

NBRB/02/05

February 12, 2024

To:

1. KARIA PRADIP NANDLAL
2. THE BUILDING COMMITTEE, KAMPALA CITY

DECISION OF THE NATIONAL BUILDING REVIEW BOARD

1.0 Background of the Appeal:

On the 14th day of December 2023, Mr Karia Pradip Nandlal lodged an appeal against the Kampala Capital City Authority Building Committee (hereinafter referred to as the “Respondent”) with the National Building Review Board (NBRB) vide the Building Industry Management System (BIMS).

The Appeal was premised on the ground that the Respondent after grant of a building permit intentionally, refused and neglected to issue to the Appellant endorsed copies of the Civil/Structural, Electrical and Mechanical Building Plans contrary to S. 36 (6) of the Building Control Act, 2013 (hereinafter referred to as the “Act” and R. 24 (3) of the Building Control Regulations, 2020 (hereinafter referred to as “the Building Control Regulations”).

Briefly the facts giving rise to the appeal are as follows;

1. The Appellant sometime in mid-2023 through the Building Industry Management System (BIMS), submitted online to the Respondent an application for a building permit with all necessary documentation in respect of land comprised in Freehold Register Volume 1447, Folio 25, Land at Kitante Kampala City, Kintate Road Plot 17, Kampala Capital City.
2. Although the appeal was submitted through the online platform, the Building Industry Management System (BIMS) the Appellant was issued a **physical / hard copy building permit** on the 25th day of September 2023.
3. Thereafter, the Appellant was requested by the Respondent to submit physical hard copies of the Architectural, Civil/Structural, Electrical and Mechanical building plans for endorsement accordingly.
4. On the 10th day of October 2023, the Appellant indeed complied and submitted physical copies of the aforementioned building plans to the Respondent. Subsequently, on the 27th day of October 2023, the Respondent issued to the Appellant only endorsed Architectural building plans. Since November 2023 all further attempts by the Appellant to obtain endorsed Civil/Structural, Electrical, and Mechanical buildings plans were futile.
5. The Appellant on the 14th day of December 2023 lodged the instant appeal at

NBRB pursuant to the Building Control (Appeal Procedure) Regulations, 2021 against the intentional refusal and neglect by the Respondent to issue endorsed Civil/Structural, Electrical, and Mechanical buildings plans contrary to S. 36 (6) of the Building Control Act, 2013 and R. 24 (3) of the Building Control Regulations.

2.0 Application for Review by the NBRB:

The Appellant prayed for an order that the respondent doth issue endorsed Civil/Structural, Electrical and Mechanical building plans.

Before delving into resolution of the appeal, it is pertinent to note that after the Appellant lodged the same appeal at NBRB on the 14th of December 2023, the Respondent issued **ONLY** an endorsed copy of the Civil/Structural building plans. As such, the prayer for an endorsed copy of the Civil/Structural building plans was overtaken by events. However, since then, the Appellant has not been issued with endorsed copies of the Electrical, and Mechanical buildings plans

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			<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 <p>Application made to the NBRB is in the required form under the Schedule to the regulations</p>
Fees payable			<ul style="list-style-type: none"> Reg.5(3) of the Building Control (Appeal Procedure) Regulations, 2021 Schedule 2- UGX. 20,000/=
Timelines			<ul style="list-style-type: none"> Appellant's claim is that the decision of Building Committee has not been communicated yet particularly regarding the issuance of endorsed copies of Mechanical and Electrical Drawings
Decision appealed against was made by the Building Committee of KCCA			<ul style="list-style-type: none"> There is an established Building Committee of Kampala Capital City Authority
Right of Appeal under Section 37 of the BCA, 2013			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.

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

3.2 Issue(s) for Resolution

Review of the documentation led to formulation of **one major issue** being;

Whether the Respondent is mandated to issue to the Appellant endorsed copies of the, Electrical and Mechanical buildings plans in respect of proposed building operations at Freehold Register Volume 1447, Folio 25, Land at Kitante Kampala City, Kintate Road Plot 17, Kampala Capital City?

Law Applicable

The Building Control Act, 2013

The Building Control Regulations, 2020

The Building Control (Appeal Procedure) Regulations, 2021

3.3 Resolution of the Issue(s)

Submission from the Appellant

1. The Appellant's written representation dated 11th December 2023 vide the Building Industry Management System is stated verbatim *"To National Building Review Board RE: PENDING SIGNED AND STAMPED DRAWINGS FOR A DEVELOPMENT ON PLOT 17, KITANTE ROAD. We acquired a building permit on 25th September 2023 but were told to resubmit hard copies for stamping which we did on 10th October. We received the stamped approved Architectural drawings around 27th October. On the date of receiving the stamped Architectural drawings, we were informed that the BCO was away on leave so we would receive then when the said officer was back. No courtesy phone calls for updates or picking approvals, etc. what is happening??"*

To date, we are yet to receive the stamped Structural AND Electro-Mechanical drawings. You promised us a seamless service with online approvals but we seem to be heading back to "analogue" with barely any performance indicators registering success! We are losing work because we seem like not doing something right with your staff. Clients are moving to those Architects that seem to have the magic with KCCA.

Therefore, we appeal against this lacklustre performance and response by your team to our submissions. Unfortunately, we operate in a private sector that is fast and expecting scheduled outputs of tasks. We do request to start the Construction since the issuance of these pending stamped approval drawings is beyond us as we have tried all that is humanely possible but continually face frustrations at every turn. And we are not the only ones that noticed this latest vice!

Submission from the BC

By letter dated 18th December 2023, NBRB in conformity with R.6 of Building Control Appeals Regulations invited the Respondent to make written submissions within fourteen days from the date thereof.

The Respondent's Building Control Officer long after the expiry of the fourteen (14) statutory days by email dated 17th January 2024 wrote to the Appellant's Agent stating that

“... the building plans were approved last year and received on 10th January, 2024 by the authorised agent as indicated in the attached document”.

Furthermore, NBRB in accordance with R.8 (1) of the Building Control Appeals Regulations by letter dated 11th January 2024 invited the Appellant and Respondent to attend a hearing to which the Respondent neither responded nor appeared for the said hearing.

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 Friday 19th January, 2024 at 10:00am.

The hearing was attended only by the Appellant's representative Arch. Benjamin Nkundiye.

The Respondent did not enter appearance and neither was the institution represented by any agent. Furthermore, it did not respond to the NBRB's request for written submissions to the appeal as well as to the invitation for an appeal hearing.

A. Submission of the Appellant during the hearing

1. Arch. Benjamin Nkundiye who represented the Appellant stated that although the application for a building permit was submitted via the Building Industry Management System, the Respondent approved the same and issued a physical building permit on 25th September 2023.
2. The Appellant was instructed by the Respondent to submit physical copies of the building plans. Subsequently, the Appellant on 10th October 2023 re-submitted the said building plans. On 27th October the Respondent issued only an endorsed copy of the Architectural drawings.
3. In spite of the several visits and reminders to the Respondent's office, the Appellant did not receive the endorsed copies of Civil/Structural, Electrical, Mechanical building plan.
4. However, on 10th January 2024 after lodging the instant appeal at NBRB, the Respondent called upon the Appellant to receive endorsed copies of the drawings and only Civil/Structural drawings were obtained thereof.
5. The Appellant further emphasised that Respondent had not issued any endorsed copies of Electrical and Mechanical building plans.
6. Consequently, due to failure by the Respondent to promptly issue endorsed copies of the Electrical and Mechanical building plans, the Appellant's building operations have unfortunately not commenced despite the outstanding strict financial commitments.
7. The Appellant prayed that the Respondent should promptly issue endorsed copies of Electrical and Mechanical building plans so that the approved building operations commence immediately to avoid the dire impact of strict financial obligations that accrue on each day of such delay.

B. Submission of the Respondent during the hearing

There were no submissions from the Respondent owing to their lack of representation during the hearing.

3.4 Analysis of the facts by the NBRB

Whether the Respondent is mandated to issue to the Appellant endorsed copies of the, Electrical and Mechanical buildings plans in respect of proposed building operations at Freehold Register Volume 1447, Folio 25, Land at Kitante Kampala City, Kitante Road Plot 17, Kampala Capital City?

S.35 (1) of the Building Control Act provides as follows:

“a person who intends to carry out a building operation shall apply to the Building Committee in the area in which he or she intends to carry out the building operation for a building permit”.

S.35 (2) (e) of the same further provides that;

“an application for a building permit shall be in a form prescribed by the Board and shall be accompanied by such number of copies of building plans and other documents as may be required by Regulations”.

The Act under S.2 defines a building plan to mean architectural or engineering drawings required by a Building Committee in respect of a building operation.

Such building plans pursuant to R.9, R.10, R.11 and R.12 of the Building Control Regulations, 2020 refer to Architectural, Civil or structural, Electrical engineering installation plans and Mechanical engineering installations plans.

Section 36 of the BCA,2013 also provides 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.”*

Moreso, Section (6) of the Act which guides on procedure for issuing a building permit provides that;

*“the Building Committee shall, where it issues a permit under subsection (1) endorse its approval on the building plan and other documents, **and shall return one endorsed copy each of the building plan and other documents to the applicant”.***

The Appellant confirmed that following their application, the Respondent on 25th September 2023 issued a physical building permit for the application.

The above S.36 (6) ought to be read together with R. 24 (3) of the Building Control Regulations which states 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”.

From the foregoing therefore, it is imperative to appreciate the Respondent's role in the issuance of a building permit and what comprises a full submission of documents to the Appellant.

The language in S. 36 (6) of the Act is coined in mandatory terms as it uses the word “**shall**”. Similarly, the language in R. 24 (3) of the Building Control Regulations is also coined in mandatory language as it uses the word “**shall**”.

The Supreme Court in **Civil Appeal No. 013 Of 2014** between **Kampala Capital City Authority Appellant and Kabandize and 20 Others Respondents** while citing **Sitenda Sebalu vs Sam K. Njuba and the Electoral Commission (Election Appeal No 26 of 2007)** (unreported) and **Regina Vs Soveji and other [2005] UKHL 49** cited Lord Steyner's assessment that after reviewing decisions from the English Court of Appeal, the privy Council and Courts in New Zealand, Australia and Canada he made the following conclusion:-

“Having reviewed the issue in some detail I am in respectful agreement with the Australian High Court that the rigid mandatory and directory distinction, and its many artificial refinements have out lived their usefulness. Instead, as held in Attorney General's Reference (No. 3 of 1999) the emphasis ought to be on the consequences of non- compliance, and posing the question whether parliament can be fairly taken to have intended total invalidity”.

In the instant appeal, the Respondent failed to comply with the law when it simply issued a building permit without the relevant endorsed supporting documents. It is definitely presumed that a developer shall require the relevant approved drawings to guide in implementation of the building operation and the same are also necessary for inspection by the Local Authority. In fact, Reg. 27(4) of the BCR,2020 states as follows:

“A copy of the approved drawings and building permit shall be kept on site and shall be readily accessible by the Building Control Officer at all times during the building operation.”

Much as the law obligates the developer to ensure that approved drawings are always kept on site, the same developer cannot adhere to this provision if the Local Authority has not issued the same. The provision is also coined in mandatory language by the use of shall and with good reason, as the purpose of the BCA,2013 is to ensure safe and sustainable building operations. The law therefore envisions and requires a cordial / symbiotic relationship between the developer and the Local Authority where each party meets their respective obligations for a greater goal- safety of buildings. It is therefore extremely necessary for each party to execute their role within the legal timelines.

Therefore, the Respondent's non-compliance with S.36 (6) of the Act and R.24 (3) of the Building Control Regulations have far reaching consequences on implementation of R.27 (4) of the same Regulations which envisages that a copy of the approved drawings and a building permit shall be kept on site.

The Act under S.33 (d) (i) (iii) further mandates a Building Control Officer to inspect the erection of any building and any activity, in respect of which a permit has been issued in accordance with Sections 35 and 39 and to ensure that any condition upon which the permit is issued is complied with.

The purpose of this was no doubt meant to ensure that the Building Control Officer/s

should at all times have access to endorsed copies of the building plans while conducting such statutory inspections of building operations in order fulfil the object of the Act which is **“to promote and ensure planned, decent and safe building structures that are developed in harmony with the environment”**. It was also meant to ensure that the building operations are being implemented in line with what was approved to avoid deviation, which in turn could translate to unsafe building operations on site. Moreover, Reg. 39 of the BCR,2020 makes it an offence to construct in deviation of what was approved by the Local Authority. Reg.39 (3) states that *where an owner of a building deviates from an approved plan, drawing or diagram to a substantial degree in terms of plot coverage, height, depth, other dimensions, structural system, or becomes noncompliant with these Regulations, the Building Committee may revoke the building permit for the building operations and require the owner of the building to demolish and remove the building within a specified time at his or her own cost.*

Therefore, one of the core purposes of site inspection by the Building Control Officer is to ensure that building operations are being implemented on site according to what was approved. This can only be possible if both parties act accordingly on their respective obligations that is; the building owner applied for a building permit and submitted all necessary documentation and the Building Committee scrutinised the application and approved it, issuing a building permit and relevant endorsed drawings.

It goes without saying that the intentional failure, refusal and neglect by the Respondent to issue endorsed copies of the Mechanical and Electrical building plans to the Appellant tantamount to breach of a statutory duty under S.36 (6) of the Act and R.24 (3) of the Building Control Regulations which unfortunately defeats the object of the Act

3.5 Decision of the NBRB on the issue(s)

The NBRB finds that the Respondent failed to issue endorsed Electrical and Mechanical buildings plans to the Appellant in respect of proposed building operations at Freehold Register Volume 1447, Folio 25, Land at Kitante Kampala City, Kitante Road Plot 17, Kampala Capital City within 30 days as stipulated under section 36 of the Building Control Act,2013.

Should there have been any reason for delay in issuing the said endorsed building plans, the BC ought to have notified the Appellant of this delay in line with the law as the building permit and the relevant endorsed drawings are part and parcel of the building permission. **These cannot be separated.**

Obiter dictum

NBRB notes with serious concern the several appeals that have so far been lodged against the Respondent pursuant to the above stated provisions of the Appeals Regulations wherein the Appellants have expressed deep frustration over the intentional, failure, refusal and neglect to issue endorsed copies of building plans upon grant of a building permit.

Besides, NBRB has also observed that the Respondent on very many occasions has

intentionally, failed, refused and neglected to utilize the Building Industry Management System which is a regulatory tool that was established to promote efficiency, transparency and accountability in the permit approval process in addition to attaining the object of the Building Control Act, 2013.

This irregular practice is very unfortunate because it is outright evidence by the Respondent's actions to circumvent compliance with its statutory mandate stipulated under S.29 of the said Act. The intentional failure, refusal and neglect by the Respondent to utilize the Building Industry Management System and issuance of endorsed copies of building plans is an absurdity and a clear sign of the determination to ignore and breach fulfilment of its statutory the provisions under the Building Control Act, 2013.

3.6 Decision of the NBRB on prayers of the Appellant

Prayer	Decision of the NBRB
That NBRB compels the Respondent whose performance has been deemed lacklustre to provide endorsed Electrical and Mechanical Drawings.	<p>Upheld</p> <p>As per the above submissions in line with S. 36(6) and R.27(4), the building permit and endorsed approved building plans go hand in hand and cannot exist without the other under the Building Control Act regime.</p>

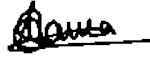
3.7 Decision by the NBRB

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

1. The Respondent **should** issue the Appellant with endorsed Mechanical and Electrical drawings in respect of the building operations at Freehold Register Volume 1447, Folio 25, Land at Kitante Kampala City, Kintate Road Plot 17, Kampala Capital City **within 14 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.

The NBRB reiterates its disapproval to the Respondent concerning the issuance of Building permits and endorsed drawings **off** the Building Industry Management System (BIMS) which was developed for the purpose transparency in the building control processes

Decision made on this **12th** day of **February 2024**



Eng. Flavia G. Bwire
Secretary to the Board

