THE SUPREME COURT OF KENYA

CLAIRE KUBOCHI ANAMI & 2 OTHERS, *suing as officials of* RHAPTA ROAD RESIDENTS ASSOCIATION VS. COUNTY EXECUTIVE COMMITTEE MEMBER (CECM) BUILT ENVIRONMENT AND URBAN PLANNING, NAIROBI CITY COUNTY & 20 OTHERS

SC PETITION NO. E044 OF 2025

DATE OF JUDGMENT: 30th October 2026

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Court partially allows the appeal.

Background

The appellants, residents of Muthangari, along Rhapta Road in Nairobi, raised concerns over the rapid construction of high-rise buildings in their neighbourhood ranging from 17 to 22 floors, despite the area being designated for buildings of no more than four (4) floors under the Nairobi City Development Ordinances and Zones, 2004, and the Nairobi Integrated Urban Development Master Plan (NIUPLAN), 2016. They petitioned the Environment and Land Court (ELC), challenging the approvals issued by Nairobi City County (NCC) and NEMA to the 6th to 21st respondents, who are the registered owners and developers of some of the upcoming buildings, based on the draft Nairobi City Development Control Policy, 2021 (2021 Policy). They argued that the 2021 Policy had neither been approved by the County Assembly nor subjected to public participation as required under Article 10 of the Constitution; and that in the absence of a valid policy, the County Government had resorted to processing development applications based on discretion and inconsistent criteria. They contended that the approvals violated Articles 42, 60(1) and 69 of the Constitution, warning that uncontrolled development would strain infrastructure, harm the environment and undermine sustainable land use.

In turn, the respondents challenged the jurisdiction of the ELC to determine the matter, contending that the appellants' grievances ought to have been lodged in the first instance before the Nairobi City County Physical and Land Use Liaison Committee (Liaison Committee) and the National Environmental Tribunal (NET). The respondents maintained that the development approvals were obtained lawfully and in full compliance with due process.

The ELC partially allowed the petition, finding that it had jurisdiction to determine the dispute and acknowledged the existence of a planning policy vacuum. The Court held that the 2021 Policy was applicable in the circumstances and that the approvals granted for the affected properties breached zoning requirements on building heights within zone 4B. It varied the approvals for the 6th to 21st respondents, limiting the buildings to 16 floors pending the County Assembly's decision on the 2021 Policy. It also directed NCC and the relevant authorities to comply with the Policy

when approving developments along Rhapta Road, pending its approval by the County Assembly. However, the Court found that the appellants had failed to prove that the issuance of the licences was unlawful or that it violated their constitutional right to a clean and healthy environment.

Aggrieved, the appellants appealed to the Court of Appeal, while the respondents filed a cross-appeal challenging the classification of the properties. The court dismissed the appellants' appeal but allowed the cross-appeal, finding that the properties fell under Zone 3C, rather than Zone 4B as determined by the ELC and varied the 16-floor cap imposed by the ELC to 20. The court also directed NCC, within six months, to prepare and adopt the relevant zoning and development plans through the County Assembly and gazette them in accordance with the Physical and Land Use Planning Act, 2019 (PLUPA), and the Constitution.

The appellants, aggrieved by that decision, appealed to the Supreme Court.

The Supreme Court delineated the following issues for determination:

i) *Whether the jurisdiction of the Court has been properly invoked;*
ii) *Whether the ELC properly assumed jurisdiction in light of the doctrines of exhaustion and specialized statutory mechanisms under the PLUPA and the EMCA;*
iii) *Whether the courts below properly interpreted and applied the Articles of the Constitution upon which the petition was brought in determining the mandate of the county government of Nairobi in matters of county planning and development;*
iv) *Whether the reliefs granted by the Court of Appeal were appropriate under Article 23(3) and consistent with the constitutional allocation of county planning functions; and*
v) *What reliefs should issue?*

Upon consideration, the Supreme Court partially allows the appeal for the following reasons:

Issue 1: The Court has jurisdiction to entertain this appeal as it falls squarely within the scope of Article 163(4)(a) of the Constitution.

Issue 2: The ELC was properly seized of the petition before it, as the jurisdictions of the Liaison Committee and the NET were inadequate to address the appellants' grievances, especially those anchored on Articles 10, 42 and 69 of the Constitution.

Issue 3: The appellants failed to prove any ongoing environmental degradation that threatened or violated their rights to a clean and healthy environment. The only constitutional violation that was established is that the 2nd respondent (NCC) lacked a valid planning framework.

Issue 4: The structural interdicts issued by the appellate court therefore provided constitutional oversight of planning to the extent only that the 1st and 2nd respondents were to develop, adopt and gazette the policy or plan within six (6) months of the date of the judgment in compliance with the Constitution and PLUPA.

The Court of Appeal's judgment is therefore set aside in part, on reliance on the Nairobi City County Development Policy 2021 as the basis for granting development permission by the NCC in the Rhapta Road area.

The matter is remitted to the Court of Appeal to ensure the structural interdict regarding the enactment of the Nairobi City County Development Control Policy is duly complied with.

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