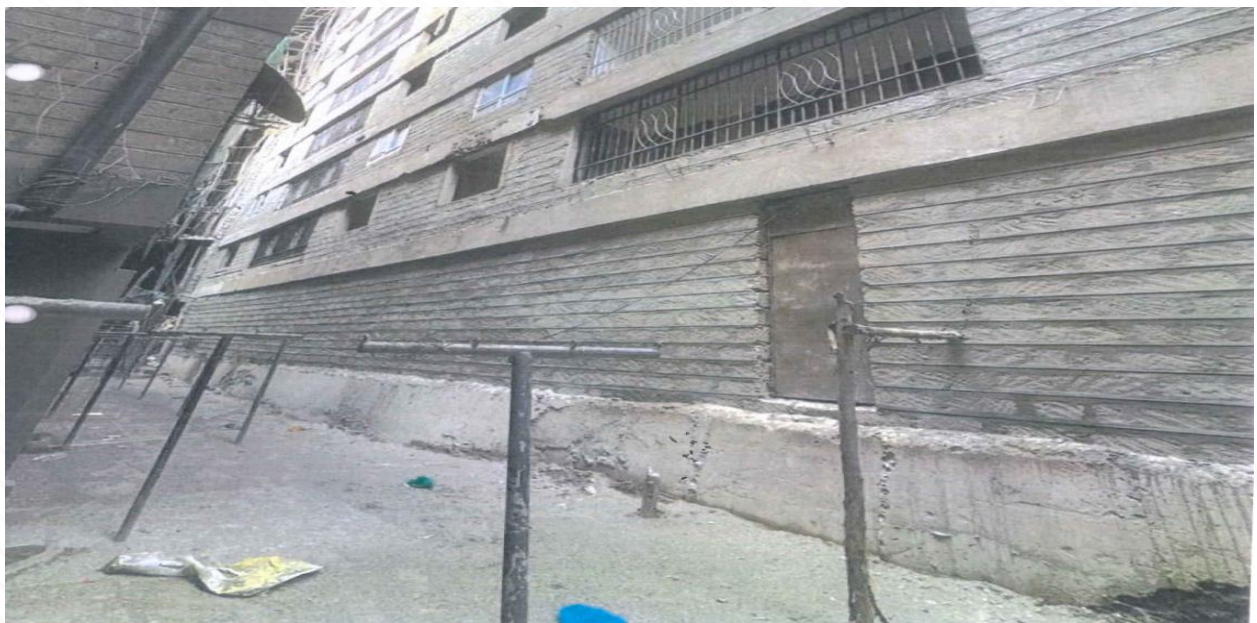


Figure 5: **The sewer line corridor (with Hang lines) that was misrepresented as public land**

Following the demolition of the rear boundary wall, Coldstone Investment Limited reported the matter at Pangani Police Station on 31 December 2022 at around 1510 hours, under Occurrence Book (OB) No. 48, classified as *Malicious Damage/Interference with Boundary Fixtures* and referred to DCI–Starehe for investigation.

Subsequently, on 22 March 2023, Coldstone Investment Limited filed a boundary dispute claim against Khaleej Towers Limited before the Chief Officer, Lands, Nairobi City County. Acting on the complaint, Mr. Philip Mbithi Kiswii, a Land Surveyor with the Nairobi County Government, conducted a site inspection and, in his memo dated 26 May 2024 (Reference: LANDS/00454/pmk/NZR) to the Director, Survey & GIS, stated:

*"I have made a site visit to L.R. No. 36/VII/235 and confirmed that the neighboring property, L.R. No. 36/VII/234, is currently under construction. Through visual inspection and analysis, I noted that a boundary wall constructed by the owner of L.R. No. 36/VII/235 was demolished by the proprietors of L.R. No. 36/VII/234 during excavation and construction works. Additionally, hoarding erected by the owner of L.R. No. 36/VII/234 appears to encroach upon L.R. No. 36/VII/235 by between 1.0 and 1.9 metres in some sections."*

Similarly, the Nairobi County Health Department, in an inspection report prepared in response to Coldstone's letter (Reference: NCCG/PH/VOL.2/38/2024) dated 12 February 2024, confirmed that the rear boundary wall of Coldstone's property had indeed been demolished by the contractor working for Khaleej Towers Limited.

Further, a letter dated 21 October 2022, authored by Shabana Osman & Associates on behalf of Khaleej Towers Limited, acknowledged that a meeting between the two parties had been held to deliberate on the boundary wall issue. The letter further indicated that Khaleej Towers had sought approval to reconstruct the wall, but their request was declined on the grounds that the proposed works would interfere with the sewer line.



Figure 6: **Pictorial representation of the demolished Boundary Wall belonging to Coldstone Limited.**



*Figure 7: Pictorial representation of building debris deposited on the roof of Coldstone Building*



*Figure 8: Pictorial Representation of construction materials/debris deposited on the backyard of Coldstone Limited property.*

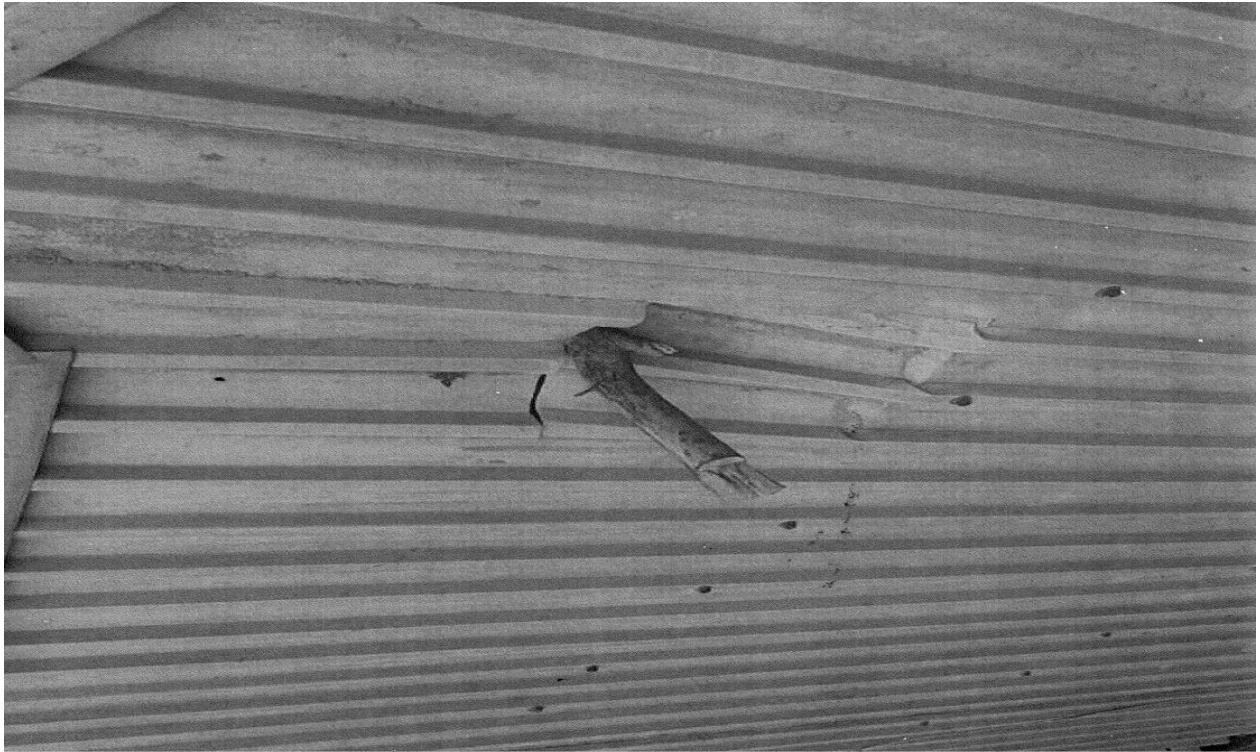


Figure 9: *Pictorial representation of dangerous construction materials falling and damaging coldstones property roof*

### 2.4.3 Findings: Evidence of Damages Suffered by Coldstone Investment Limited

The evidence gathered from official reports, correspondence, and site inspections demonstrates that Coldstone Investment Limited suffered physical, structural, environmental, and operational damages directly resulting from the irregular approval and unlawful construction activities undertaken by Khaleej Towers Limited on L.R. No. 36/VII/234.

#### 1. Physical Damage to Property

- The demolition of Coldstone's rear boundary wall was verified by both the Nairobi County Survey & GIS Department and the County Public Health Department.
- The destruction of the wall deprived the complainant of a key security and structural feature, exposing the premises to trespass, debris intrusion, and weather damage.
- The cost of rebuilding and restoring the wall constitutes a direct financial loss attributable to Khaleej Towers Limited.

#### 2. Encroachment and Loss of Land Use

- Survey findings confirmed that Khaleej Towers' hoarding and scaffolding encroached between 1.0 and 1.9 meters into Cold stone's parcel.

- This encroachment reduced the complainant's usable land area, obstructed access, and interfered with the right to quiet possession protected under Article 40 of the Constitution and the Land Act, 2012.
- The encroachment and obstruction effectively deprived Coldstone of beneficial use and enjoyment of the affected land portion throughout the construction period.

### 3. Environmental and Aesthetic Damage

- The dumping of construction debris within Coldstone's backyard created an environmental nuisance, contrary to the Public Health Act (Cap. 242).
- This act degraded the environment, diminished property aesthetics, and increased the cost of maintenance and sanitation, resulting in measurable economic loss.

### 4. Loss of Amenity and Structural Comfort

- The development on L.R. No. 36/VII/234 failed to meet required setbacks and clearance distances, resulting in reduced natural lighting and ventilation to Coldstone's property.
- These structural interferences compromised habitability, privacy, and property value, thereby constituting loss of amenity and reduced functional utility.

### 5. Psychological and Operational Disruption

- Coldstone's staff were harassed by County Inspectorate and Public Health officers, acting on the claim that the property encroached onto a public sewer wayleave.
- These actions disrupted business operations, created reputational damage, and worsened the stress and inconvenience caused by the unlawful encroachment and demolition.

### 6. Causation and Responsibility

The damages suffered by Coldstone Investment Limited arose directly from the irregular approval and negligent oversight by Nairobi City County and unlawful construction activities undertaken by Khaleej Towers Limited on L.R. No. 36/VII/234. The false claim that the sewer line constituted a public wayleave, implying that the sewer corridor was public land, was the immediate cause of the demolition, encroachment, and resulting loss.



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## HEALTH, WELLNESS AND NUTRITION Office of the County Chief Officer - Public Health

- The existing backyard is a private space for Plot No. 36/VII/235 as shown on the survey map and the plot size as indicated on the title deed. Refer approved building plans No. ED-723 dated 27<sup>th</sup> January 2007.
- There is provision for storm water drainage at the backyard on Plot No. 36/VII/235. Only that part of it has been damaged by the ongoing construction at the time of inspection.
- 2. The ongoing development had no safety provision measures to safeguard construction material/objects from falling to the neighboring plots.
  - At the time of inspection, evidence of construction materials/debris was dangerously falling at the backyard and on the roof of the neighboring plot.
  - The existing corrugated iron sheet hoarding has been placed 1.5m full width inside Plot 36/VII/235 without approved hoarding construction permit.
  - The ongoing development has provided an illegal door opening accessing the neighbor plot, hence interfering with the safety, security and privacy of the residence. It is not shown on the approved plans
  - The boundary wall for plot 36/VII/235 at backyard was found demolished by the Khaleej towers limited contractor.
- 3. Approved building plans for Khaleej Tower Limited, Plan No. CPF-AW-765 and PLUPA-BPM-002413-Q (proposed additional floors with 36 No. units to approved plan No. CPF-AN 765 on the Nairobi Planning Development Management System (NPDNS) the following are our findings on the ground and as per the building plans approval and released on 13/Sept, 2023.
  - a) The required minimum unobstructed window clear distances for the lounge, bedroom, kitchen, water closet//shower are not observed on all rooms, leading to inadequate natural lighting and ventilation in the building.
  - b) There is encroachment to 3m distance at the setback and surrender on the frontage of the building. The extension is contrary to the approved plans.
  - c) The construction is contrary to the approved plans, no window clear distances at the backside, hence window openings to the backside wall opens to the neighbor's plot

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Figure 10: Excerpt of Nairobi County Public Health inspection report dated 12 February 2024 Ref: NCCG/PH/VOL.2/38/2024, following a complaint by Coldstone Limited

### 2.5 Assessment of Acts and Omissions of Public Officers in the Approval and Oversight of the Construction

The investigation established that several public officials in Nairobi City County failed to discharge their statutory duties in relation to the construction project on L.R No. 36/VII/234. Their omissions and actions contributed to irregular approvals, weak enforcement, and ongoing violations of planning and building regulations. The specific findings are as follows:

#### a. Stephen Mwangi – CECM, Built Environment and Urban Planning

- Relied exclusively on forwarded memos without conducting independent verification, contrary to Section 20(j) of PLUPA.

- Ratified building plans CPF-AW765 and PLUPA-BPM-002413-Q without confirming that technical and committee compliance issues had been resolved.
- Received approval lists with inflated application numbers, which differed from UPTC minutes.
- Failed to ensure that revoked plans were followed by enforcement action, thereby enabling ongoing violations.

**b. Patrick Analo – Chief Officer, Urban Development and Planning**

- As a UPTC member, forwarded non-compliant application CPF-AW765 for ratification which was later revoked.
- Approved application PLUPA-BPM-002413-Q despite unresolved technical objections, including non-compliance with setback requirements and absence of KCAA clearance.
- Submitted approval lists with inflated application numbers inconsistent with UPTC records.
- Did not enforce either the enforcement notice or the revocation order, allowing construction to continue unlawfully.

**c. Fredrick Ochanda – Assistant Director, Development Control**

- Identified compliance issues in PLUPA-BPM-002413-Q but advanced the application without ensuring resolution.
- Issued an approval letter prematurely, before UPTC deliberation and CECM ratification as required under PLUPA 2019.
- Withheld unresolved objections from the Technical Committee, breaching approval protocols.

**d. Simon Omondi – Development Control Officer**

- Advanced application PLUPA-BPM-002413-Q to UPTC without verifying the resolution of critical technical objections.
- Failed to raise outstanding issues during committee deliberations, weakening the integrity of the review process.

**e. Mr. Edward Okuku – Planning, Compliance and Enforcement Officer**

- Issued an enforcement notice in January 2023 citing deviations from approved plans, but failed to follow up with enforcement measures, enabling construction to continue in defiance of the notice.

**f. Tom Achar – Director, Planning, Compliance, and Enforcement**

- Oversaw issuance of the enforcement notice but failed to ensure follow-up action.
- Did not disclose ongoing enforcement issues when UPTC considered additional floors.
- His omissions undermined enforcement and allowed continued violations.

**g. Urban Planning Technical Committee (UPTC)**

- Approved applications despite unresolved objections and unverified technical details.
- Failed to uphold statutory requirements, thereby facilitating unlawful development.

## CHAPTER 3: CONSEQUENTIAL OBSERVATIONS

### 3.1 Weak Internal Controls: Systemic Gaps in the Nairobi Planning and Development Management System (NPDMS)

**i. Unregulated Allocation of Applications:** The system allows development control officers to self-assign applications from the evaluation pool without oversight. This discretionary allocation makes it difficult to establish accountability or trace responsibility in case of irregularities.

**ii. Progression of Non-Compliant Applications;** NPDMS permits applications to proceed to the next stage of approval regardless of whether technical comments have been addressed. This undermines the integrity of the review process and facilitates approval of incomplete or noncompliant submissions.

**iii. Lack of Automated Approval Restrictions:** There is no in-built accountability mechanism in the system to prevent the generation of Development Control approval letters (DC8) for applications with unresolved technical objections. The system should automatically restrict the progression of such applications until all comments are satisfactorily addressed.

**iv. Circumvention of Multi-Disciplinary Technical Review:** Development control officers exercise broad discretion in the handling of development applications, often failing to circulate them to key technical departments such as Roads, Survey, Public Health, and Fire Safety. This practice undermines the multidisciplinary technical review process required under the Physical and Land Use Planning Act (PLUPA), 2019, and may result in selective, inconsistent, or incomplete evaluation of development applications.

**v. Restricted System Access for Critical Staff:** Several officials interviewed reported being denied access rights to the system, which limited their ability to track or intervene in the application review and approval process effectively.

**vi. Inactive Enforcement Module:** The enforcement module, which is essential for post-approval monitoring and regulatory compliance, has not been activated. This hinders follow-up on approved developments, particularly in cases of violations.

**vii. Exclusion of Professional Body Representatives:** Representatives from professional bodies in the Urban Planning Technical Committee (UPTC) lack system access. As a result, they rely solely on information provided by county officials, which limits their capacity for independent assessment and meaningful participation in approval decisions.

**viii. Lack of Standardized Evaluation Criteria:** The system does not incorporate objective evaluation criteria, leaving room for subjective decision-making by technical officers during assessments.

**ix. No Tracking of Repeat Offenders:** The system fails to flag professionals (e.g., architects or engineers) previously found to have submitted erroneous or deceptive drawings. This allows such professionals to continue participating without scrutiny or accountability.

### 3.2 Coordination Failures among Departments

Nairobi County's building regulation process lacks coordination among key departments. A notable example is the issuance of approval PLUBA-BPM-002413-Q on 30th August 2023, despite an unresolved enforcement notice (Serial No. 1851) issued by the Department of Planning, Compliance, and Enforcement on 31st January 2023 for the same property (L.R. No. 36/VII/234). This indicates a failure in internal communication and collaboration, enabling contradictory decisions.

### 3.3 Observation on Surrounding Developments: Widespread Non-Enforcement of Planning Regulations

During the site visit, investigators from the Commission observed that numerous buildings in the vicinity of the development under investigation had similarly contravened planning regulations. These violations were consistent across multiple developments and included:

- **Exceeding permitted building heights** in violation of zoning restrictions.
- **Failure to observe mandatory setbacks**, particularly side and rear setbacks as stipulated in the Zoning Policy and Building Code.
- **Installation of windows and balconies facing directly into adjacent properties**, compromising privacy and contravening safety standards.

Of particular concern was the prevalence of beacon-to-beacon construction, where buildings had been erected directly up to the boundaries of plots without leaving any setback space. This trend severely undermines urban planning principles related to spacing, ventilation, fire safety, and light penetration.

These widespread breaches indicate a systemic failure in regulatory oversight and enforcement by Nairobi City County's Planning and Development Control authorities. The pattern of non-compliance calls for urgent, targeted reforms to strengthen enforcement mechanisms, enhance accountability, and uphold the integrity of the urban development framework.

## CHAPTER 4: CONCLUSIONS

### 4.1 Status and Nature of the Sewer Line Between L.R. No. 36/VII/234 and L.R. No.36/VII/235

The investigation established that the sewer line runs exclusively within L.R. No. 36/VII/235, which is the registered property of Coldstone Investment Limited. Notwithstanding its public utility function, the presence of the sewer line does not alter the ownership status of the land. The portion of land traversed by the sewer line remains private property vested in Coldstone Investment Limited, subject only to the Nairobi City Water and Sewerage Company's limited right of use for sewerage purposes.

A sewer wayleave does not convert private land into public land, nor does it create a development buffer upon which an adjoining landowner may lawfully rely to relax statutory setback requirements or modify building orientation. Accordingly, the presumed existence of a public wayleave could not lawfully justify construction on L.R. No. 36/VII/234 up to the boundary line, the omission of prescribed setbacks, or the installation of windows opening directly onto the adjoining property, L.R. No. 36/VII/235.

### 4.2 Evaluation of the Building Plan Approval Process and Regulatory Compliance for L.R. No. 36/VII/234

The investigation established that the approvals granted for the project, CPF-AW765 and PLUPA-BPM-022413-Q, were marred by serious procedural and substantive irregularities. Both approvals failed to comply with the Physical and Land Use Planning Act, 2019 (PLUPA), the Building Code, and Nairobi zoning regulations.

Key lapses included:

- Premature issuance of approval letter (DC8) before formal deliberation and approval.
- Failure to circulate applications to all relevant technical departments, particularly Public Health, undermining interdepartmental review.
- Non-compliance with mandatory planning controls on setbacks, ground coverage, and plot ratio, resulting in excessive density and bulk.
- Contradictory and misleading submissions by the architect, including the misrepresentation of a public sewer wayleave.
- Weak enforcement by Nairobi City County, which allowed construction to proceed despite an enforcement notice, revocation of plans, and a stop order.

- Systemic weaknesses in the Nairobi Planning and Development Management System (NPDMS), which permitted applications to advance despite unresolved technical objections.

Generally, the approvals were irregular, non-transparent, and contrary to legal and planning frameworks. These failures not only infringed on the rights of neighboring property owners but also eroded public confidence in the credibility of Nairobi City County's development control processes.

#### **4.3. Enforcement of Building Regulations during Construction by Nairobi City County in Respect of LR No. 36/VII/234**

The investigation established that Nairobi City County failed to enforce building regulations effectively. Although Enforcement Notice No. 1851 was issued on 31 January 2023, requiring the developer to cease construction and submit a structural integrity report, the developer ignored the notice and continued building. The County subsequently revoked the approvals on 14 March 2024, but failed to take decisive action to halt the project.

This inaction demonstrates serious lapses in regulatory oversight and enforcement capacity. By failing to implement its own decisions, the County allowed continued violation of PLUPA, the Building Code, and zoning regulations, thereby undermining public trust in the County's regulatory and compliance framework.

#### **4.4 Determination of Loss or Damage Associated with the Approval and Execution of the Construction Project on L.R. No. 36/VII/234.**

The cumulative evidence establishes that Coldstone Investment Limited suffered quantifiable material, environmental, and operational damages as a direct consequence of the irregularly approved and unlawfully executed construction on L.R. No. 36/VII/234. The harm encompasses loss of property, diminished utility and aesthetics, and interference with lawful occupation, warranting restitution and regulatory accountability to the approving authorities.

The approvals granted by Nairobi City County were procedurally irregular, reflecting administrative negligence. Consequently, Coldstone Investment Limited suffered material and structural damage arising from the unlawful failure of regulatory authorities to exercise due diligence.

#### **4.5. Assessment of Acts and Omissions of Public Officers in the Approval and Oversight of the Construction**

The investigation establishes clear culpability on the part of Nairobi City County officials and allied entities for failing to discharge their statutory duties in relation to the project. Their actions and omissions, including irregular approvals, disregard of technical objections, misrepresentation of a sewer wayleave, premature issuance of approvals, and failure to enforce notices and revocation orders, constitute dereliction of duty under PLUPA (2019), the Enforcement Regulations (2021), and related planning and zoning policies.

These failures directly enabled continued unlawful development, undermined the integrity of statutory planning mechanisms, compromised enforcement, and facilitated violations that disadvantaged affected landowners. Collectively, the conduct of the responsible officers reflects systemic weaknesses in accountability, diligence, and regulatory integrity within Nairobi City County's urban planning and development control processes.

Accordingly, the culpability of the officers lies in their collective and individual failure to exercise due diligence, statutory oversight, and enforcement responsibility, thereby breaching the trust placed in them as custodians of public interest in urban development and land use management.

#### **4.6 Consequential Observations**

The consequential observations reveal deep-seated weaknesses within the Nairobi Planning and Development Management System (NPDMS) and its operational environment. The systemic gaps, ranging from unregulated officer discretion and inactive enforcement tools to poor inter-departmental coordination and widespread regulatory non-enforcement, have created an environment that fosters impunity, erodes accountability, and undermines the integrity of urban development controls. The prevalence of contraventions, not only in the case under investigation but also in surrounding developments, demonstrates that these failures are not isolated but entrenched and systemic. Unless urgent reforms are undertaken to strengthen internal controls, enhance transparency, and institutionalize enforcement, Nairobi risks entrenching a culture of non-compliance that compromises public safety, urban livability, and the credibility of regulatory institutions.

## CHAPTER FIVE: ANALYSIS OF RESPONSES TO CULPABILITY NOTICES

### Background

In accordance with Section 36 of the Commission on Administrative Justice Act, 2011, and the rules of natural justice, the Commission is obligated to accord any person adversely mentioned in its findings an opportunity to be heard before making an adverse determination or recommendation against them. This requirement upholds the principles of fair administrative action under Article 47 of the Constitution of Kenya, 2010, and the Fair Administrative Action Act, 2015.

Pursuant to these provisions, the Commission, on 7 January 2026, communicated its preliminary findings to Mr. Fredrick Ochanda, Mr. Patrick Analo, Hon. S.K. Mwangi, Mr. Erick Okuku, Mr. Simon Omondi, and Mr. Tom Achar, inviting them to submit written representations within fourteen (14) days of receipt of the notices

Responses were received from Mr. Fredrick Ochanda, Mr. Simon Omondi, Mr. Patrick Analo, Mr. Tom Achar, and Mr. Erick Okuku, and the same were duly considered. In the absence of any representations from Hon. S.K. Mwangi, the adverse findings against him are upheld. The responses submitted by the five officers are analyzed and presented below:

### 5.1. Mr. Fredrick Ochanda – Assistant Director, Development Control

#### **Adverse Finding 1: Failure to Resolve Compliance Issues Before Progression of the Application**

Mr. Ochanda had identified compliance concerns in respect of application **PLUPA-BPM-022413-Q**, yet the application proceeded to subsequent stages without confirmation that the issues had been satisfactorily resolved. In response, he contended that his objections were invalidated by an earlier approval and by the Nairobi City Water and Sewerage Company's (NCWSC) letter dated 26 April 2023, which indicated the presence of a sewer line behind the subject property.

The reliance placed on the NCWSC letter is misplaced. While the letter confirms the existence and general alignment of a sewer line, it does not determine the legal status of the land affected. Such determination rests on survey and land registration records and not the Nairobi County Development Control Officers. The investigation established, based on survey evidence and the County Surveyor's boundary dispute resolution report, that the sewer line lies within L.R. No. 36/VII/235, which is privately owned by Coldstone Investment Limited. The

mere presence of a sewer line, therefore, did not create a public corridor nor justify the disregard of applicable compliance requirements.

In addition, no formal records were produced to support the assertion that the identified objections had been invalidated. Accordingly, Mr. Ochanda's response does not rebut the finding that the compliance issues identified were not satisfactorily resolved before the application progressed.

### **Adverse Finding 2: Inclusion of the Application in the UPTC Agenda Despite Outstanding Issues**

Mr. Ochanda was found to have generated and tabled the agenda for the UPTC meeting of 31 August 2023, which included the subject application notwithstanding unresolved technical objections. He attributed the preparation of the agenda to his predecessor.

The agenda copy relied upon appears to be a post-meeting, cleaned version prepared to capture the committee's outcomes and signed on 5 September 2023, rather than the agenda used to guide deliberations. In any event, the Assistant Director, Development Control, plays a central role in the agenda workflow and was expected to ensure that unresolved issues were either cleared or expressly brought to the attention of the committee. This did not occur. The response does not displace the adverse finding.

### **Adverse Finding 3: Premature Issuance of the Approval Letter (DC8)**

Mr. Ochanda acknowledged that the DC8 approval letter was generated on **30 August 2023**, a day prior to UPTC deliberations, contrary to the prescribed statutory approval sequence. His response confirms the existence of a procedural irregularity and does not explain how it occurred, who authorized it, or whether any corrective action was taken. During the interview, he admitted that he generated the approval letter himself. The response confirms the adverse finding.

### **Adverse Finding 4: Failure to Escalate Unresolved Technical Issues to the UPTC**

No response was provided in respect of this finding. The investigation established that unresolved technical issues identified at the circulation and Pre-PTC stages were not escalated to the committee prior to approval. The adverse finding remains undisputed.

Having considered the representations made and the evidence on record, the Commission concludes that Mr. Fredrick Ochanda's responses do not sufficiently rebut the adverse findings communicated in the culpability notice. The findings

relating to procedural non-compliance, premature approval action, and failure to escalate unresolved technical concerns are accordingly upheld.

## 5.2 Simon Omondi, Development Officer

### Adverse Finding 1

The investigation established that Mr. Simon Omondi advanced application PLUPA-BPM-002413-Q **from** the Pre-PTC stage to the UPTC without verifying that critical technical objections had been resolved.

In his response, Mr. Omondi contended that the submitted drawings fully complied with the prescribed setback requirements, asserting that the rear of the property abuts a public sewer wayleave. He relied on a letter from the Nairobi City Water and Sewerage Company (NCWSC) dated 26 April 2023, and further argued that the rear-facing windows and balconies overlooked a public corridor.

A review of the NCWSC letter relied upon by Mr. Omondi does not support his position. While the letter confirms the existence of a public utility wayleave for sewerage purposes, it does not declare the land on which the wayleave is situated to be a public corridor. Rather, it confirms that the wayleave serves a limited public function namely, the provision of sewerage services. Nairobi County officers had no authority to treat the land hosting the sewer wayleave as a public corridor or to permit Khaleej Towers Limited to rely on it as a setback for development purposes. Ownership of the land remains vested in Coldstone Investment Limited, and the only permissible public use is the sewerage function.

Further, no evidence was adduced to demonstrate that Mr. Simon Omondi's technical objections had been formally invalidated or lawfully resolved. Notably, one of his objections requiring the developer to obtain and attach a height clearance letter from the Kenya Civil Aviation Authority (KCAA) was not complied with. Correspondence from the KCAA dated 22 July 2025 confirms that no such clearance was sought.

In the circumstances, the Commission finds that the adverse finding against Mr. Simon Omondi is upheld.

### Adverse Finding 2

The investigation established that Mr. Simon Omondi failed to raise outstanding technical issues during the Committee's deliberations, despite being a member of the Committee. This omission undermined the integrity and effectiveness of the review process.

In his response, Mr. Omondi contended that his role as a technical officer concluded at the Pre-PTC stage, and that decisions beyond that stage, including deliberations at the UPTC, were institutional and collective in nature. While it is acknowledged that UPTC decisions are collective, the Commission notes that the Committee comprises representatives drawn from different institutions, each with distinct roles and responsibilities. As a technical officer and member of the UPTC, Mr. Omondi was expected to provide a factual and accurate presentation of the technical status of the plans to inform the Committee's collective decision-making.

His failure to raise unresolved technical concerns during deliberations constituted negligence and compromised the Committee's ability to make a fully informed and lawful decision. The adverse finding against Mr. Simon Omondi is upheld.

### **5.3 Mr. Patrick Analo, Chief Officer**

At all material times, Mr. Patrick Analo served as Chief Officer in charge of the department responsible for physical and land use planning. In that capacity, he occupied a central administrative and oversight position within the development approval and enforcement framework established under the Physical and Land Use Planning Act, 2019 (PLUPA) and the County Government Act, 2012. His role placed him squarely within the chain of accountability for vetting, recommending, escalating, and enforcing development control decisions.

The investigation assessed his conduct not based on whether he was the final approving authority, but whether, given his position, participation, and actions, he discharged his statutory and constitutional duties with the diligence, integrity, and accountability required.

#### **i. Adverse Finding 1: Recommendation and Escalation of a Non-Compliant Application**

The investigation established that Mr. Analo, as a member of the UPTC, participated in deliberations on application CPF-AW765, which was recommended for approval and later revoked for non-compliance. Although he relied on PLUPA provisions assigning approval authority to the County Director and the CECM, the evidence shows that his role extended beyond committee participation. As Chief Officer and accounting officer, he signed and transmitted the cleaned agenda to the CECM, a critical integrity step in the approval process. Given his supervisory authority under the County Government Act, he could not reasonably disassociate himself from the recommendation

and escalation of a non-compliant application, and his response does not rebut the adverse finding.

**ii. Adverse Finding 2: Advancement of an Application with Unresolved Technical Objections**

The investigation established that application PLUPA-BPM-022413-Q advanced through the approval process despite unresolved technical objections, including non-compliance with setback requirements and lack of mandatory KCAA clearance. Although Mr. Analo attributed responsibility to the CECM and described his role as merely forwarding documents, the evidence shows that, as a UPTC member, he participated in deliberations where the objections should have been addressed or the matter deferred. By signing and transmitting the cleaned agenda, he endorsed the recommendation without qualification. His explanation therefore does not rebut the finding that he facilitated the progression of a non-compliant application

**iii. Adverse Finding 3: Forwarding of Inflated and Irregular Approval Lists**

The investigation found that approval lists forwarded to the CECM under Mr. Analo's cover did not align with official UPTC records and contained inflated application numbers, yet they formed the basis for approvals. Although Mr. Analo asserted that he merely transmitted documents in good faith, his position required reasonable verification and due diligence, particularly given his participation in the UPTC and knowledge of the committee's actual recommendations. His explanation does not account for how clearly inconsistent lists were forwarded without clarification or correction, nor for the fact that the lists originated from an Assistant Director, bypassing the legally recognized channel. By forwarding these irregular schedules unqualified, Mr. Analo facilitated approvals based on inaccurate and unreliable records.

**iv. Adverse Finding 4: Failure to Ensure Effective Enforcement**

Although Enforcement Notices, Revocation Notices, and Stop Orders were issued, the investigation established that construction continued, was completed, and the premises were occupied. Mr. Analo's reliance on the existence of notices and statutory roles does not address the failure to ensure effective, timely enforcement. As Chief Officer, he bore responsibility for follow-through, including monitoring, escalation, and sanctions. The delayed and ineffective enforcement undermined planning control and public safety, and does not rebut the adverse finding.

**v. Adverse Finding 5: Exercise of Discretion Inconsistent with Article 232**

Mr. Analo denied exercising discretion inconsistently with the principles of accountability, transparency, and good governance, maintaining that his role was purely administrative and that PLUPA procedures were followed. However,

this response does not address the specific conduct identified. The investigation shows that he endorsed and transmitted recommendations and approval schedules despite unresolved technical objections, inconsistencies with official records, and weak enforcement follow-through. In a forwarding and endorsing role, he was required to exercise reasonable diligence, raise concerns, and prevent the approving authority from being misled. His characterization of his role as purely administrative is therefore not supported by the record.

#### **vi. Adverse Finding 6: Failure to Safeguard the Public Interest**

Mr. Analo disputed the finding that he failed to safeguard the public interest, citing the issuance of enforcement notices and the involvement of other agencies, and attributing responsibility to the CECM. However, this response focuses on institutional mandates rather than his own conduct. The investigation established that irregular approvals were endorsed, unlawful development progressed, and enforcement was ineffective and untimely. Although the CECM is the final approving authority, Mr. Analo's participation in and transmission of key documentation formed part of the chain that enabled non-compliance, and the involvement of other agencies does not absolve responsibility within his docket.

### **Conclusion**

Taken cumulatively, Mr. Analo's responses rely on the formal allocation of statutory mandates and the existence of higher approving authorities, but do not meaningfully address his own conduct within the approval and enforcement chain. His responses therefore do not rebut the adverse findings.

## **5.4 Tom Achar, Director, Planning, Compliance and Enforcement, and Erick Okuku, Planning, Compliance and Enforcement Officer**

### **Adverse Findings against Mr. Achar**

- i. He oversaw issuance of the enforcement notice but did not ensure effective follow-up action.
- ii. He did not bring ongoing enforcement concerns to the attention of the UPTC when the Committee considered approval of additional floors.
- iii. These omissions weakened enforcement controls and allowed the violations to persist.

### **Adverse Findings against Mr. Okuku**

- i. He issued an enforcement notice but failed to follow up with enforcement measures, enabling construction to continue in defiance of the notice.

## **Summary of their Responses**

Both officers contend that Khaleej Towers Limited defended the development in several court matters, and that the courts confirmed the construction was lawful, compliant with planning requirements, and within approved plans. They further assert that the courts recognized a public sewer wayleave and found that the development does not infringe on Coldstone Investment Limited's private property. In their view, these outcomes validate Nairobi City County's approvals and enforcement actions.

### **Analysis of the response**

The officers did not provide particulars of the court matters they rely on, such as case numbers, dates, the issues determined, or the final orders yet they advance the broad conclusion that the court outcomes validate the County's approvals and actions. From the records available to the Commission, the matters known in relation to this dispute are:

1. **Water Tribunal, Nairobi – Case No. TRWAC/E002/2023:** *Coldstone Investment Limited v Nairobi City Water and Sewerage Company & Khaleej Towers Limited*

**Outcome:** The matter was dismissed on the basis that the Tribunal lacked jurisdiction.

2. **County Physical and Land Use Planning Liaison Committee – Complaint/Claim/Appeal No. E001 of 2024**

**Outcome:** The matter was struck out for being time-barred.

3. **National Environment Tribunal – Tribunal Appeal No. 15 of 2023**

#### **Summary of Order (3 October 2023)**

*The Tribunal directed Khaleej Towers Limited to comply, within 14 days, with the conditions contained in NEMA's letter dated 6 March 2023. The Tribunal further issued a temporary injunction restraining any further construction on the suit property pending compliance within the said period. The Tribunal also directed NEMA to inspect and/or supervise compliance and to file a status report within 14 days, and in any event on or before 6 October 2023, with the matter scheduled for mention for further directions.*

These orders point to outstanding compliance obligations and a directive to halt construction, rather than a judicial confirmation that construction was compliant or that the County's approval and enforcement processes were proper.

These outcomes, on their face, do not amount to a judicial confirmation that the development was fully compliant or that the County's approval and enforcement processes were properly executed. In particular, a dismissal for

want of jurisdiction and a striking out on grounds of limitation are procedural outcomes and do not determine the substantive merits of compliance. Further, the proceedings before the National Environment Tribunal resulted in orders favorable to Coldstone Investment Limited.

In any event, the adverse findings against Mr. Achar and Mr. Okuku are not primarily about the existence of litigation. They concern enforcement follow-through and, in Mr. Achar's case, disclosure to the UPTC during subsequent decision-making.

**First**, on enforcement, the issue is what happened after the enforcement notice was issued. Neither officer explains what practical steps were taken to give effect to the notice once issued such as site inspections, written compliance verification, escalation measures, coordination with enforcement personnel, or any action once it became apparent that construction was continuing. An enforcement notice is not an end in itself; it must be implemented, monitored, and pursued to outcome, particularly where non-compliance persists.

**Second**, in respect of Mr. Achar, the response does not address the concern that the UPTC was not alerted to ongoing enforcement issues when it later considered approval of additional floors. Regardless of whether court proceedings existed, the UPTC required a complete and accurate compliance posture to make an informed recommendation. Mr. Achar, as a committee member, does not state that he briefed the Committee, tabled the enforcement status, or ensured that the enforcement concerns were recorded and considered before further approvals were processed.

**Third**, even assuming the officers' characterization of court outcomes were correct, that would not automatically cure gaps in internal process. The questions remain procedural and governance-based: was enforcement pursued to conclusion, and was the Committee properly informed of the enforcement posture when subsequent approvals were being considered? The response does not link any specific order to these issues or demonstrate how any court decision addressed continued construction after enforcement action or the duty to disclose enforcement concerns to the UPTC.

**Finally**, the reliance on the NCWSC letter does not resolve the legal status of the alleged corridor. The letter confirms the existence and general alignment of a sewer line, but it does not determine whether the corridor constitutes registered public land or a public wayleave. That is a matter for survey and land records. The context is also relevant: the letter responded to an inquiry by Coldstone Investment Limited's property manager and, within NCWSC's mandate, clarified the sewer's location and service function. Such clarification does not settle the legal character of the land affected by the sewer line.

## **Conclusion**

The responses by Mr. Achar and Mr. Okuku do not address the substance of the adverse findings. They rely on general references to court outcomes without

particulars, and they do not explain what enforcement follow-up was undertaken after issuance of the enforcement notice. Further, Mr. Achar does not demonstrate that the UPTC was properly informed of active enforcement concerns when additional floors were under consideration. Accordingly, the adverse findings against both officers remain upheld.

## CHAPTER SIX: ACTIONS AND RECOMMENDATIONS

### 6.1 Actions to be undertaken

Pursuant to sections 42 (2)(b) and 42 (3) of the CAJ Act, 2011, the Commission considers that the following actions should be taken and reports on the same be submitted to the Commission within the specified periods:

1. That the Director of Public Prosecutions (DPP), pursuant to its constitutional and statutory mandate, initiates appropriate legal proceedings against the following officials for their roles in approving, endorsing, or otherwise facilitating unlawful development permissions, contrary to the Physical and Land Use Planning Act, 2019, and the Local Government (Adoptive By-Laws) (Building) Order, 1968:
  - **Mr. Stephen Mwangi** – Former County Executive Committee Member, Built Environment and Urban Planning
  - **Mr. Patrick Analo** – Chief Officer, Urban Planning
  - **Mr. Fredrick Ochanda** – Assistant Director, Development Control
  - **Mr. Simon Omondi** – Development Control Officer
  - **Mr. Tom Achar** – Director, Planning, Compliance, and Enforcement

The Director of Public Prosecutions (DPP) should update the Commission of its progress, within one month of receiving this report.

2. That the Nairobi City County Assembly, pursuant to its mandate under Section 40 of the County Governments Act, 2012, initiates disciplinary proceedings for the removal of the following senior officer on grounds of gross misconduct, dereliction of duty, and breach of public trust:

**Mr. Stephen Mwangi:** Position: Former CECM, Built Environment and Urban Planning (currently CECM for Boroughs, Administration, and Personnel)

#### Grounds for Removal

- Approved development applications CPF-AW/765 and PLUPA-BPM-022413-Q in violation of the Physical and Land Use Planning Act (PLUPA), 2019, the Building Code, and applicable zoning regulations.
- Failed to enforce the Enforcement Notice (January 2023) and the Revocation Order (November 2023) as required under PLUPA, 2019.

- Neglected mandatory circulation of development applications to technical departments (Roads, Survey, Public Health, Fire Safety, etc.), contrary to PLUPA, 2019.
- Breached public trust by engaging in actions and omissions amounting to gross misconduct and undermining the integrity of Nairobi City County's urban planning and regulatory framework

The Clerk of the Nairobi County Assembly should report back to the Commission, within one month of receiving this report, on the action taken.

3. That the Nairobi City County Public Service Board (CPSB) initiates disciplinary proceedings, pursuant to Section 59(1)(c) of the County Governments Act, 2012, against the following technical officers for abuse of power, dereliction of duty, and failure to uphold statutory obligations in the approval and enforcement of development control processes:

- **Mr. Patrick Analo**: Position: Chief Officer, Urban Planning
- **Mr. Fredrick Ochanda** – Assistant Director, Development Control
- **Mr. Simon Omondi** – Development Control Officer
- **Mr. Tom Achari** – Director, Planning, Compliance, and Enforcement
- **Mr. Erick Okuku** – Planning, Compliance, and Enforcement Officer

### **Grounds for Disciplinary Action**

- Facilitated or endorsed unlawful approvals in contravention of the Physical and Land Use Planning Act (PLUPA), 2019, the Building Code, and zoning regulations.
- Failed to enforce valid Enforcement Notices and Revocation Orders, thereby enabling continuation of non-compliant developments.
- Exercised discretionary powers in a manner inconsistent with the principles of accountability, transparency, and good governance under the Constitution and PLUPA, 2019.
- Neglected their duty to protect public interest by permitting irregular developments and undermining regulatory compliance mechanisms.

The CEO of the Nairobi City County Public Service Board (CPSB) should report back to the Commission within one month of receiving this report on the actions taken.

4. The Chief Executive Officer of the Ethics and Anti-Corruption Commission (EACC) to institute investigations into the circumstances surrounding the

premature issuance of the approval letter (DC8) dated 30 August 2023 for PLUPA-BPM-022413-Q, which was issued before formal deliberation by the UPTC on 31 August 2023 and final ratification by the County Executive Committee Member (CECM) on 14 September 2023, with a view to establishing whether the officers involved engaged in corrupt conduct.

The CEO should update the Commission on its progress within one month of receiving this report.

5. That the Board of Directors of the Nairobi City Water and Sewerage Company (NCWSC), in collaboration with the Governor of Nairobi City County, develops and implements clear policy and administrative measures to protect the rights of private landowners whose land hosts public utilities such as sewer lines or water infrastructure.

Rationale:

- Protection of Ownership Rights: While the sewer line constitutes a legitimate public wayleave, ownership of the underlying land remains with the private proprietor. NCWSC, therefore, has a duty to ensure that the presence of the utility does not lead to unlawful encroachment or misuse by third parties.
- Duty of Care and Oversight: NCWSC should maintain accurate records and provide clear, evidence-based communication regarding the legal status of all utility corridors to prevent misrepresentation or misuse of wayleave rights.
- Conflict Prevention: Proper documentation, community sensitization, and inter-agency coordination should be strengthened to avoid disputes where private land hosts public utilities.

The Chairperson, Board of Directors of NCWSC, should report back to the Commission within one Month of receiving this report on the policy and administrative steps taken to safeguard private landowners' rights in such situations.

6. The Governor of Nairobi City County takes appropriate measures to regularize the irregular building on L.R. No. 36/VII/234 so that it complies with the statutory setback requirements under the *Physical and Land Use Planning Act, 2019*, and the Nairobi City County by-laws. In particular, this should include blocking the windows and balcony openings situated on the boundary and directly overlooking the complainant's property on L.R. No. 36/VII/35.

The Governor should report back to the Commission, within one month of receiving this report, on the action taken.

## **6. Recommendation of Compensation**

### **i. Recommendation on Special Damages**

Having considered the evidence on record, including inspection reports, professional assessments, and documentary proof of loss, the Commission is satisfied that Coldstone Investment Limited incurred quantifiable pecuniary loss directly attributable to the irregular approval and execution of the construction project on L.R. No. 36/VII/234.

Pursuant to Sections 8(g) and 42 of the Commission on Administrative Justice Act, 2011, and having regard to the Commission's mandate to recommend appropriate redress where maladministration results in loss or damage, the Commission recommends that the Nairobi City County Government and Khaleej Towers Limited be held jointly and severally liable to compensate Coldstone Investment Limited a total sum of Kenya Shillings Two Million, Five Hundred and Thirty-Three Thousand, Three Hundred and Seventy-Nine (Kshs. 2,533,379) in respect of the established special damages.

The losses were sufficiently particularized, supported by documentary evidence, and are itemized as follows:

- Roof and gutter repairs – Kshs. 220,165
- Reconstruction of rear boundary wall – Kshs. 1,886,711
- Re-establishment of razor wire and burglar screens – Kshs. 180,000
- Structural engineer's professional fees – Kshs. 141,503
- Repair of backyard paving slabs – Kshs. 80,000
- Replacement of clothing lines – Kshs. 25,000

The Commission is satisfied that the above losses were reasonably foreseeable and arose as a direct consequence of the impugned construction activities

### **ii. Recommendation on General Damages**

In addition to the specific pecuniary losses established, the Commission finds that Coldstone Investment Limited suffered substantial non-pecuniary harm arising from the irregular approval and execution of the construction project on L.R. No. 36/VII/234. The evidence demonstrates prolonged interference with the quiet enjoyment of property, loss of privacy occasioned by boundary-line construction and overlooking windows, sustained exposure to construction-related nuisance, demolition of boundary infrastructure, and the attendant

inconvenience, distress, and disruption to the lawful use and enjoyment of the property.

Having regard to the nature, duration, and cumulative impact of these violations, and guided by the principles of fairness, proportionality, and reasonableness, the Commission is satisfied that an award of general damages is warranted.

Accordingly, and pursuant to Section 8(g) of the Commission on Administrative Justice Act, 2011, the Commission recommends that the Nairobi City County Government and Khaleej Towers Limited be held jointly and severally liable to compensate Coldstone Investment Limited by way of general damages not exceeding Kenya Shillings Twenty Million (Kshs. 20,000,000), as fair and reasonable redress for the non-quantifiable harm suffered.

### iii. **Justification and Jurisprudence**

The recommendation for general damages is consistent with settled Kenyan jurisprudence, which recognizes that unlawful administrative action, interference with property rights, nuisance, and loss of quiet enjoyment give rise to compensable non-pecuniary harm, even where specific financial loss has been separately quantified.

#### **(a) Interference with Quiet Enjoyment and Nuisance**

In **Park Towers Limited v John Mithamo Njika & 7 Others [2014] eKLR**, the High Court affirmed that unjustified interference with a landowner's quiet enjoyment of property is actionable and attracts compensatory relief. The Court recognized that encroachment, obstruction, and activities that diminish the enjoyment of land constitute compensable wrongs.

Similarly, in **Kenya Breweries Ltd v Washington O. Okeyo [2002] eKLR**, the Court of Appeal held that general damages are awardable for nuisance and inconvenience arising from unlawful or negligent activities affecting neighbouring property, even where precise quantification is not feasible.

#### **(b) Unlawful Administrative Action**

In **Dry Associates Limited v Capital Markets Authority & Another [2012] eKLR**, the High Court underscored that public bodies exercising statutory power must act lawfully, reasonably, and procedurally fairly, and that unlawful regulatory action attracting loss or harm warrants appropriate remedial intervention.

The same principle was reiterated in **Republic v Attorney General & Another ex parte James Alfred Koroso [2013] eKLR**, where the Court held that unlawful or procedurally unfair administrative action attracts remedial consequences, including compensation where justified.

### **(c) Constitutional Protection of Property and Fair Administrative Action**

Articles 40 and 47 of the Constitution protect property rights and guarantee fair administrative action. In **Gitobu Imanyara & 2 Others v Attorney General [2016] eKLR**, the Court of Appeal held that awards of general damages for constitutional violations must be fair, reasonable, and proportionate, and may be substantial where the violation is serious or prolonged.

### **(d) Proportionality of Quantum**

Kenyan courts have consistently held that the assessment of general damages is discretionary and must take into account the nature and duration of the violation, the conduct of the offending parties, and the impact on the claimant's rights (see **Koigi Wamwere v Attorney General [2015] eKLR**).

#### **iv. Conclusion**

The Commission finds that, in the present case, the sustained disturbance, loss of privacy, boundary interference, and regulatory failures justify a substantial and proportionate award of Kshs 20 million as general damages.

The Commission's recommendations on both special and general damages are grounded in law, proportionate to the harm established, and consistent with Kenyan jurisprudence on redress for unlawful administrative action and interference with property rights.

Accordingly, the Commission directs that the Nairobi City County Government and Khaleej Towers Limited make the said payment to Coldstone Investment Limited within thirty days from the date of receiving the report to remedy the prejudice occasioned by their actions.

## **6.2 Recommendations**

The Commission makes the following recommendations under section 42 (2)(C) of the CAJ Act:

### **a. Recommendations to the Nairobi City County Assembly**

The County Assembly should fast-track the finalization of the development of the Nairobi City County Development Control Policy, ensuring alignment with the Physical and Land Use Planning Act, 2019, and incorporating the following:

- **Standardized approval procedures** to enhance transparency and predictability.
- **Robust enforcement mechanisms** to ensure compliance with planning and zoning regulations.
- **Enhanced inter-agency coordination** to eliminate overlaps, duplication, and regulatory gaps.
- **Broad public participation** to improve inclusivity, accountability, and stakeholder ownership of the planning process.

**b. Institutional and System Reforms recommendations to the County Government of Nairobi**

No.	Recommendation	Responsible Entity
1	Reconstitute UPTC for balanced representation and inclusivity	CECM, Built Environment & Urban Planning
2	Grant secure and limited access to the NPDMS for professional body representatives, enabling them to meaningfully contribute to the approval process.	Chief Officer, Urban Planning, Director Development Management & County IT Department (CO and the Director)
3	Mandatory conflict-of-interest declarations for all UPTC members	CECM, Built Environment & Urban Planning and Chief Officer, Urban Planning
4	Restrict self-assignment of applications in the NPDMS; only supervisors can allocate to technical officers to ensure accountability.	Chief Officer, Urban Planning, Director Development Management & County IT Department (CO and the Director)
5	NPDMS should be configured to prevent any application with unresolved technical comments from progressing to the next processing stage.	Chief Officer, Urban Planning, Director Development Management & County IT Department (CO and the Director)
6	NPDMS should be configured to restrict issuance of approval letters (DC8) for applications with pending objections	Chief Officer, Urban Planning, Director Development Management & County IT Department (CO and the Director)
7	Mandate multidisciplinary technical	Chief Officer, Urban Planning,

	review within the system prior to approval	Director Development Management & County IT Department (CO and the Director) & Departmental Heads
8	Activate and operationalize NPDMS enforcement module for post-approval compliance	Chief Officer, Urban Planning, Director, Planning, Compliance & Enforcement & County IT Department (CO and the Director); IT Department
9	Introduce shared dashboard to enhance inter-departmental visibility and coordination	Chief Officer, Urban Planning, Director Development Management & County IT Department (CO and the Director)
10	Track repeat offenders (architects, engineers) and restrict submissions	Chief Officer, Urban Planning, Director Development Management & County IT Department (CO and the Director)
11	Establish automated system alerts for properties under enforcement action	NPDMS Administrator
12	Develop standardized evaluation checklists for technical officers	Director, Development Management & UPTC Secretariat
13	Formal registration of unregistered sewer corridors by NCWSC	NCWSC Managing Director & County Survey Department
14	Establish joint verification protocol for wayleave and infrastructure claims	CECM, Built Environment & Urban Planning; NCWSC

**c. Recommendations to the Chief Executive Officer, Board of Registration of Architects and Quantity Surveyors (BORAQS), and the Engineers Board of Kenya (EBK)**

**1. Professional Oversight and Collaboration**

- Collaborate with the Nairobi City County Government to investigate and take disciplinary action against professionals who submit erroneous, fraudulent, or non-compliant development plans.
- Establish a mechanism to identify and blacklist repeat offenders, coordinating with relevant professional registers to prevent future participation in non-compliant projects.

**2. Specific Action Against Rayplan Architects**

- Conduct a thorough investigation into Rayplan Architects regarding the misrepresentation of infrastructure information on L.R. No. 36/VII/234.
- If found culpable, apply appropriate professional sanctions, including suspension, deregistration, or formal censure, in accordance with established professional codes of ethics.

**Signed this 6<sup>th</sup> day of February, 2026.**

A handwritten signature in black ink, appearing to read 'Charles Dulo', written in a cursive style.

**Charles Dulo, EBS**  
**Chairperson, Commission on Administrative Justice**



## *Hata Mnyonge ana Haki*

### Head Office

West End Towers, 2<sup>nd</sup> Floor, Waiyaki way  
P.O. Box 20414- 00200, Nairobi  
Tel: 0202270000 / 0800221349 (Toll Free)  
Email: info@ombudsman.go.ke (for general inquiries)  
complain@ombudsman.go.ke (for complaints)

### Kisumu Regional Office

Central square Building, 2<sup>nd</sup> Floor  
Oginga Odinga Street  
P.O. Box 1967 - 40100, Kisumu.  
Tel: 0572022810 / 0731248906  
Email: kisumu@ombudsman.go.ke

### Mombasa Regional Office

Posta Pension Towers (GPO), 4<sup>th</sup> Floor,  
Digo Road - Mombasa City  
P.O. Box 80979 – 80100, Mombasa.  
Tel: 041 2315411/0731 011116  
Email:mombasa@ombudsman.go.ke

### Eldoret Regional Office

Kerio Valley Development Authority (KVDA)  
Plaza, 7<sup>th</sup> Floor Oloo Street  
P.O. Box 10326 - 30100, Eldoret.  
Tel: 020-8106515  
Email: eldoret@ombudsman.go.ke

### Nyahururu Regional Office

Laikipia County  
Next to Laikipia West Constituency Offices  
Opposite Nyahururu Referral Hospital  
P.O. BOX 866 - 20300, Nyahururu.  
Tel: 020 2210657  
Email: nyahururu@ombudsman.go.ke

### Isiolo Regional Office

County area, along kiwanjani road,  
Near KRA office  
P.O. Box 860 - 60300, Isiolo.  
Tel: 020 2007671  
Email: isiolo@ombudsman.go.ke

### Garissa Regional Office

Hosted by National Gender  
and Equality Commission  
KRA Route, Off Ijara-Lamu Road  
P.O. Box 485 - 70100, Garissa.  
Tel: 020 7868338  
Email: garissa@ombudsman.go.ke

### Meru Regional Office

Meru Town  
Royal Business Park, 6<sup>th</sup> Floor  
Njuri Ncheke Street  
P.O. Box 3222 - 60200, Meru.  
Email: meru@ombudsman.go.ke

### Makueni Regional Office

Wote Town  
Red Dot Plaza, 4<sup>th</sup> Floor  
Machakos Road  
P.O. Box 527 - 90300, Makueni.  
Email: makueni@ombudsman.go.ke

### Huduma Centres

Wundanyi, Makueni, Meru, Nairobi(GPO), Embu, Nyeri, Nakuru, Kajjado, Kakamega, Kisii, Bungoma & Kwale.

