

The Nairobi Physical and Land Use Planning Liaison Committee Report

2024



FORWARD



The current report from the Nairobi Physical & Land Use Liaison Committee provides an overview of the development matters filed at the committee by aggrieved parties dissatisfied with the Planning decisions of County Executive Committee Member (CECM) responsible the Built Environment, Land and Physical Planning issues. Notably, most of the appeals appear to emanate from aggrieved developers and / or interested parties whose developments are situated in areas characterized by medium and high income socio-economic groups only.

However, the Nairobi Physical and Land Use Planning Liaison Committee is a statutory quasi-judicial tribunal that is meant to be a cheaper non-legalistic alternative dispute resolution mechanism envisaged to offer timely determination of appeals by aggrieved parties of all socio-economic groups in the Nairobi City County jurisdiction. Therefore, it is the concern of the Liaison Committee that its statutory functions of overseeing appeals against Planning decisions by the CECM for Built Environment, Lands & Physical Planning including advisories on Planning Policy matters should be publicised and embraced by all stakeholders to enhance prompt determination of Planning appeals that are premised on facts and overall knowledge of the obtaining zoning & planning policies that regulate & create sustainable developments for all residents in the City.

It is therefore important to empower & enable all stakeholders to participate in the Liaison committee's work and provide the requisite support and/or resources for realization of the committee's objectives as demonstrated by the determinations and advisories it has issued overtime to reduce expenditure on the city's public funds on litigations.

J.K. Barreh

Liaison Committee Member

CHAIRMAN'S STATEMENT



The Nairobi Physical and Land Use Planning Liaison Committee is established through the Physical and Land Use Planning Act to provide for an alternative avenue for determining planning and Land disputes within the County of Nairobi.

Since inception the liaison committee under the guidance of Mr. Kihara and later Mr. Monda has processed and concluded several appeals and issued appropriate advisories to the CECM of the relevant planning department. This has seen a tremendous reduction in the number of enforcement cases since the employees are aware that unlike the past, there is an independent oversight body over enforcement notices.

The uptake of the committee advisories has been commendable although a lot needs to be done to achieve a more cohesive and planned city. Indeed, the continued failure by the County to keep a public register for all applications for building approvals in Nairobi is creating a great disservice to prospective litigants who do not have a ready avenue for establishing when approvals or applications are made to have an opportunity to challenge the same. The failure by the County also in paying members and the secretariat allowances is also a hindrance to access to justice.

The committee through the Chair has attempted to expand areas of partnership with various government agencies and especially the Judiciary, the University of Nairobi and the Salaries and Remuneration Commission on general interaction to enhance governance and member and secretariat welfare.

We have not been able to disseminate the committee's existence and objectives to the wider Nairobi Citizenry due to constrained resources. However, there are efforts to do so through the available media including social media, briefs, lectures, radio appearances among others.

On behalf of the Committee, I would like to appreciate the Committee Members and the secretarial for their dedication to the committee work that has enabled us to conclude the various appeals/claims that we have been able to.

I would like to assure the public, the County Government of Nairobi and other stakeholders of the committee's continued commitment towards the realization of its mandate.

R.O Monda

The Chairman

EXECUTIVE SUMMARY



1.1 Background

The Nairobi Physical and Land Use Planning Liaison Committee is established pursuant to section 76 of the Physical and Land Use Planning Act, 2019.

1.2 Composition

The Liaison Committee is composed of professionals from various fields including Advocates, Physical Planners, Architects, Surveyors among others.

It is expected that the diversity of Professionals in the committee will enrich the committee's deliberations and in turn the committee will be better equipped to address all facets related to planning and Land use within the County.

The committee can also co-opt 5 additional members, by law, if they require more expertise in a dispute.

The Committee is made up of 8 members and headed by a Chairman and is currently domiciled at the City Hall Court room 2 or 3. The City Government of Nairobi supports the committee operations by providing Secretariat, provision of a court room and payment of allowances.

1.3 Principal Functions

The functions of the committee are found under section 78 of the Act and they include: -

- a) Hearing and determining complaints and claims made in respect to applications submitted to the County.
- b) Hearing appeals against decisions made by the Planning Authority with respect to Physical and Land Use Development Plans in the County.
- c) Advise the County Executive Committee Member in charge of Planning and Land Use in the County.
- d) Handle enforcement disputes.

1.4 Cases/Appeals

APPEAL NO.	DATE RECEIVED	PLOT/ LR NO./ BLK NO.	LOCATION	DATE DISCUSSED	APPELLANT	ISSUE RAISED	RESPONDENT	DETERMINATION & DATE
NCCG/PLUPLC/001	26/1/2022	209/10709	South C	9/2/2022	Abdullahi Associates for Bishar Mohamed Muhumud	Appeal against enforcement notice no. 001302	Nairobi Metropolitan Services	-
NCCG/PLUPLC/002	25/1/2022	1/521	Wood Avenue Kilimani	6/4/2022	Tirupati Kenya Limited	Appeal against an enforcement notice	Nairobi City County	-
NCCG/PLUPLC/003	228/2/2022	1/402	Kindaruma road, Kilimani		David Kiaraho together with other land owners along Kindaruma road	Appeal against approval of building plan reg. no. CPF-AW 144 & CPF-AS-740	Ever for Garden Co. Limited	1. That the building plan disapproval/revocation by the Nairobi Metropolitan Services (NMS) vide letter Ref. No. EOP/NMS/DC/L/0074/PAA/rmm dated 20 th December 2021 and Enforcement Notice Serial No 001251 dated 20 th December 2021 be upheld. The grounds of disapproval are indicated in the letter and the basis of the order was due to complaints by residents.

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								<p>2. That the planning authority – Nairobi Metropolitan Services (NMS) be explicit on the allowable densities in the subject area to clear the ambiguity in the revocation letter which states in part that “the 870 units are not acceptable as they exceed the plot ratios provided”. This is in noting that in law, there is no vacuum when a policy /law is not updated and the approved one remains in force until it is updated.</p> <p>3. That the Liaison Committee cannot correct/alter the contents of the revocation letter and Enforcement Notice by Nairobi Metropolitan Services (NMS) as this is beyond its mandate and hence found the relief sought by the appellant to the effect that the letter and enforcement notice were defective as inappropriate.</p>

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								<p>4. That the inter-party mediation process by Nairobi Metropolitan Services be concluded.</p>
NCCG/PLUPLC/004		192/75 Orig. no. 192/14/3	Pepo Lane - Karen	3/3/2022	Manjit Singh Sethi & Perminder Singh Sethi	Appeal against revocation of subdivision approval	CECM, Nairobi City County & Nairobi Metropolitan Services	<p>1. That the disapproval is hereby nullified.</p> <p>2. That the appellant satisfy NMS/Nairobi City Engineer that condition no. 3 of the approval relating to storm water drainage of the site is met by provision of satisfactory requisite Mechanical drawings/Designs on storm water drainage.</p> <p>3. That the Lower Pepo Lane Residents Association, the Appellant and NMS jointly, appoint a surveyor within 14 days to establish the storm water drainage wayleave at the appellants' cost.</p> <p>4. That the status quo is maintained until Orders 2 and 3 above are met.</p>

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NCCG/PLUPLC/005	11/3/2022	7158/268 & 269	Shanzu road	6/4/2022	Shawnawaz Mohamed Wiissni	Appeal against revocation & disapproval of building plans	Nairobi Metropolitan Services	<ol style="list-style-type: none"> 1. That in the interest of safeguarding public interest and striking a balance between the developer and residents, the cancelled of the building plans approval should be reinstated. 2. That a functional sewer on site should be confirmed by NMS. 3. That precedence should not be encouraged as the criteria for approving developments and public interest and fairness should be guiding principles.
NCCG/PLUPLC/006	14/3/2022	209/9055 & 209/9965	Madaraka Shopping Centre	5/5/2022	Madaraka Land Lords Association	Appeal against refusal to renew the ammended plan for boundary wall	Nairobi Metropolitan Services	<p>Dated 2nd day of March, 2023</p> <ol style="list-style-type: none"> 1. That the Committee having ruled that the 'effective date' for purposes of calculating time within which a matter before the Committee ought to start running as being the date in which a matter is received at the Secretariat of the Liaison Committee,

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								<p>the committee held that it had jurisdiction to hear the appeal. The Committee went on the hear and make the following determinations/reliefs:</p> <ol style="list-style-type: none"> 2. That the Planning Authority had no minutes or invitations of the site meeting that occasioned the site report and cancellation of approval. 3. That site report upon which the enforcement order was premised was only signed by one person, yet it indicates that three people visited the site and spaces for their signatures provided. 4. That the said site report is not on a Nairobi County Government or NMS letter head and neither did the author of the letter appear in the meeting and consequently the veracity of the same is in doubt.

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								<p>5. That there are sub zones in zone 5 but the site report gave generalization and the witness from Planning Authority when asked if she could point out the different sub zones she answered in the negative.</p> <p>6. That the Planning Authority failed to provide the zoning guidelines and maps as requested during the meeting.</p> <p>7. That during the site inspection of 23/03/22 the Committee had noted existence of Developments of similar character and density along Shanzu Road built on approval by the Nairobi City County Government (NCCG) about eleven years ago.</p> <p>8. That requisite public participation notices were published by the Appellant's Urban Planner and no material objections were</p>

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								<p>raised by the Shanzu Road Residents or the interested party.</p> <p>9. That the respondent's cancellation of the appellant's approved building plan registration number CPF AV 666 of 19/11/2020, was unilateral, unprocedural, did not provide the appellant with fair hearing pursuant to fair administrative action Act, 2015, lacked material planning policy justification, was contrary to prescribed planning procedures regarding management of complaints on planning approval and/or disapproval of development permission(s) hence unwarranted.</p> <p>10. Accordingly, the cancellation of the approved building plan no. CPF AV 666, is unfair, unilateral, and not supported by any material Planning Policy</p>

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								and/or statutory basis and is therefore null & void and is hereby set aside; the approved Building Plan No. CPF AV 666 of 19/11/2020 and its conditions of approval are, therefore, reinstated forthwith. Respondent(s) are advised accordingly and are obliged to obey the directions as ordered.
NCCG/PLUPLC/006	14/3/2022 21/3/2022	209/9055 & 209/9965	Madaraka Shopping Centre	6/4/2022 5/5/2022	Madaraka Land Lords Association	Appeal against refusal to renew the ammended plan for boundary wall	Nairobi Metropolitan Services	<ol style="list-style-type: none"> 1. That a layout plan designating the parking to be prepared by NMS within 90 days excluding the public road. 2. That the parking may be managed by the shop owners as per the prevailing policies on parking in NMS. They can apply to install barriers and control the parking within the prevailing procedures. 3. That the removal of the unauthorized developments within the shopping centre

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								<p>be undertaken by Nairobi Metropolitan Services (NMS) and ensure enforcement to avoid re-encroachment.</p> <p>4. That Nairobi Metropolitan Services (NMS) initiates proceedings with National Land Commission (NLC) to recover the public land irregularly excised.</p> <p>5. That the boundary wall should not be a full wall as it should not be an enclosed facility.</p>
NCCG/PLUPLC/007	21/3/2022	7258/54	Limuru Road	5/5/2022	Mediview Limited	Appeal against revocation of building plans	Nairobi Metropolitan Services	<p>1. That NMS's decision cancelling/revoking the approval permit dated 7th January 2022 does not meet the requirements contained in Section 4(3) of the Fair Administrative Action Act of 2015 regarding fairness in administrative action and is therefore null and void. NMS acted unilaterally as it did not inform the Appellant of any complaint against the</p>

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								<p>subject approval permit or even accord the Appellant an opportunity to be heard and to make representations in that regard.</p> <p>2. That both in its written and <i>viva voce</i> submissions, NMS failed to substantiate what constituted adequate or inadequate public participation to warrant cancellation of an approved permit and for that reason the letter 28th February 2022 cancelling/revoking the approval permit dated 7th January 2022 is hereby found to be ambiguous, vague, and therefore, void.</p> <p>3. That in view of determinations 1 and 2 above, NMS is hereby ordered to immediately reinstate the cancelled approval permit dated 7th January, 2022 for Plan. Reg. No. CPRN-AB-268 on plot L.R. No. 7258/54 –</p>

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								Limuru Road – Gigiri, AND THAT the 23 rd February, 2017- Building Plan approval performance conditions be incorporated in the 7 th January, 2022 approval permit as the said application was a renewal.
NCCG/PLUPLC/008	7/6/2022	1159/323	Dagoretti road	4/4/2022	Susan Wanjiku Riunga	Appeal against approval of change of use	1. County planning Committee 2. Sutton Holdings Ltd 3. David Zinny Weyusia	<p>1. THAT the Preliminary Objection is upheld. The appellant filed out of the time contrary to the Physical and Land Use Planning Act No. 13 of 2019 section 61 (3).</p> <p>2. THAT the costs of the appeal to be met by the parties.</p>
NCCG/PLUPLC/009	14/6/2022	60/493	Langata		Moi-Otiende & Ngei one Residents Association	Appeal against the suspension of development plan ref. no. CPRN AB 215	NMS	

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NCCG/PLUPLC/010	14/6/2022	60/493	Langata	4/7/2022	Christian Life Community	Appeal against the lifting of suspended building development	Nairobi Metropolitan Services	<ol style="list-style-type: none"> 1. That the relief sought by the appellant on lifting the suspension of plan registration number CPF AL 399 and CPRN AB 215 has been resolved by the planning authority and the buildings permit has been reinstated vide a letter dated 28th June 2022. 2. That the relief sought by the appellant to allow the development to proceed uninterfered cannot be granted as the powers to control development are vested on the approving authority as provided by Physical and Land Use Planning Act No. 13 of 2019 Section 56 and 57. 3. That the third relief sought by the appellant on special and general damages cannot be granted by the Committee. 4. That the cost of appeal to be met by the parties.

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NCCG/NMS/PLUPLC/011	20/7/2022	7716/16/2			Nesclay Limited/ Wamae & Allen Advocates	Appeal against enforcement notice by NMS dated 14/7/22 on construction of perimeter wall	NMS	<p>Under min. 2/16/12/2022 meeting of 16th December 2022</p> <p>Determination</p> <ol style="list-style-type: none"> 1. That NCCG holds everything regarding the suit property and that no demolition to occur. 2. That Advocate Kamau of Kayoyo Investment Ltd. Does a response to the appeal. 3. That NCCG does a response to the appeal 4. That all parties to have done the service as guided.
NCCG/NMS/PLUPLC/012	21/7/2022	7258/79	Gigiri		Gigiri Residents Association	Appeal against proposed development	NMS	
NCCG/NMS/PLUPLC/013	27/7/2022	209/12592	Lavington		P.M. Karanja & Associates Adv. for: Mary Wanjiku	Appeal against a decision of County Physical &	NCC	

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					Ngatia – Estate of the late Evans Ngigi Gitau	Land use planning joint committee		
NCCG/NMS/PLUPLC/014	17/10/2022	209/1458/2			1. Hon. John Harun 2. Tom Brown	Appeal against decision of NCC to irregularly & opaquely change the use of L.R. No. 209/1458/2 without giving neighbours opportunity to object	NCC	<p>under min. 1/16/12/2022 meeting of 16th December 2022</p> <p>The meeting was informed that the appellant had written to the committee notifying it that they had filed their matter with ELC and hence did not wish to proceed with the Liaison Committee Appeal.</p> <p>Ruling</p> <ol style="list-style-type: none"> 1. That the matters are filed upon payment of requisite fee. 2. That since this (No 1) has not been done, the matter be expunged from the list of matters of the day and as such no orders can be issued.

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								3. That NCCG will be notified of the same.
	2/11/2022	209/1458/2			B.M. Musyoki & Co. Adv.	Objection to the proposed development on L.r. 209/1458/2 of 12 storey building consisting of 42 apartments Y duplexes, basement & ground floor	NCC	
NCCG/PLUPLC/015	15/9/2022	3734/790	Lavington		Ndirangu Wa Maina – Chairman, Lavington five roads association	Appeal against the decision of CECM/Urban Planning Technical Committee – Change of use	1. CECM-NCC Woodridge Center Limited	<p>Prayer by Appellant (Advocate Wamae of Githara & Associates)</p> <p>That the appeal be withdrawn since it was already in the ELC</p> <p>Ruling</p> <p>That the matter be withdrawn as per the request of the Advocate.</p>

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NCCG/PLUPLC/016	10/11/2022				Wood Ridge Centre Limited	Appeal against enforcement notice issued by the CECM – Urban Planning Committee on 8/11/22	NCC	
NCCG/PLUPLC/017	7/11/2022	12814	Redhill	28/2/23	V. Shah	Appeal against decision by CECM Planning approving convenient stores	1. Gigiri Mart Ltd 2. CECM - Planning	<p>Dated 2nd day of March, 2023</p> <p>1. Upon hearing the 1st respondent's Preliminary Objection and the Appellant' response thereof, the Committee arrived at the decision that it was without jurisdiction to hear the matter as the appeal was filed more than fourteen (14) days of the approval being granted to the 1st respondent which is in contravention with Section 61(3) of the Physical and Land Use Planning Act, 2019.</p> <p>2. The appeal is therefore dismissed with no Orders as to cost.</p>

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NCCG/PLUPLC/018	3/3/2023	91/351		28/2/23	Lawrence Mwangi Gichuki	Appeal against the decision of the Urban Planning Technical Committee made on 13/1/2023 regarding construction of a bill board	Urban Planning Technical Committee 1 ^s Respondent & Live Ad Limited 2 nd respondent	
NCCG/PLUPLC/020	26/4/2023	36/287/VII	Eastleigh		Mohamud Sheikh Hussein	Against Cancellation of renovation permit	CECM- Planning (1 st Respondent) & Onesmus M. Waweru Waithanua (2 nd Respondent)	<p>Dated 17th May 2023 That the committee upholds the cancellation of the renovation permit for plot Lr. 36/387/VII, Eastleigh, Nairobi on grounds that:-</p> <ol style="list-style-type: none"> 1. That the appellant is a stranger to the matter as he is not the registered owner of the subject property. This is clearly manifest in the fact that the renovation permit issued by the Planning Authority (1st Respondent) was issued in the name of the 2nd

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								<p>Respondent who is the registered owner of the premises.</p> <p>2. That the works being carried out at the site warranted a different kind of permit as the scope was in contravention of what was provided in the impugned renovation permit.</p> <p>3. That from documents presented, the Committee is of the opinion that the case fundamentally revolves a dispute between a landlord and tenant and thus the Committee has no jurisdiction on the matter.</p> <p>4. That the reliefs sought (a, b and c) in the appeal are hereby dismissed with no orders as to cost.</p>

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NCCG/PLUPLC/001/24	15/1/2024	36/VII/234	Eastleigh		Coldstone Investment Ltd	Appeal against approval of building plan no. CPF-AW 765	<ol style="list-style-type: none"> 1. Khaleej Towers Ltd 2. Rayplan Architects 3. Nairobi City County 	<p>DATED 12th February 2024</p> <p>a) The appeal by the appellants at page 1 proclaims that it was filed pursuant to section 75 of the Act which is supposed to be for appeals to the National Physical and Land Use Planning Liaison Committee. The error is not fatal.</p> <p>b) The interested party through his counsel, supporting the submissions for Mr. NYaosi, submitted that there is a matter pending at the Water Tribunal being case no. E002 of 2023 over the same subject matter. He did not, however, produce any evidence of the existence of the matter. The Committee did not take into consideration the said arguments in arriving at these findings.</p>

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								<p>c) The Committee was properly constituted from the year 2020 to June 2023 contrary to the appellants' submissions.</p> <p>d) The appeal emanates from approval no. CPS-AW 765 which was granted on 21/2/2022.</p> <p>e) The Appeal was filed on 15/1/2024 almost two years after the approval was made.</p> <p>f) The Committee therefore lacks jurisdiction to handle the appeal having been filed out of time and hereby abandons its tools.</p> <p>Conclusion The upshot of the above is that the preliminary objection is upheld. The appeal is hereby struck out for being time barred.</p>

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NCCG/PLUPLC/002/24	15/1/2024	Dag/Mutu ni/524	Dagoretti		Apostolic Faith Church (Registered Trustees)	Appeal against Enforcement notice	CECM – Built Environment & Urban Planning	<p>DATED 13TH FEBRUARY 2024</p> <p>The committee has considered the submissions of the parties and makes the following findings:</p> <ol style="list-style-type: none"> 1. The appeal by the appellant at page 1 proclaims that it was filed pursuant to Section 75 of the Act which is supposed to be for appeals to the National Physical and Land Use Planning Liaison Committee. The error is not fatal. 2. The interested party through his counsel, supporting the submissions for Mr. Nyaosi, submitted that there is a matter pending at the Water Tribunal being case no. E002 of 2023 over the same subject matter. He did not, however, produce any evidence of the existence of the matter. The committee did not take into consideration the said arguments in arriving at these findings.

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								<p>3. The committee was properly constituted from the year 2020 to June 2023 contrary to the appellants' submissions.</p> <p>4. The appeal emanates from approval no. CPF-aw 765 which was granted on 21/2/2022.</p> <p>5. The Appeal was filed on 15/1/2024 almost two years after the approval was made.</p> <p>6. The committee therefore lacks jurisdiction to handle the appeal having been filed out of time and hereby abandons its tools.</p> <p><u>Conclusion</u> The upshot of the above is that the preliminary objection is upheld. The appeal is hereby struck out for being time barred.</p>

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NCCG/PLUPLC/003/24	15/1/24	9363/72	Kasarani		Dennis Mburu Wanderi & others	Appeal against enforcement notice	1. CECM – BE&UP 2. Samuel Kago MCA- Mwiki ward	<p>DATED 1ST MARCH 2024</p> <p>The committee has considered the submissions of the parties and makes the following findings:</p> <p>a) The enforcement notice was validly issued by an officer of the County in requiring the appellant to stop further developments and avail approved plans.</p> <p>b) The Physical and Land Use Planning Act 2019 is applicable to all developments within the County, whether on public land or otherwise.</p> <p>c) There is no provision under the Act or regulations that stipulate that the enforcement Notice must be served on the police.</p> <p>d) The 7th Appellant has duly complied with the enforcement notice with regard to the production of its building approval for its</p>

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								<p>subject plot no. 9363/1774 and 9363/1775. The county is at liberty to peruse and confirm if the conditions granted therein have been met.</p> <p>e) The Notice period stipulated in the enforcement notice dated 23/11/2023 having lapsed, the County Government is hereby mandated and directed to ensure the compliance of the said Enforcement notice as per section 57 of the Physical and Land Use Planning Act 2019 and the Regulations.</p>
NCCG/PLUPLC/004/24	15/2/24	141/718	Njiru Kasarani		Efrond Mutuma Bundi as Millionear Bar & Restaurant	Appeal against an enforcement notice	1. CECM – BE&UP & Nairobi City County	<ol style="list-style-type: none"> The appellants Advocate confirmed to the Committee that he had filed a Notice of Withdrawal dated 29/2/2024 seeking to withdraw the appeal. The appellants had not served the County Authorities.

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								<p>3. The Notice of Withdrawal relied upon provided that the appellant was a tenant at the premises and has since vacated.</p> <p><u>DETERMINATION DATED 29TH FEBRUARY 2024</u></p> <p>a) The Appeal is hereby withdrawn.</p> <p>b) The Enforcement Notice 31/1/2024 remains valid.</p> <p>c) The County Attorney to advise the County accordingly.</p>
NCCG/PLUPLC/005/24	27/2/2024							<p><u>DATED 7TH MARCH 2024</u></p> <p>1. At the outset the committee wishes to point out this is one of the agonising issues that we are faced with on a daily basis. The Physical and Land Use Planning Act provides strict timelines within which actions are supposed to be conducted. However, in practice it is difficult for parties to know when applications have been filed at the county or indeed when the decisions</p>

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								<p>have been made by the planning authority. Yet the county should have a register of applications and decisions accessible by the public. To the best of our knowledge the same is not maintained by the county.</p> <p>2. As a consequence of the said failure you find many cases where the planning authority has not published its decisions or indeed maintained a register to enable the public keep an eye on the developments that will be built in their respective areas. By the time they come to the committee for redress, the time has lapsed and they are faced with notices of preliminary objections for filing appeals out of time. When they run to the Environment and Land Court they are hit with the doctrine of exhaustion: go back to the committee. Perhaps it is time the law</p>

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								<p>makers looked at the Planning law and sorted out this quagmire for good order and once and for all.</p> <p>3. To the matter at hand, Section 61(3) provides: - “An applicant or interested party that is aggrieved by the decision of a County Executive Committee Member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee <u>within Fourteen days of the decision by the County executive committee member</u> and that committee shall hear and determine the appeal within fourteen days of the appeal being filed”.</p> <p>4. According to the Respondents this Section is mandatory and should be observed. The appellant on</p>

APPEAL NO.	DATE RECEIVED	PLOT/ LR NO./ BLK NO.	LOCATION	DATE DISCUSSED	APPELLANT	ISSUE RAISED	RESPONDENT	DETERMINATION & DATE
								<p>the other hand believes the Committee can exercise its discretion to enlarge the time within which the appeal can be filed and has filed an application along the said lines.</p> <p>5. Justice Mboya seems to agree with the Appellants. In the case of <u>Susan Wanjiku Riunga vs County Planning Committee, Nairobi City County and 2 others (2022) eKLR</u> he observed in passing at paragraph 86: “In my considered view, the time for computing the duration for the lodgement of the intended appeal, if any, runs from when the aggrieved person on interested party becomes knowledgeable and aware of the impugned decision”</p> <p>6. The good judge seems to have seen the mischief of the timelines.</p>

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								<p>7. However, the judge also pointed out at paragraph 91 of the said case that an appeal that is lodged outside time raises a jurisdictional question to the extent that a court or tribunal confronted with an appeal filed out of time, albeit without leave would not be seized with jurisdiction to entertain the said appeal.</p> <p>8. The committee is at a cross road.</p> <p>9. Should we consider the application to enlarge time first, then the appeal or the Notice of Preliminary Objection on a point of law? The answer seems to lie in the case of <u>Nicholas Kiptoo Arap Korir Salat vs independent electoral and Boundaries Commission and 6 others (2013) Eklr</u> where the Supreme Court of Kenya observed that:</p>

APPEAL NO.	DATE RECEIVED	PLOT/ LR NO./ BLK NO.	LOCATION	DATE DISCUSSED	APPELLANT	ISSUE RAISED	RESPONDENT	DETERMINATION & DATE
								<p>“to file an appeal out of time and seek the court to extend time is presumptive and in –appropriate. No appeal can be filed out of time without the leave of the court. Such a filing renders 'a document' so filed a nullity and of no legal consequence.”</p> <p>10.A section of the committee believes for an application for enlargement of time to be considered it can only be filed first and once granted leave then the appeal can be filed. The other section of the committee believes the committee lacks jurisdiction to enlarge time. In both instances the preliminary objection succeeds.</p> <p>Conclusion</p> <p>11.The upshot of the above is that the preliminary objection is upheld. The appeal is hereby struck out for being time barred and</p>

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								<p>with no order as to costs.</p> <p>12. Perhaps the appellant can file a fresh suit at the Environment and Land court and apply for a remit to the Committee, the Committee being the first point of call for matters under the Physical and Land Use Planning Act, 2019. That is up to the appellants.</p>
NCCG/PLUPLC/006/24	26/2/2024	209/11953	Haille Selassie Avenue		Waqooy Merchants Limited	Appeal against Failure by the County to render a decision concerning the application for approval for building plans ref. no. PLUPA – BPM-000973-N	Nairobi City County	<p><u>DATED 7TH MARCH 2024</u></p> <p>1. The only issue for determination was whether the committee could direct the planning authority to render a decision on an application made under Physical and Land Use Planning Act, 2019.</p> <p>2. Section 61 of the Physical and Land Use Planning Act, 2019 provides for a clear mechanism on what and how the Planning Authority should consider when</p>

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								<p>dealing with applications for development permission. Section 61(2) is clear that with regards to an application for development permission that complies with the Act the County Executive Member may:</p> <ul style="list-style-type: none"> a. Grant the development permission and stipulate any conditions it considers necessary, or b. Refuse to grant the application and state the grounds for the refusal in writing <p>3. This should be done within thirty (30) days of the application.</p> <p>4. This is in line with Article 47 (1) of the Constitution which provides that, <u>every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.</u></p>

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								<p>5. Section 78 (a) of the Physical and Land Use Planning Act, 2019 provides that the Liaison Committee has the mandate to hear and determine complaints and claims made in respect to applications submitted to the planning authority in the County.</p> <p>6. The committee has considered the foregoing and come to the conclusion that the failure by the planning authority to communicate its decision on the appellants' application comprised in PLUPA-BPM-000973-3-N for L.R NO. 209/11953 for over one (1) year is unreasonable, unfair and inefficient, unconstitutional and indeed contrary to the express provisions of section 61 (2).</p> <p>7 Good or bad it was incumbent upon the Planning Authority to</p>

APPEAL NO.	DATE RECEIVED	PLOT/ LR NO./ BLK NO.	LOCATION	DATE DISCUSSED	APPELLANT	ISSUE RAISED	RESPONDENT	DETERMINATION & DATE
								<p>communicate its decision in writing to the appellant. That's the least the law requires, that's the least the appellant is praying for, and that's the finding of the committee.</p> <p><u>Conclusion</u></p> <p>8. The upshot of the above is that the Statement of Appeal partially succeeds:</p> <p>9. The committee hereby directs:</p> <ul style="list-style-type: none"> a. The county executive member, Built Environment and Urban Planning is hereby directed to render a decision to grant or refuse, the appellants application comprised in PLUPA-BPM-000973-3-N for L.R NO. 209/11953 within Thirty (30) days from the date hereof. b. Each party to bear their own costs.

APPEAL NO.	DATE RECEIVED	PLOT/ LR NO./ BLK NO.	LOCATION	DATE DISCUSSED	APPELLANT	ISSUE RAISED	RESPONDENT	DETERMINATION & DATE
NCCG/PLUPLC/007/24	11/3/24	336/18	Ruaraka		Francis Ndungu Muturi	Appeal against an enforcement notice	Nairobi City County	<p><u>DATED 8TH APRIL 2024</u></p> <p>The committee has considered the submissions of the parties and makes the following findings.</p> <p>a) The enforcement notice was validly issued by an officer of the county.</p> <p>b) The Physical and Land Use Planning Act 2019 is applicable to all development within the county, whether on public land or otherwise.</p> <p>c) The Notice period stipulated in the enforcement notice dated 27/02/2024 having lapsed, the County Government is hereby mandated to ensure the compliance of the said Enforcement notice as per section 57 of the Physical and Land Use Planning Act 2019.</p>

APPEAL NO.	DATE RECEIVED	PLOT/ LR NO./ BLK NO.	LOCATION	DATE DISCUSSED	APPELLANT	ISSUE RAISED	RESPONDENT	DETERMINATION & DATE
NCCG/PLUPLC/008/24	11/4/24	4393/26	Waiyaki Way		Delta Suites Management Co. Ltd	Appeal against approval of Change of use	1 st Respondent- Brake Horse Power Performance Ltd 2 nd Respondent – CECM-BE&UP	<u>DATED 2ND MAY 2024</u> 1. The upshot of the above is that the preliminary objection is upheld. The application is hereby dismissed with no order as to costs. 2. Perhaps the appellant can file a fresh suit at the Environment and Land court and apply for a remit to the Committee, the Committee being the first point of call for matters under the Physical and Land Use Planning Act, 2019. That is up to the appellants.
NCCG/PLUPLC/009/24	18/4/24	209/19785 & 209/19786	Nairobi West		Nur Hassan Gure	Appeal against an enforcement Notice	1 st Respondent – CECM-BE&UP 2 nd Respondent NCCG	<u>DATED 9TH MAY 2024</u> The upshot of the foregoing is the committee finds merit in the appellant's appeal dated 18 th April 2024 and makes the following findings for disposal thereof: a) The enforcement notice dated 12 th day of April 2024 is null and void and is hereby revoked to the extent that it was issued on the basis the

APPEAL NO.	DATE RECEIVED	PLOT/ LR NO./ BLK NO.	LOCATION	DATE DISCUSSED	APPELLANT	ISSUE RAISED	RESPONDENT	DETERMINATION & DATE
								<p>appellant was constructing on alleged public utility land.</p> <p>b) There will be no order as to costs.</p>
NCCG/PLUPLC/010/24	22/4/24	209/12286	Muratina road, behind Pumwani Hospital		Mary Muthoni	Appeal against approval of Change of use	Director Planning Compliance & Enforcement	<p><u>DATED 8TH MAY 2024</u></p> <p>1 The upshot of the above is that the preliminary objection is upheld. The application is hereby dismissed with no order as to costs.</p> <p>2 Perhaps the appellant can file a fresh suit at the Environment and Land court and apply for a remit to the Committee, the Committee being the first point of call for matters under the Physical and Land Use Planning Act, 2019. That is up to the appellants.</p>

APPEAL NO.	DATE RECEIVED	PLOT/ LR NO./ BLK NO.	LOCATION	DATE DISCUSSED	APPELLANT	ISSUE RAISED	RESPONDENT	DETERMINATION & DATE
NCCG/PLUPLC/011/24	23/4/24	214/186 (Nairobi Block 8/20)	Old Muthaiga Estate		Raymond Kamau	Appeal against approval of Developmen t Permission	1 st Respondent Califam Holdings Ltd 2 nd Respondent CECM	<u>DATED 9TH MAY 2024</u> 1. The Upshot of the foregoing is that: - a) The appeal lacks merit and is hereby dismissed. b) There will be no order as to costs.
NCCG/PLUPLC/012/24	2/5/2024	36/1/74	Mukuyu road, Kamukunji		Julius Mwangi Kariuki	Appeal against Enforcement notice	Director Planning Compliance & Enforcement	<u>DETERMINATION</u> 1. On the date of hearing of the matter, 6/6/2024, Counsel for the appellant indicated that he was unable to reach his client and unable to proceed with the hearing of the matter while Counsel for the respondent on his part indicated he was ready to proceed with the hearing 2. The committee advised counsel to file a notice of withdrawal if he is unable to proceed with the mater. 3. The appellant has since filed a notice of withdrawal dated 12/6/2024

APPEAL NO.	DATE RECEIVED	PLOT/ LR NO./ BLK NO.	LOCATION	DATE DISCUSSED	APPELLANT	ISSUE RAISED	RESPONDENT	DETERMINATION & DATE
NCCG/PLUPLC/013/24	22/5/24				Victor Odhiambo	Appeal against the decision of the Governor to halt all building approvals	<p>1st Res. The Governor</p> <p>2nd resp. CECM – BE&UP</p> <p>1st Interested party- Architectural Association of Kenya</p> <p>2nd Interested party National Construction Authority</p>	<p>DETERMINATION</p> <p>The upshot of the foregoing is the committee finds partial merit in the appellant's appeal dated 21/5/2024 and makes the following findings for disposal thereof:</p> <p>a) It is the opinion of the Committee that any and all communication affecting, relating, about or concerning the Planning department should be made by the Planning Authority: The County Executive Committee Member, Build Environment and Urban Planning.</p> <p>b) There will be no order as to costs.</p>
NCCG/PLUPLC/014/24	7/6/24	1836 & 1837	Fedha Estate		Martin Kinoti	Appeal against Enforcement notice	<p>Davidson O. Orinda</p> <p>1st Resp & NCCG – 2nd Resp</p>	<p>Dated 5th August 2024</p> <p>The upshot of the foregoing is the committee finds merit in the appellant's amended appeal dated 24th day of June 2024 and makes the following findings for disposal thereof:</p> <p>a) The enforcement notice dated 24th day of May 2024 is null and void and is hereby revoked.</p> <p>b) There will be no order as to costs.</p>

APPEAL NO.	DATE RECEIVED	PLOT/ LR NO./ BLK NO.	LOCATION	DATE DISCUSSED	APPELLANT	ISSUE RAISED	RESPONDENT	DETERMINATION & DATE
NCCG/PLUPLC/015/24	10/7/24	Nbi/Blk 14/366	Along Kingara RoadThompson, Kilimani		Symolink Company Limited	Appeal Against approval of Architectural Building	1 st resp. Makao Fahari Limited 2 nd Resp. CECM –BE&UP	Dated 9th August 2024 a. The Notification of approval of architectural plans to the respondent was validly issued and proper. b. The appeal is hereby dismissed. c. There will be no order as to costs.
NCCG/PLUPLC/016/24	12/7/24	Nbi/Blk 117/1184	Riverline Estate		Riverline Estates Residents Ass.	Appeal against construction of multi-dwelling units	1 st Resp. Nelson Njagi Tanu 2 nd resp. CECM-BE&UP	Dated 7th August 2024 -The appeal is hereby struck out for being time barred and with no order as to cost.
NCCG/PLUPLC/017/24	6/8/24	7943	Marula Lane Karen		Karen & Langata D. Ass.	Appeal against irregular Change of use and development permit for proposed tertiary	Resp. Nairobi City County De la Salle Brothers as Interested parties	Dated 20th August 2024 a) The appeal is hereby struck out for being time barred and with no order as to cost. b) The County Executive Committee member responsible for the planning authority is hereby advised to maintain a register of all applications and documents made to the County in respect of development permission and the same be accessible to the public for scrutiny as provided for under section 62 of the PLUPA 2019.

Challenges

The Committee is faced with various challenges including but not limited to lack of proper facilities, delayed payment of allowances, lack of an independent budget, and the short timelines for determining cases. The following table provides for the challenges and the proposed recommendations

ITEM NO.	ISSUE	RECOMMENDATION
1.	<p>a. Section 61 of the Act provides that the CECM shall maintain a register for all development permission and shall enter whether the permission was granted or not and the details for the development applied for. The section also provides that the register shall be open to the public for scrutiny.</p> <p>b. The county does not currently provide the register to the public for scrutiny and hence most cases filed at the committee are more often than not filed outside the timelines stipulated by the Act. The appellants lose cases on this technicality</p>	<p>a. The CECM to open the maintain a register and have it accessible to the public both virtually and physically.</p> <p>b. Time for filing appeals to be deemed from the time the person had knowledge of the grant of development permission rather than from the date it was granted.</p>
2.	An applicant, under Section 61 of the Act, that is aggrieved by the decision of the CECM to grant development permission is required to file an appeal at the liaison committee and the committee is required to here and determine the dispute within 14 days	Owing to the complexity of matters and sometimes bulky paperwork involved it is the recommendation of the Committee that parliament expands the timeframe to 45 days
3.	Section 80 (3) provides that the Liaison Committee determinations be filed at the Environment and Land Court. The court has since advised the committee to file the said determination under miscellaneous applications	Due to constrained resources, the committee proposes the act be amended and the filing of the determination be done by the "winning party" or the county attorney
4.	Funding of the Committee Operations. The committee members and secretariat go for years without being paid allowances or being funded for Trainings, outreach programs, induction, welfare.	The county to fund the operation of the committee as per the proposed budget to ensure a more efficient Committee or in the alternative the committee operations be moved to the judiciary under the Tribunals Secretariat and funded by the National Treasury
5.	<p>Lack of infrastructure: The Committee Chair does not have a dedicated office at City Hall from which the determinations can be prepared or to receive partner organizations who intend to make courtesy calls.</p> <p>The Committee members also need a boardroom from where to meet and deliberate before issuance of determinations.</p>	The county to provide an office and boardroom for the chair and members.

THE COMMITTEE MEMBERS



Mr. Rogers O. Monda is the Chairman, Nairobi Physical and Land Use Planning Liaison Committee.

He is also a Partner in the firm of Koskei Monda Advocates LLP and specializes in General Litigation, Conveyancing, Intellectual Property Law, Land, Physical and Land Use Planning Law (including Change or use, Extension of Use, Enforcement cases, Amalgamation and Sub Division of Properties) and Corporate and Commercial Law.

Mr. Monda has been instrumental in various Compulsory Acquisition Cases and Extension and Renewal of Leases as well as handling disputes as Chair under the Physical and Land Use Planning Act 2019 and advising the County of Nairobi on Physical and Land use policy.

Mr. Monda is an Advocate of the High Court of Kenya. He holds a Bachelor of Laws degree from Moi University and a Diploma in law from the Kenya School of Law. He is a student of a Master of Arts Degree (Peace and Conflict Management at the Kenyatta University).

Mr. Monda also seats in various boards and committees including the Nairobi Environment and Planning Division Working group



Plnr. Mary K. Ngundo is the Deputy Director Land Use Planning at National Land Commission and represents the Commission at the Nairobi County Physical and Land Use Planning Liaison Committee as a member.

She holds a BA in Urban and Regional Planning from Msaeno University, MA in Project Planning and Management from Maseno University and a MPDSD (Design for sustainable Development) from Chalmers University of Technology, Goteborg, Sweden.

Mary is a Registered Physical Planner, a Corporate member with the Kenya Institute of Planners (KIP) and has more than 14years of experience in Land Use and Physical Planning.

Currently, Plnr. Ngundo plays a major role in monitoring and ensuring that land use planning is carried out as per the Constitution of Kenya 2010, NLC Act, 2012 and other related statutes throughout the country.



Surveyor. Isaiah Bonyo

Position: Managing Director, Kenval Realtors E.A Limited

Profession: Valuation Surveyor

Membership to Professional Organizations: Full Member-ISK, Licenced Member-EARB, Licenced Member-VRB, Pioneer Member-IRPV

Membership Representation (Present): Nairobi County Physical and Land Use Planning Liaison Committee representing the institution of Surveyors of Kenya (ISK)



Mr. John K. Barreh

Currently works as Principal Partner/Town Planner & EIA/Environ. Auditor Lead Expert-Consultant in private practice & nominated by Kenya Institute of Planners (KIP) to represent it in the Nairobi County Physical & Land Use Planning Liaison Committee.

Professional affiliation: Registered Town Planner (R.P.P 0102); Corporate Member of Kenya Institute of Planner (No. C0128); Kenya Country Chapter-Member of ACEN (Africa Circularity Network).Worked for NCCG from Planning Assistant to Director of Urban Planning from Oct., 1988 to May 2016 & Worked for Ministry of Works & Housing-Provincial Architect's office-Nyeri as Architectural Assistant from July 1985 to September, 1988.



Cynthia Nyawira Kamau

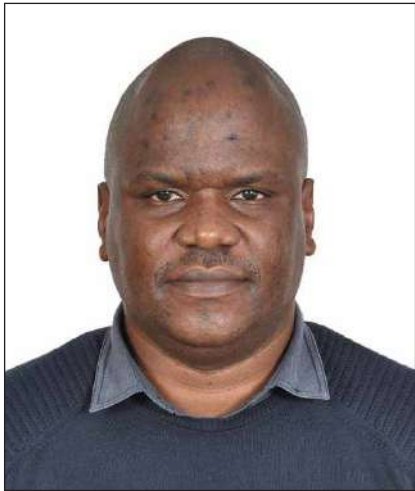
National Board Member, Kenya National Chamber of Commerce and Industry (KNCCI)

Chair, Labour Migration Committee

Cynthia Nyawira Kamau is an accomplished business leader with a diverse background in the medical industry and real estate development in the UK. She holds a Bachelor's degree in International Business Administration and a Diploma in Information Systems from the University of East London.

Currently serving as a National Board Member at KNCCI and Chair of the Labour Migration Committee, Cynthia has been instrumental in advancing labor migration policies, including her involvement in the recent Kenya-Germany comprehensive labor mobility agreement. Her leadership roles have extended to being the Vice Chair of KNCCI Nairobi County and Chair of Women in Business, where she championed entrepreneurship and economic opportunities for women.

Cynthia was nominated by KNCCI to the Nairobi County Government Physical and Land Use Planning Committee to represent the private sector, reflecting her expertise in business management and commitment to sustainable urban development.



Arch. Juma Oino

Arch. Juma Oino is a Lecturer at the Jomo Kenyatta University of Science and Technology and distinguished Architect of many years standing. He is a member of the Nairobi physical and Land Use Planning Liaison Committee having been seconded by the Architectural Association of Kenya (AAK).

Architect Oino was elected to the College of Fellows, the highest class of membership of AAK in the year 2023. He is a former chairman of the Commonwealth Association of Architects CAA board of Education among other senior positions in academia and in Architectural bodies.



Mr. Kihara Njuguna is an accomplished lawyer with a Bachelor of Laws degree from the prestigious University of Nairobi. With over 17 years of experience.

He has served on the Board of the Nairobi Center for International Arbitration and Betway Kenya, in addition to his current position as the chamber secretary of the Kenya National Chamber of Commerce and Industry.

He also a member of the Nairobi County Physical Land use and Planning Committee representing the Kenya National Chamber of Commerce.



Arch. Stephen Mwilu is a registered architect with the Board of Registration of Architects and Quantity Surveyors (BORAQS). Prior to joining the Authority, Arch. Mwilu worked with the Directorate of public Works, where he rose to the position of Senior Superintending Architect.

Arch. Mwilu joined NCA as a Regional Officer in charge of the Lower Eastern Region, and his dedication and hardwork saw him promoted to Manager, Regional offices, where he coordinated the activities of NCA's regional and liaison offices.

As Manager in charge of Compliance and Enforcement, he still coordinates the Regional and Liaison offices, handling project registration, quality assurance and the enforcement of both the Building Code and the Code of Conduct for the Construction Industry.

Arch. Mwilu brings to the Authority a wealth of Knowledge due to his technical background, as well as over a decade's worth experience both in the public sector and as a private consultant.

He holds a Master's degree in Construction Management band a Bachelor of Architect degree, both from the University of Nairobi.

THE SECRETARIAT



Planner Ruth Waruguru Muroki is an urban planner and works at the Nairobi City County Government, Kenya as Director responsible for Urban Policy and Research Department. She is a registered planner with the Kenya Physical Planners Registration Board, a Fellow Member of Kenya Institute of Planners (FKIP) and a past Hon Secretary of the Kenya Institute of Planners (KIP).

She holds Master's Degree in Urban and Regional Planning and a Bachelor of Arts degree in Sociology. Among her key interests is participatory governance and advocacy planning.

She is a member of the Nairobi Physical Planning Liaison Committee in the capacity of the Head of the Secretariat.



Planner Wycliffe Nyasende Nyagara

Nairobi City County Government Ag. Assistant Director, Urban Policy and Research.

Master's in Urban and Regional Development - University of Seoul, South Korea,

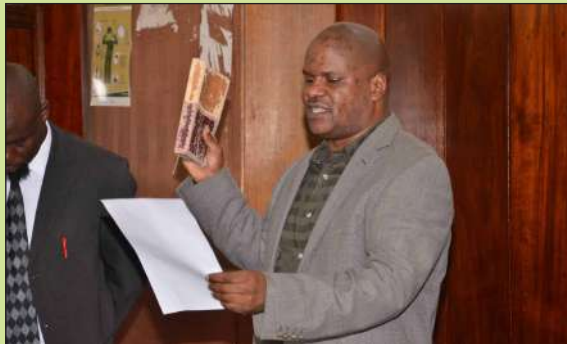
Bachelor of Arts Degree in Urban and Regional Planning - Maseno University,

Diploma in Technology in Architecture - Technical University of Kenya - Ongoing,

Corporate member of the Kenya Institute of Planners.

Member of the Nairobi City County Physical and Land Use Planning Liaison Committee - Secretariat

INAUGURATION OF THE COMMITTEE MEMBERS



Members in session



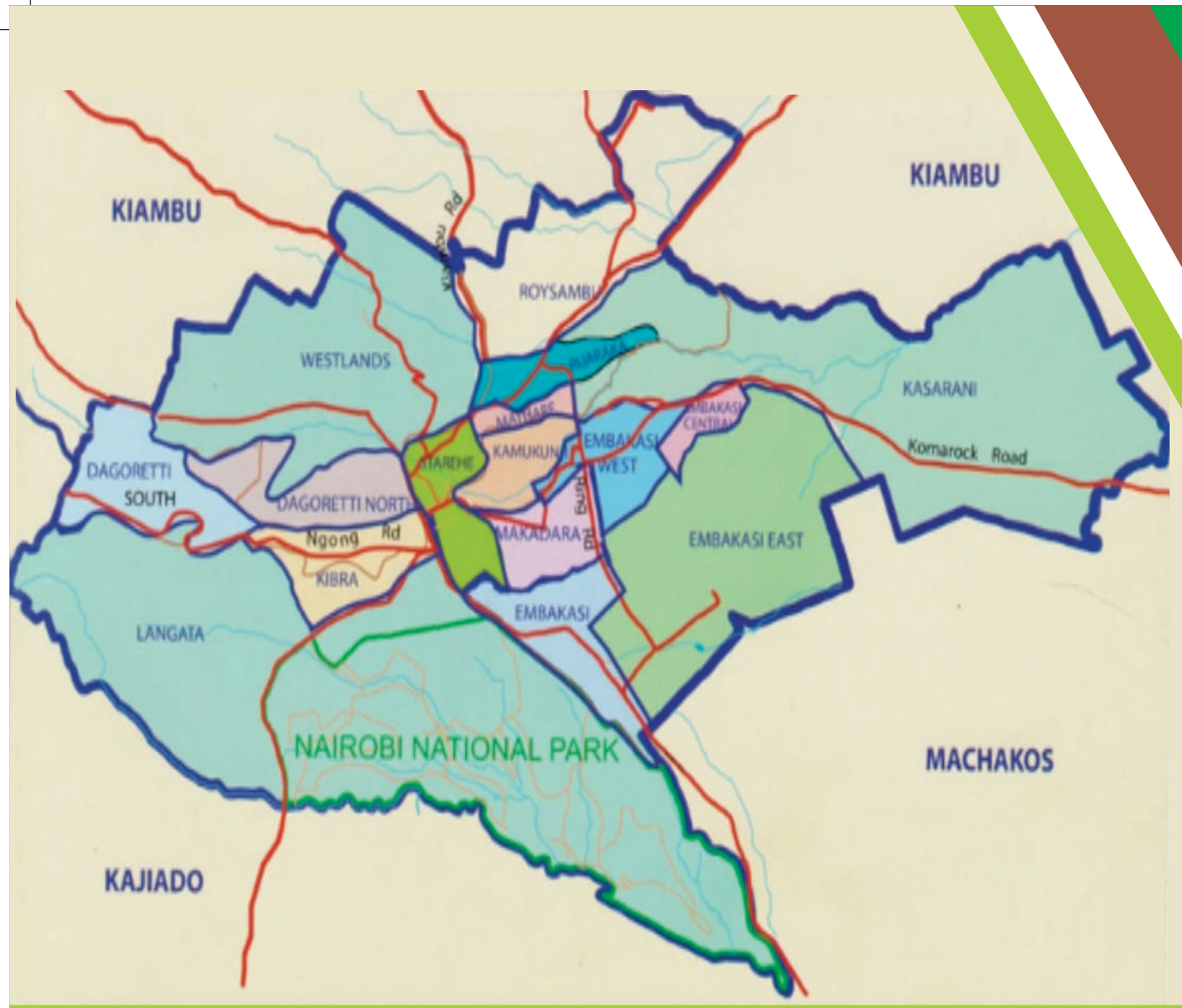
The Chairman and Justice Mugo tree planting in Korogocho on 25/04/2024



Architect Oino with members of the Land Justice Working Group on 24/6/2024



The Nairobi Physical and Land Use Planning Liaison Committee Report 2024

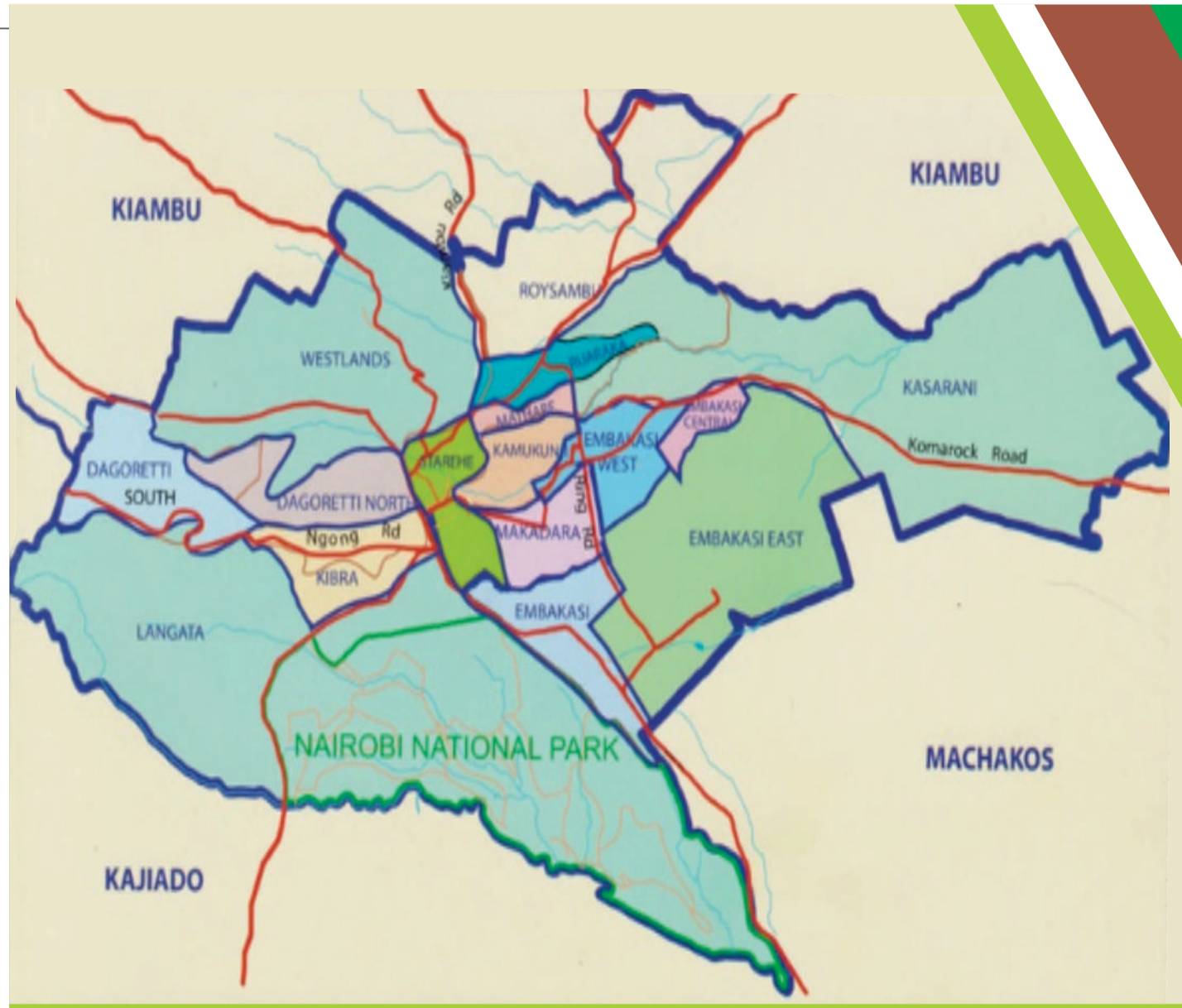


The Nairobi Physical and Land Use Planning Liaison Committee Report



The Nairobi Physical and Land Use Planning Liaison Committee Report 2024

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