

NBRB/02/05

September 28, 2023

To:

1. Twinomurisa Jordan
2. THE BUILDING COMMITTEE, KAMPALA CAPITAL CITY AUTHORITY

DECISION OF THE NATIONAL BUILDING REVIEW BOARD

1.0 Background of the Appeal:

1. An appeal application was lodged with the NBRB for resolution by Mr. Jordan Twinomuriisa on August 4, 2023 through the Building Industry Management System (BIMS).
2. The gist of the appeal is that the Appellant is the registered proprietor of land comprised in FRV, KCCA 446 Folio 21 Upper Hill Close Plot 12A Naguru and Bukoto Crescent, Naguru.
3. The Appellant acquired the said land from the former registered proprietor, a one Mr. Moses Kamoga who was constructing residential apartments on the same land and a boundary wall, with approved plans from KCCA dated May 2, 2019. Development permission for the same was granted on April 3, 2019 by the Physical Planning Committee, Kampala Capital City Authority (*herein after referred to as "KCCA"*) - (Ref: DPP/KCCA/1702/03); permit number: N/0328/19 of 2019.
4. Following the said approvals in 2019, the Appellant, who later acquired the said property applied to the Directorate of Physical Planning, KCCA on November 26, 2021 (Ref: UGA/RES/04-21/001) for renewal of building plans, given the change of ownership through his engaged architect, Arch. Adrian T. Rutaroh.
5. Another letter was written by Arch. T. Rutaroh on behalf of the Appellant on November 29, 2021 ((Ref: UGA/RES/04-21/001) to the Directorate of Physical Planning, KCCA informing them of the change of architects on the project due to change of ownership of the land.
6. The Appellant, finally, in a letter received by the KCCA Building Committee on March 10, 2022 wrote to the Building Committee seeking to regularize their validly issued approvals in line with the Building Control Act, 2013 and in line with the circular issued on May 11, 2020 by the Hon. Minister of Works and Transport.
7. It is this very application that is subject to the appeal; the Appellant claims

that the Building Committee of KCCA(*herein after referred to as "BC"*) has never issued its decision on the application for a building permit.

8. It should be noted that the Appellant also attached proof of clearance by the Inspectorate of Government concerning investigations as to the ownership of the subject land as the same was subject to court proceedings. The said letter from the IG was dated December 21, 2022 Ref: HQT/CO/593/2019).

2.0 Application for Review by the NBRB:

The Appellant lodged an appeal under Section 37(3) of the Building Control Act, 2013 (hereafter the Act) against the KCCA City BC. The following ground was cited:

The BC of KCCA neglected their statutory duty to consider and issue the Appellant a building permit within the statutory period under Section 36 (5) of the Act.

Prayers

The Appellant prays that the NBRB should compel Kampala Capital City Authority (KCCA) to perform its statutory duty of considering the Appellant's application and issuing its decision on the same.

3.0 Determination of the Appeal:

3.1 Qualities of the Appeal

In determining the appeal, the NBRB assessed the submission against the established legal framework for conformity as detailed below:

Analysis of the facts in the matter vis-a-vis requirements for an appeal under the Act and Regulations

Qualities of an appeal	Yes	No	Comments
Form of the Appeal	ü		<ul style="list-style-type: none"> · Reg.5(2) of the Building Control (Appeal Procedure) Regulations,2021 · Form 1 (Schedule 1) to the Building Control (Appeal Procedure) Regulations,2021 · Application made to the NBRB is in the required form under the Schedule to the regulations
Fees payable	ü		<ul style="list-style-type: none"> · Reg.5(3) of the Building Control (Appeal Procedure) Regulations, 2021 · Schedule 2- UGX. 20,000/=
Timelines	ü		<ul style="list-style-type: none"> · Appellant's claim is that the decision of Building Committee has not been communicated yet
Decision appealed against was made by the Building Committee of KCCA	ü		<ul style="list-style-type: none"> · Established Building Committee of Kampala Capital City Authority
Right of Appeal under Section 37 of the Act	ü		<ul style="list-style-type: none"> · The alleged facts fall within the ground of appeal under Section 37 (3)

The matter met the criteria of an appeal within the law and was considered as such.

The NBRB notes the Appellant's letters in evidence addressed to the Directorate of Physical Planning however, NBRB wishes to clarify for purposes of this resolution, that it shall consider the operations of the Building Committee of KCCA which is a statutory committee established under Section 28 of the Act. The NBRB is mandated to among others to oversee, inspect and monitor the operations of the Building Committee and to hear and determine appeals under Section 9 of the Act.

Owing to this mandate, and in accordance with Reg. 5, 6, 8 and 10 of the Building Control (Appeal Procedure) Regulations, 2021, the NBRB requested the KCCA Building

Committee to forward a written memorandum within a period of 14 days from receipt of the notice issued on August 4, 2023. It should be noted that the BC's response was received on August 24, 2023 (Ref: DETS/KCCA/1718), beyond the 14-day period.

3.2 Issue(s) for Resolution

Review of the memoranda received from both parties led to formulation of **one major issue** being;

Whether the Respondent, the Building Committee of KCCA notified the Appellant of its decision regarding the application for a building permit received in March 10, 2022 regarding the proposed residential development on Plot 12A, Upper Hill Close & Bukoto Crescent, Naguru, Nakawa Division.

3.3 Resolution of the Issue(s)

Submission from the Appellant

The Building Committee was in breach of its statutory duty for having failed to render a decision on an application for a building permit submitted on March 10, 2022 within 30 days from the date of receipt of the application under Section 36 of the Act

Submission from the BC

1. That the Building Committee of KCCA during its sitting no. BC 061, BC 094 and BC097 deferred the application for a building permit on the subject land and the same was communicated to the developer to address comments dated April 27, 2023. Minutes of the meetings were attached to the written submissions.
2. The Committee's decision was on prior occasion communicated to the Director Physical Planning to guide on the development permission in a letter dated April 19, 2022.
3. That the Building Committee awaits submission of a response to the comments raised to the Appellant for further scrutiny.

Hearing of the Appeal

In line with Regulation 8 of the Building Control (Appeal Procedure) Regulations, 2021 the NBRB invited both parties for a hearing at the NBRB Board Room on Thursday 14 September, 2023 at 10:00am.

The hearing was attended by the Appellant, Mr. Jordan Twinomuriisa as well as his legal representatives from ALP Advocates, Senior Counsel Gimara Francis and

Counsel Ayebare Edwin as well as Architect Adrian T. Rutaroh.

The Respondent was represented by Eng. Wanyama Peter Paul, Building Control Officer, KCCA and Dr. Omodi Dennis, member of the Building Committee, KCCA.

A. Submission of the Appellant during the hearing

1. The Appellant in good faith and in a bid to conform to the law, applied for a building permit following change of ownership and supervision personnel on the subject site and in line with the circular of the Hon. Minister of Works & Transport even though they had valid building plans approved in 2019.
2. That he had a verbal request from KCCA to renew drawings
3. That the delay in issuance of a decision by the Building Committee of KCCA has greatly inconvenienced the Appellant's developments and caused financial loss due to the delays.
4. That the Building Committee had neither notified the Appellant of their decision on the building permit application nor notified him of any delays in line with the law.

B. Submission of the Respondent during the hearing

1. That the Appellant has made substantial deviations both vertically and horizontally on site (about 60%) from what was approved in 2019 therefore, this required fresh approval of the Physical Planning Committee.
2. That the Appellant's application had not adhered to the required form for application of a building permit under the Building Control Regulations, 2020
3. That the Building Committee made a decision on the application which was then submitted to the Client Care Office of KCCA for service onto the Appellant as per the internal procedure, however it was possible that the Appellant or any of his agents were called to pick up the notification letters but declined to do so.
4. The BC also noted that the Appellant had previously addressed its letters to the Directorate of Physical Planning instead of the Directorate of Engineering and Technical Services which the Building Committee was under.
5. The BC noted that they had earlier referred the matter to NBRB to issue a decision on the same in June, 2022 however NBRB guided in its response dated June 14, 2022 (NBRB/02/12) that it could not issue a decision on behalf of the Building Committee as it was an appellate body under Section 9 and 37 of the Building Control Act, 2013. NBRB guided that the BC should issue its decision in a 30-day period as per the law.

C. Observations from the NBRB during the hearing

1. The NBRB objected to the BCO representing the BC without any written communication from the Building Committee delegating this function in line

with Section 29 (2) of the Act. The Appellant, however, in the interest of justice, chose to waive this objection and proceed with the hearing.

2. The Appellant denied having received any communication from KCCA Building Committee notifying him of their decision and the NBRB further observed that there was no proof of service of the decision of the BC onto the Appellant neither was there any evidence that the same had been received.

3.4 Analysis of the facts by the NBRB

1. There are some inconsistencies in dates in the respective parties' written representations for example the Appellant submits that the previous registered proprietor's building plans were approved on May 2, 2018 however reference to the copy of Development permission attached reveals that the plans were approved on May 2, 2019.

Furthermore, regarding the same development permission attached, the Physical Planning Committee notes that the application was considered and approved on May 2, 2019 however it was stamped April 3, 2019.

KCCA communicated the approval by the PPC on May 2, 2019 pending structural review. It therefore raises concern as to how the KCCA Physical Planning Committee could have approved development permission on April 3, 2019 quoting a meeting that took place one month later.

In addition, the letter of application for a building permit was dated February 28, 2021 yet received by KCCA on March 10, 2022. On analysis of all attached documentation, it is likely that this date was intended to state February 28, 2022.

Furthermore, the BC submits in its written submissions to NBRB that it communicated to the Director Physical Planning to guide on the development permission for plot 12A in a letter dated April 19, 2022 however, what was attached to the appeal was a copy of an Internal Memo (Ref: DETS/KCCA/1718) dated April 19, 2023.

The letter addressed to the Appellant attached to the BC's submission dated April 27, 2023 states that the BC **rejected** the application pending submission of development permission although the subject reads '**deferral**'. Deferment and rejection are not the same under the Act therefore, the letter should have been more consistent.

2. The Building Committee of KCCA received the Application for a building permit by the Appellant on March 10, 2022. Section 36 of the Building Control Act, 2013 states as follows:

- (1) "A Building Committee may upon receipt of an application for a permit under section 35, issue a building permit to the applicant within **thirty days after receipt of the application**"
- (5) "*Where the Building Committee is unable to reach a decision **within***

thirty days as required by subsection (1), it shall, notify the applicant in writing of that fact, within fourteen days after the date of the meeting of the Committee, and shall indicate in the notice, a reasonable period within which it will be able to reach a decision, but in any case not later than sixty days from the date of the receipt of the application.”

In its written submission to the NBRB, the Building Committee attached a copy of letter of notification of its decision regarding the application for a building permit by the Appellant, dated **April 27, 2023** (ref: DETS/KCCA/1718). Much as this was attached, the NBRB observed that there was no proof of service of the same onto the Appellant and the notification was made **more than a year** after the application has been lodged with the BC.

The KCCA Building Committee has not provided any indication that it adhered to **two** out of three requirements under the above provision namely:

- a. Reaching a decision on the application for a Building permit in order to regularize building operations and notifying the Appellant of the same within 30 days from the date of receipt of the drawings;
- b. Notifying the Appellant within 14 days of the meeting of the Committee in the event of failure to issue a decision in 30 days;

It should be noted that the Building Control Act, 2013 and Regulations thereunder recognise that the BC's decision on any submission by a developer may be either an approval, a deferral or a rejection however in all cases, the BC should notify the developer of its decision within the legal timelines as reiterated under Section 36 of the Act and Regulation 24 of the Regulations.

Much as there is evident delay in issuance of the decision by the Building Committee, the NBRB also notes that the applicant too did not attach proof of any efforts made on their part to follow up the said decision from the BC. The NBRB notes that it is a well-known and recognised maxim that equity aids the vigilant, the appeal ought to have been lodged by the Appellant within a reasonable time after the lapse of the 30-day statutory timeline.

Nonetheless, the NBRB concludes that the BC has not provided any evidence to the effect that it notified the Appellant of a decision made by the Building Committee within the statutory timeline.

Section 51 of the Building Control Act, 2013 provides as follows:

“Where, in this Act, there is reference to the service of any notice, that notice shall be served by post or delivered by hand to the addressee or his agent, as the case may be, or to the person in charge of the building operation at the site.”

The Building Committee did not provide any proof of its attempts to serve the notification of its decision to either the Appellant personally or his agents such as

Arch. Adrian T. Rutaroh of M/S Koncepts – Infiniti (U) Ltd stated as the newly appointed consultants in the letter to the Building Committee which was received on March 10, 2022.

3.5 Decision of the NBRB on the issue(s)

The NBRB finds the Building Committee in breach of its duty to notify the Appellant of its decision within 30 days as stipulated in section 36 of the Act.

Should there have been any reason for delay in issuing the decision, the BC ought to have notified the Appellant of this delay in line with the law.

3.6 Decision of the NBRB on prayers of the Appellant

s/n	Prayer	Decision of the NBRB
1.	The Appellant prays that the NBRB should compel Kampala Capital City Authority (KCCA) to perform its statutory duty of considering the Appellant’s application and issuing its decision on the same.	Upheld: The NBRB finds that the Building Committee did not issue its decision on the application for a building permit to the Appellant as required under the Building Control Act, 2013

3.7 Decision by the NBRB

During the hearing held by the NBRB, the parties expressed willingness to resolve the matter if a decision on the application is issued by the Building Committee. The Building Committee informed the Appellant that all notifications of its decisions regarding the application were prepared and submitted to the Client Care office, KCCA for collection by the Appellant.

During the hearing, the Appellant that they would accordingly visit the Client Care office of KCCA to collect the said communications from the BC and report to the NBRB on whether these are satisfactory. The same feedback from the Appellant is yet to be

forwarded to the Board however, the NBRB commends the BC and the Appellant for the fruitful discussion on the matter. Mutual cooperation between the developer and the Building Committee is indeed encouraged.

In line with Regulation 12 (2) of the Building Control (Appeal Procedure) Regulations, 2021, and having considered all the facts herein, the NBRB decides as follows:

1. The NBRB can only confirm, reverse or modify **the decision of the Building Committee** or order fresh consideration of the application of the Appellant by the Building Committee. Therefore, the Board cannot act in absence of the decision of the Building Committee;
2. The Building Committee of KCCA should issue a decision on the Appellant's submission **within 7 days from the date of receipt of this decision**. Proof of adherence with this directive ought to be shared with the NBRB within 7 days of issuance of the decision.
3. Both the Appellant and the Building committee should exercise diligence in the building permit application and consideration processes respectively.

Decision made on this **28th** day of **September 2023**



A handwritten signature in black ink, appearing to read 'Flavia', is written over a horizontal line. The signature is centered on the page.

Eng. Flavia G. Bwire
Secretary to the Board