

NBRB/02/05

September 25, 2023

To:

1. KAMULI ADRIS
2. THE BUILDING COMMITTEE, KAMPALA CAPITAL CITY AUTHORITY

## DECISION OF THE NATIONAL BUILDING REVIEW BOARD

### 1.0 Background of the Appeal:

1. An appeal was lodged with the NBRB on the July 27, 2023 by Mr. Kamuli Adris represented by his Architect, Arch. Khayongo R. Patricia of Dream Architects Ltd, against the Building Committee (BC) of KCCA for issuing two separate yet contradictory decisions in respect of the building permit application (Ref: application no. 2305317739) lodged through the Building Industry Management System (BIMS), for a proposed residential apartment on plot 3484 block 215 Kulambiro, Nakawa Division.
2. The Appellant applied for a building permit in line with the Building Control Act, 2013 (hereafter the Act) for which communication dated July 12, 2023 was received that a decision was made by the BC **deferring** the application.
3. The Appellant alleges that the above communication came right after the same plan **had been approved** in the BC meeting dated **July 3, 2023** and a building permit approval letter drafted although no proof as to how this information was acquired was provided by the Appellant.
4. To prove the alleged approval, the Appellant attached to her appeal, a copy of a building permit signed July 10, 2023 by the Chairperson of the Building Committee of KCCA although receipt of the same had not been acknowledged by the building owner.

### 2.0 Application for Review by the NBRB:

The Appellant lodged an appeal under Section 37(1) of the Act. The following ground was cited:

The BC of KCCA neglected their statutory duty to endorse its approval on the plans as

required by section 36(6) of the Act and that the same BC erred in issuance of a post - approval deferral

The Appellant prays that NBRB;

1. Considers the delayed feedback and vanishing uploads;
2. Looks into multiple site visits and deferral in light of the application;
3. Upholds the plan approval in the meeting of the BC held on July 3, 2023;
4. Orders that the permit that would have been issued on July 10, 2023 be issued

### 3.0 Determination of the Appeal:

#### 3.1 Qualities of the Appeal

In determination of the appeal, the NBRB assessed the submission of the Appellant against the established legal framework for conformity as below.

Analysis of the facts in the matter vis-a-vis requirements for an appeal under the Act and Building Control Regulations, 2020 and Building Control (Appeal Procedure) Regulations, 2021

Qualities of an appeal	Yes	No	Comments
Form of the Appeal	ü		<ul style="list-style-type: none"> <li>· Reg.5(2) of the Building Control (Appeal Procedure) Regulations,2021</li> <li>· Form 1 (Schedule 1) to the Building Control (Appeal Procedure) Regulations,2021</li> <li>· Application made to the Board is in the required form under the Schedule to the regulations</li> </ul>
Fees payable	ü		<ul style="list-style-type: none"> <li>· Paid- Reg.5(3) of the Building Control (Appeal Procedure) Regulations, 2021</li> <li>· Schedule 2- UGX. 20,000/=</li> </ul>

Timelines	ü	· Decisions for deferral was issued on July 12, 2023 and the appeal was lodged on July 27, 2023 which is within the 30-day timeline under Section 37 (1) of the Act.
Decision and irregularities in the procedure appealed against were made by the Building Committee of KCCA	ü	· Established Building Committee of KCCA under sec 28(1) of the Act
Right of Appeal under Section 37 of the Act	ü	Matter falls within the ground of appeal under Section 37 (1)

The matter met the criteria of an appeal within the law and was considered as such. The NBRB is mandated to among others to oversee, inspect and monitor the operations of the Building Committee and to hear and determine appeals from persons dissatisfied with the decisions of the BC under Section 9 of the Act. Therefore, 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 KCCA Building Committee to forward a written memorandum within a period of 14 days from receipt of the notice of the appeal issued on August 1, 2023.

It is however noteworthy that the BC neglected to respond to the appeal lodged therefore, no written memorandum was filed with the NBRB by the Respondent.

### 3.2 Issue(s) for Resolution

Review of the documentation lodged on appeal gave rise to two issues for resolution;

Issue 1

Whether the Building Committee of KCCA notified the Appellant of their decision regarding the building permit application?

Issue 2

Whether the Building Committee is required to sign and endorse a copy of the permit and other documents?

### **3.3 Resolution of the Issue(s)**

#### **Submission from the Appellant**

##### **Issue 1**

1. The Appellant lodged an appeal against a decision that was reached by the BC on July 12, 2023.
2. In an annexure to the appeal, the Appellant indicated that the application was created on the BIMS on June 7, 2023 and officially received on June 21, 2023 by the Building Committee for consideration.
3. Upon review of the applications and conclusion of site visits by the office of the Building Control Officer and submission for scrutiny to the BC, on July 12, 2023, the application on BIMS was deferred.

This deferral came after the Appellant had received communication that the Building Committee has approved the Building Permit and attached a copy of the same to the appeal. The attached Building permit was not received by the building owner but dated July 10, 2023 and signed by the Chairperson of the Building Committee.

#### **Submission from the BC**

The Respondent did not file any memorandum or make any submissions in response to the appeal.

#### **Hearing of the Appeal**

##### **Issue 1**

A hearing was held in the presence of Eng. Wanyama Peter Paul, the BCO of KCCA and Arch. Patricia Khayongo, representing her client, Kamuli Adris, the Appellant on Friday 15 September, 2023 in line with Reg. 8 of the Building Control (Appeal Procedure) Regulations, 2021

At the commencement of the appeal hearing, the Building Control Officer (BCO) was present for the hearing representing the Building Committee. The NBRB raised an objection as to BCO's representation of the BC without any delegation in writing as per

Section 29 (2) of the Act. In the interest of justice, however, the Appellant consented to continuity of the proceedings as it was established that the BCO was better versed with the facts of this appeal and therefore in the best position to answer questions that could be raised.

A. Submission of the Appellant at the hearing;

1. The Appellant contended that the BC breached its statutory obligation of issuing a decision when it issued two contradictory positions.
2. The Appellant brought to the NBRB's attention the fact that the application was made on the June 7, 2023 the same was deferred at different times.
3. The process was characterised by numerous comments on the BIMS and the same were addressed although the same deferrals kept being issued even after site visits were conducted by the Building Control Office.
4. The Appellant also informed the NBRB that since the filing of the appeal on July 27, 2023, she was notified by the Building Committee of its decision and accordingly received the building permit on August 6, 2023. The building permit received was the one dated July 10, 2023 as per her initial submission.
5. A copy of the duly received Building permit (dated July 10, 2023 and signed for receipt on August 6, 2023) was submitted to the NBRB for its record
6. She however informed the NBRB that despite receipt of the building permit, she had not been issued with approved building plans, therefore could not proceed with site operations.

B. Submission of the BCO, KCCA

1. The BCO contended that the delay from the date of lodging the application to the time of making a decision was centred on the failure of the Appellants to follow the prompt procedure.
2. That such an application for a building permit to the Building Committee should be made once the Physical Planning Committee has granted development permission to the developer.
3. He therefore submitted that the application was approved as per the permit dated July 10, 2023 attached to the Appellant's appeal documents.
4. He further stated that the reason for the subsequent deferral of the application on

the system was that the applicant, who was to undertake demolition on site had not attached proof of payment of demolition fees as per the Building Control (Fees) Regulations, 2021

5. In order to clear the demolition fees, a new application in BIMS for demolition (2305317739) as the sole building operation was opened by the Appellant.

## Issue 2

### A. Submission of the Appellant

1. The Appellant contended upon receipt of the Building permit by the Building Committee of KCCA on August 6, 2023, she did not receive stamped drawings.
2. She argued that she was entitled to a digitally stamped copy of the approved building plans which reflects the BC's approval of the intended building operations.
3. She added that the same had not been issued yet the application had been approved in a meeting of the Building Committee held on July 3, 2023

### B. Submissions of the BCO, KCCA

1. He submitted that the BC was not well equipped with handling of digital stamps on drawings, therefore the way forward in KCCA was that the applicants are encouraged to submit hard copy drawings to ensure that they are manually stamped by the BC as verification of the committee's approval.
2. He further stated that the Chairperson of the BC was ready and open to stamping these building plans if copies were submitted manually therefore the Appellant was encouraged to submit hard copies for stamping.

## 3.4 Analysis of the facts by the NBRB

### Issue 1

1. Based on the above facts it is clear that the Appellant got hold of a signed copy of a building permit issued by the Building Committee on July 10, 2023. There is no proof that the same had not been formally communicated by the Building Committee in line with Section 36 of the Act, however, since the BC elected not to respond to the grounds of appeal, the NBRB considers the attached building permit by the Appellant as proof of an existing approval of the building permit application



on KCCA's record. It should however be noted that the same was issued off the BIMS, which the NBRB finds concerning. The same permit (No: 1921/2023) however also alludes to a BC minute number 104/6 although there is no indication as to the date of the sitting.

2. The BIMS was developed to encourage transparency in the building permit approval process and the partial use of the same by KCCA does indeed raise concern of the NBRB, putting applications at risk of interference by officers of KCCA.

3. The issue then arises as to what decision of the Building Committee stands, since at present there appear to be two contradictory positions namely; the seemingly approved physical building permit dated July 10, 2023 (issued outside the BIMS) or and the consequent deferral on the BIMS dated July 12, 2023.

An administrative body becomes *functus officio* if it issues a decision and therefore cannot issue a latter contradictory decision on the same matter. **Black's Law Dictionary, 9<sup>th</sup> Edition** defines *functus officio* to mean "without further authority of legal competence because the duties of the original commission have been fully accomplished."

The *functus officio* doctrine is a mechanism by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter. Once a decision has been made, it is (subject to the right of appeal to a superior body) final and conclusive. It has however been noted that this is not absolute since the instrument from which the decision maker derives its adjudicative powers may empower them to interfere with their own decision or to create clarity on any ambiguities.

The above rule therefore applies to the KCCA BC in execution of its administrative role. The law requires a BC to notify an applicant of its decision and if a building or occupation permit is granted, the same can only be reconsidered for revocation in line with Reg.25 and 35 of the Building Control Regulations, 2020 respectively.

## Issue 2

1. Reg 24(3) of the Building Control Regulations, 2020 is to the effect that;

"where the building committee issues a permit under sub regulation (1), the chairperson of the building committee shall sign the permit and other documents and issue one endorsed copy of the permit and other documents to the applicant"

The Appellant contended that they had received a permit from the Building Committee after they had lodged the appeal with the NBRB but they had not received the approved /stamped building plans submitted with the application.

2. Basing on the above Reg.24(3) of the Building Control Regulations, 2020, when a building permit is issued by the Building Committee, it ought to be endorsed by the same BC, together with a copy of the building plans submitted. The NBRB however notes that the Appellant did not attach proof of the alleged meeting of the BC on July 3, 2023 and neither were any minutes alluding to the same provided and therefore such a meeting and minutes that approved the drawings cannot be verified by the NBRB.
3. Nonetheless, deducing the evidence at hand, the existence of a building permit dated July 10, 2023 points to a BC meeting from which minute no. 104/6 was extracted to issue the building permit in question.
4. In order for this position to be reached, building plans must be scrutinized and if approved a permit issued in line with Section 29 of the Act. Therefore, once a permit has been issued it is expected that the relevant building plans submitted should be endorsed by the same BC and a copy issued to the Appellant.

### **3.5 Decision of the NBRB on the issue(s)**

#### 1. Issue 1

1. The first issue for resolution was overtaken by events as the Appellant informed the NBRB during the hearing held on Friday 15, September, 2023 that she had received a building permit on August 6, 2023 after the appeal had been lodged.
2. KCCA BC has been noted to issue building permits that do not conform to the gazetted statutory form under the Building Control Regulations, 2020. It was further established that the application was made for a Class A building (No. 2208232441) but the issued permit was for a Class B structure thus a building permit should be issued that conforms with the one that was applied for.
3. KCCA BC was cautioned against issuing approvals such as building permits outside the BIMS which was developed to ease the building control process.

#### Issue 2

The NBRB finds that the Appellant was entitled to endorsed copies of building plans submitted to the BC and the same should be issued to the Appellant whether manually stamped or digitally stamped on the BIMS.



The ground for the approval of the plans submitted therefore succeeds and the Appellant should submit manual copies of the drawings to the BC for endorsement.

### 3.6 Decision of the NBRB on prayers of the Appellant

4.0

s/n	Prayer	Decision of the NBRB
1.	Considers the delayed feedback and vanishing uploads	There were no delays in feedback from the BC and the responses made before lapse of the 30-day statutory period (sec 36 of the Act).
2.	To look into multiple site visits	The Appellant's submission indicates two scheduled visits; one on June 27, 2023 and the later site visit on August 3, 2023. The site visit on August 3, 2023 was unnecessary since a building permit had been issued on July 10, 2023 and the deferral 2 days later was done in error.
3.	Deferral in light with the application	<p>Upheld</p> <p>The BC earlier on July 10, 2023 approved a building permit and later deferred the same on BIMS two days later. The BCO however clarified that the deferral was sent in error, therefore the approval stands. The Appellant was issued a building permit on August 6, 2023.</p>

4.	The plan approval in the meeting on the 3 <sup>rd</sup> of July 2023 be upheld	<p>Upheld</p> <p>Issuance of a permit is confirmation of approval of the building plans submitted. Reg 24 of the Building Control Regulations, 2020 requires that building plans be endorsed with the building permit.</p>
5.	The permit that would have been issued on 10 <sup>th</sup> July 2023 be issued	<p>Upheld</p> <p>This was overtaken by events. The BC after the Appellant filed the appeal issued a building permit on August 6, 2023.</p> <p>The NBRB instructs that the Building Permit be altered to conform with the class of structure applied for (Class A) as well as the statutory form under the regulations.</p>

### 3.7 Decision by the NBRB

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 BC of KCCA erred in issuing two contradictory decisions on the same application.
2. The NBRB notes that the BC eventually issued a building permit to the Appellant but this was not in conformity with the statutory form under the Building Control Regulations, 2020. Therefore, KCCA BC is required to issue the Appellant with a building permit that conforms with the gazetted form under the law (Form 4, Part 1 Schedule 3 of the Building Control Regulations, 2020) within 7 days from receipt of this decision.
3. The Appellant should submit copies of building plans for endorsement by the BC within 7 days of receipt of this decision.
4. The Building Committee of KCCA should issue the Appellant with

endorsed/ approved drawings within 14 days from receipt of this decision.

5. The BC should forward proof of adherence with the order of the NBRB within 21 days from the date of receipt of this decision.

Decision made on this **25th** day of **September 2023**



Eng. Flavia G. Bwire  
**Secretary to the Board**

