



# NATIONAL BUILDING REVIEW BOARD

Safe Building, Better Living  
2404055386

FILE COPY  
2nd floor Southwing Rume Plot 19  
Lumumba Avenue, Nakasero  
Kampala, Uganda  
info@nbrb.go.ug  
+256 393 241140 | +256 312 421 600  
Toll- free line: 0800 220746  
P.O Box 7349, Kampala  
**April 15, 2024**



To:

1. **The Permanent Secretary/Secretary to the Judiciary**  
P.O. Box 7985  
Kampala

2. **The Chairperson,**  
Building Committee, Kampala Capital City Authority  
Kampala



## ABBREVIATIONS

BC- Building Committee  
BCA- Building Control Act, 2013  
BCR- Building Control Regulations, 2020  
KCCA- Kampala Capital City Authority  
NBC- National Building Code, 2019  
NBRB- National Building Review Board  
PPA- Physical Planning Act, 2010  
PPC - Physical Planning Committee

## DECISION OF THE NBRB REGARDING AN APPEAL

### 1.0 Background of the Appeal;

1. An appeal was lodged with the National Building Review Board (NBRB) on Friday 5<sup>th</sup> April, 2024 by The Permanent Secretary/Secretary to the Judiciary against the Building Committee of Kampala Capital City Authority (KCCA) against a decision to defer an application for an occupation permit concerning the completed construction for the Supreme Court and Court of Appeal in Kampala.
2. The appellant's contractor M/S Seyani Brothers and company (U) Limited & Parbat Siyani Construction Limited Joint Venture applied for a full occupation permit in line with the Building Control Act, 2013 (BCA) and Regulations thereunder.



3. The Building Committee following its sitting on Monday 25<sup>th</sup> March, 2024 issued a decision deferring the application via email dated April 3<sup>rd</sup>, 2024 for reason that the application was pending submission of the consent and clearance from the Kampala District Land Board (KDLB) on the right of use for KCCA land.
4. The appellant therefore lodged the appeal being dissatisfied with the Building Committee's decision to defer the application for a full occupation permit.
5. The Appeal is based on two grounds:

**Ground 1:**

*The Application for an occupation permit was not dealt with within the time stipulated under the law*

**Ground 2:**

*The decision arrived at by the Building Committee was contrary to the Law and ultravires the powers granted under the Building Control Act.*

**2.0 Prayers of the appellant for NBRB's consideration.**

1. That the NBRB declares that the BC's decision issued out of time is illegal.
2. NBRB **reviews** the report submitted by M/S Seyani Brothers and company (U) Ltd & Parbat Siyani Construction Limited Joint Venture dated February 2<sup>nd</sup> 2024 **and finds** that the building had been erected in conformity with the approved plans and regulations **and thereby issues** an occupation permit for the newly constructed appellate court buildings on Plot 2, The Square, Kampala.

**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 shown in Table 1.

**Table 1: Analysis of the facts in the matter vis-a-vis requirements for an appeal under the BCA, 2013 and Building Control Regulations, 2020 (BCR) and Building Control (Appeal Procedure) Regulations, 2021**

S/N	Qualities of an appeal	Yes	No	Comments
	Form of the Appeal	✓		<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	✓		<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	✓		Decisions for deferral was issued on 3 <sup>rd</sup> April, 2024 and the appeal was lodged on 5 <sup>th</sup> April, 2023 which is within the 30-day timeline under Section 37 (1) of the Building Control Act, 2013
	Decision and irregularities in the procedure appealed against were made by the Building Committee of KCCA	✓		Established Building Committee of KCCA under section 28(1) BCA
	Right of Appeal under Section 37 of the BCA, 2013	✓		Matter falls within the ground of appeal under Section 37 (1)

The matter met criteria of an appeal within the law and was considered as such. In line with Regulation 4, 6, and 8 of the Building Control (Appeal Procedure) Regulations, 2021, the NBRB invited the parties for a hearing on Tuesday 9<sup>th</sup> April, 2023.

### 3.2 Issues for Resolution

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



## **Issue 1**

*Whether the Building Committee of Kampala Capital City Authority (KCCA) notified the appellant of its decision concerning an application for an occupation permit within the time stipulated under the law.*

## **Issue 2**

*Whether the decision arrived at by the Building Committee was contrary to the Law and ultravires the powers granted under the Building Control Act, 2013.*

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

A hearing was held between the parties in the presence of the Permanent Secretary/ Secretary to the Judiciary, Commissioner Engineering and Technical Services of the Judiciary, Commissioner Legal Affairs, MOJCA, State Attorney MOJCA, the Contract Coordinator Seyani Brothers, Quantity Surveyor Seyani Brothers as well as officers of the NBRB on Tuesday 9<sup>th</sup> April, 2024 in line with Reg. 8 of the Building Control (Appeal Procedure) Regulations, 2021.

During the commencement of the appeal hearing, concern was raised as to the absence of representatives of the Respondent, KCCA BC however, the meeting resolved to proceed ex parte, since KCCA BC was accorded an opportunity to be heard but neglected to respond to the invitation, nor send representatives for the hearing.

In the interest of justice, the hearing proceeded ex parte.

#### **A. Submission of the appellant at the hearing;**

The appellant prepared a written submission for purposes of presentation to the panel during the hearing, and provided copies of the same during the hearing **(Copy hereto attached)**

#### **B. Submission of the BC, KCCA**

The BC was not represented and neither did they send a response to NBRB's invitation for the hearing, nor apologies for non-attendance in writing. Through phone call on the morning of the hearing however, they acknowledged receipt of NBRB's invitation and stated that they would have preferred a rescheduling of the hearing.

### **3.4 Resolution of the issues**



## **Issue 1**

*Whether the Building Committee of Kampala Capital City Authority (KCCA) notified the appellant of its decision concerning an application for an occupation permit within the time stipulated under the law.*

### **1. Submissions by the Appellant**

- i. The appellant applied to the Building Committee for an occupation permit on February 2<sup>nd</sup>, 2024 vide reference KVV/KCCA/February/2024/009.
- ii. The Building Committee in its sitting of Monday 25<sup>th</sup> March, 2024 resolved to issue a decision to defer the application. The decision was communicated to the Appellant on April 3<sup>rd</sup>, 2024.

### **2. Submission of the Respondent (BC)**

The Respondent was served with a letter from the NBRB inviting them for the hearing and the same was duly received on April 5, 2024 however, the Respondent did not respond to the invitation neither did they attend the said hearing.

### **3. Analysis of the facts concerning issue 1**

Section 44 of the BCA provides as follows:

#### **“44. Occupation permit**

*(1) Upon the completion of a building, the owner of the building shall—*

- (a) *notify the Building Committee of the practical completion of the building in accordance with the approved plans and the regulations; and*
- (b) *apply to the Building Committee for an occupation permit.*
- (2) *The Building Committee shall, **within fourteen days** after receipt of notification of completion of a building and receipt of an application for an occupation permit, **examine the building, and** may—*
  - (a) *if satisfied that the building has been erected in conformity with the approved plans and regulations, issue an occupation permit; or*
  - (b) *if the building has not been **erected** in accordance with this Act, **refuse** to issue an occupation permit, and give reasons in writing for its refusal...”*

It is therefore implied that upon receipt of notification of completion of a building and receipt of an application for an occupation permit, the Building Committee is expected to examine the building within fourteen days upon receipt of the above documents **and** issue an occupation permit if satisfied within the same period.

It therefore stands that a Building Committee should issue a decision on an application for an occupation permit within a period of 14 days from receipt



of the application since it is expected that the BCO has been inspecting the building at different stages of its construction until completion.

- **Decision on Issue 1**

The NBRB finds that the KCCA Building Committee indeed issued the decision on the Application for an occupation permit over and above the statutory timelines.

**Issue 2**

*Whether the decision arrived at by the Building Committee was contrary to the Law and ultravires the powers granted under the Building Control Act.*

**1. Submission of the appellant**

- i. That the Building Committee's mandate / jurisdiction is restricted to either allowing the application or rejecting it within 14 days.
- ii. The Committee has no residual powers to defer an application for any reason whatsoever, let alone failing to render a decision within 14 days without any explanation.
- iii. That the Committee's decision to defer the application is in total disregard of the law and out of the Committee's mandate as Regulation 34(2) does not include proof of ownership of a property on which a building sits.
- iv. That the said decision is therefore illegal for being outside the law and beyond their powers.
- v. That the Building Committee's mandate is restricted to whether the building is in compliance with the approved building plan and whether the building is fit and safe for habitation.
- vi. That the decision to defer the application is therefore wrong, illegal and ultravires.
- vii. That moreover, the issue of ownership of the alleged disputed Plot is in its advanced stages of resolution. Boundary opening of the said land was undertaken by Ministry of Lands and a report dated 29<sup>th</sup> February, 2024 was issued to that effect.
- viii. Furthermore, a memorandum of Understanding was executed between the judiciary and the Executive Director of KCCA on the use and future acquisition of the of rights of use of part of the land on Plot 2 Square Road in dispute.
- ix. That the Committee has no mandate to inquire into the efficacy or lack thereof of ownership of any property, prior to consideration of an application for an occupation permit, which is a preserve of the Courts of law based upon evidence placed before it.
- x. That Judiciary is at risk of incurring financial loss of UGX. 500,000,000 as monthly rent for the Supreme Court and Court of Appeal as a result of the said decision.





## 2. Submissions of the Respondent

No submission was made by the BC on this issue.

## 3. Issues raised by NBRB during the hearing

- Regarding the disputed land, it was noted that there was no denial as to KDLB's interest on part of the subject land however this was being rectified, evidence of which was presented in form of the Memorandum of Understanding executed between KCCA and the Judiciary dated March 20<sup>th</sup>, 2024.
- On whether inspections were conducted on the site by KCCA, the Appellant informed NBRB that all phases of construction had been inspected by KCCA, with proof of entry on the Job Card.
- Regarding whether any stop order was issued by the KCCA concerning the building operations, the Appellant informed NBRB that none had been issued.
- Regarding lapse of the Building approval from issuance (2016), the appellant informed the NBRB that due to financial constraints upon receipt of building approval in 2016, it was not in position to commence construction but however later commenced construction in 2020, upon applying for renewal of building permission to the Physical Planning Committee, which permission was granted on December 13, 2019.
- It was noted that though this permission for resumption of building works was made under the Public Health Building Rules, it was deemed to have been granted by a building authority under Section 54(4) of the Building Control Act (2013) therefore, the same approval was valid for the period under Section 38 of the Act.
- It was agreed that the appellant would provide further documentation for the NBRB's records such as a certificate of fire safety by the Uganda Police, and proof of employment of the Contractor.

## 3. Analysis

In order to resolve the issue, there is need for further information regarding definitions and the history of building control.

### ❖ *Illegality / Ultravires*

***In Cecil David Edward Hugh Vs The Attorney General (Misc. Application No.266 of 2013)***, *illegality was defined as a situation when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its 4 principles are instances of illegality.*



The term "Illegality" has also been defined by the Supreme Court in the **case of Hilda Wilson Namusoke & Anor vs. Owalla's Home Investment Trust (E.A) & Anor. SCCA No. 15 of 2017** where Prof. Tibatemwa - Ekirikubinza, JSC in her lead judgment adopted the Black's Law Dictionary, 9th Edition @ 185, definition of the term "Illegality"

- (i) An act that is not authorised by law.
- (ii) The state of not being legally authorized.
- (iii) The state or condition of being unlawful

The Supreme Court's decision in the case of **Attorney General vs. Bumero Estates Limited, SCCA No. 25 of 2019**, also provides yet another definition of the term "illegality." In that case, Opio-Aweri, JSC, adopted the definition of illegality in the case of **Nilefos Minerals Ltd vs. Attorney General & Anor (Misc. Cause No. 0184 of 2014)** as follows; "Illegality is when the decision making authority commits an error of law in the process of taking or making the act subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of a law or its principles are instances of illegality." (Emphasis mine)

#### ❖ **Ultravires**

A public authority will be found to have acted **unlawfully** if it has made a decision or done something: without the legal power to do so (unlawful on the grounds of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of reasonableness); or without observing the rules of natural justice (unlawful on the grounds of procedural impropriety or fairness).

Decisions made without the legal power are referred to as ultra vires. These include instances where a public authority takes decisions which are not authorised,; decisions taken with no substantive power,; decisions taken in abuse of power including, bad faith (where the power has been exercised for an ulterior purpose, that is, for a purpose other than a purpose for which the power was conferred), where power not exercised for purpose given (the purpose of the discretion may be determined from the terms and subject matter of the legislation or the scope of the instrument conferring it), where the decision is tainted with unreasonableness including duty to inquire (no reasonable person could ever have arrived at it) and taking into account irrelevant considerations in the exercise of a discretion or failing to take account of relevant considerations. It may also be as a result of failure to exercise discretion, including acting under dictation (where an official exercises a discretionary power on direction or at the behest of some other person or body).





**In Thugitho Festo Versus Nebbi Municipal Council (Miscellaneous Civil Application No. 0015 Of 2017), Hon. Justice Stephen Mubiru held as follows:**

*“Whatever may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorised, ought not (unless expressly prohibited) to be held by judicial construction, to be ultra vires. In the same sense, what those sources do not expressly or impliedly authorize is to be taken to be prohibited but those things which are incidental to, and may reasonably and properly be done under the main purpose, though they may not be literally within it, would not be prohibited. To the extent that a corporation acts beyond its powers, its actions will be ultra vires and invalid.*

*An action or decision may be illegal on the basis that the public body has no power to take that action or decision, or has acted beyond its powers. If an act is within the powers granted, it is valid. If it is outside them, it is void.”*

With the above precedents and literature, NBRB shall consider the nature of the decision made by the Building Committee regarding the application for an occupation permit.

**1. Purpose of the Building Control Act, 2013 and history of building plan approvals;**

The Building Control Act, 2013 was enacted to consolidate, harmonise and amend the law relating to the erection of buildings; to provide for building standards; to promote and ensure planned, decent and safe building structures that are developed in harmony with the environment among others.

It was enacted in 2013 and commenced in 2018, transferring the role of building control from the Physical Planning Committee under the Physical Planning Act, 2010 (PPA) to the Building Committee under the BCA. The building standards in use before the development of the National Building Code, 2019 were the Public Health (Building Rules) S.I 281-1.

Requirements for development permission under PPA included among others proof of land ownership in the application form PPA.1 under item 3 and 4. Under the Public Health (Building Rules) S.I 281-1 too, land ownership was key in applications for approval of plans. Land ownership is and has always been a necessary requirement for approval of building plans.

**Section 55 of the BCA** provides that the Act shall take precedence over any other Act or instrument in existence relating to building operations, before the coming into force of this Act or instrument shall to the extent to which it is inconsistent with the Act or an instrument made under this Act be deemed to be modified to accord with this Act. The Act also takes precedence where there are any conflicts with any provisions.



This therefore means that the current requirements for building permission stand as provided under the BCA,2013 and prevail if contrary to any other law in existence. Part of the requirements under the BCA for application for a building permit under section 35 (2)(b) and (c) is proof of land ownership.

It should be noted that under **Section 34** a person shall not carry out a building operation unless he or she has a valid building permit issued by a Building Committee. Proof of land ownership is therefore a prior requirement to obtaining this permission from the Building Committee.

Likewise, in the previous regime, under the PPA and Public Health Building Rules, building plan approval was issued by the Physical Planning Committee, having been satisfied with among others, the ownership of land and the area land use.

In 2016, approvals of the Appellant's Architectural plans were granted by the KCCA PPC for development of Plot 2, The Square.

Much as this approval was the regime prior to the commencement of the BCA, ownership of land was a key requirement considered **before approval of building plans**, as is currently the case under the BCA,2013.

It is therefore expected that before the grant of building approvals, the PPC by then, (which duty is now the mandate of the BC) was satisfied with the issue of land ownership prior to its grant of approval and the Appellant's commencement of the construction.

## **2. Requirements for Building permit applications / Plan approvals under the Physical Planning regime:**

It is worth noting that before the coming into force of the Building Control Act 2013, matters related to Building operations were addressed and approved by the Physical Planning Committee of the given area. Section 3 of the PPA,2010 declares the entire country as a planning area. Since the matter on appeal before the Board stems from an initial approval granted in 2016 when the PPC was in charge of plan approvals, it is necessary to delve into the PPA and Public Health Building Rules for a comparison with the BCA so as to understand the matter better.

Section 33 of the PPA is to effect that a person shall not carry out a development within a planning area without obtaining development permission from a physical planning Committee. Section 34 of the same act provides that an application for a development permission shall take the form in Form PPA1 in the sixth schedule. Section A of the application form parts (3 and 4) specifically provide for the nature of interest in the land and Plot, Block Number and Location of the land. The form the application requires an applicant to state the nature of the interest of the applicant in the land as a condition precedent to grant of such development permission.

The mandate of the PPC under the act is to among others approve development applications relating to housing estates, industrial location,



schools, petrol stations, dumping sites or sewerage treatment, which may have injurious impact on the environment as well as applications in respect of land adjoining or within a reasonable vicinity of safeguarding areas. (See *Section 10(d) PPA*).

The rationale under this requirement before grant of development permission is to ensure that the applicant has interest in the same land that the development is to be made and to prevent any possible future grievances that may arise after grant of the development permission.

It is noteworthy that on the composition of the said PPC, there is an urban physical planner, and a land surveyor (*see section 11(b and e), PPA*) whose mandate is to ensure that the land on which the development application is suited conforms with the land use of the land at the given location, and that the applicant has interest in the land on which the application for development permission is sought.

With the coming of the BCA, as previously discussed, it takes precedence over all other laws that existed before its coming into force.

Section 28 of the BCA provides for the establishment of the BC and further lays down its composition to include but not limited to; the officer responsible for physical planning and the officer responsible for land management, whose mandate is to guide the committee on the pertinent issues that may arise pertaining to land use and the ownership of the land for which an application for a building permit is made. These officers have similar duties with those stated under section 11(b&e) of the PPA.

Section 34 of the BCA provides that any person who carries out a building operation without a building permit commits an offence. Section 35 further provides that an application for a building permit to be accompanied by a land title or any proof of ownership of land and further that if an applicant is not the owner of the land on which the building operation is to be carried out, will contain the name of the land owner and the land title or any proof of ownership and the statement of the legal relationship between the applicant and the land owner.

The need for assurance of land ownership and proper land use is further envisioned under the detailed requirements for building permit applications for various classes of buildings under the BCR, 2020. For example, Regulation 21 of the BCR provides that an application for a building permit shall be accompanied by among others, proof of land ownership, development permission from the Physical Planning Committee and a boundary opening report from a surveyor.

The rationale of this is that for a building permit to be issued, one must have proved land ownership, that the land on which the development is sought to be made is within the boundaries of the land owner or applicant and that the PPC has granted permission for the development to take place in line with the physical development plan, which is part of the considerations for a BC in

assessing a building permit application. Therefore, questions of land ownership must be answered at this stage before grant of a permit, the BC may also under section 36(7) of the BCA grant a building permit with conditions where it is not satisfied with any of the requirements for grant of the Building permit. It may in fact, also refuse to grant a building permit/building permission in line with reasons stated under Section 36.

The need for such satisfaction as to the land use and ownership is to do away with the possibility of conflict regarding land ownership once the building permit has been issued and the need to prevent the loss that would be incurred once construction has been carried out and questions of ownership arise at a later stage.

According to the facts at hand, the development permission/ building permission was granted in 2016 and renewed upon application in 2019, by the same PPC (now mandate of the BC). Should there have been any issue of concern, the BC if not satisfied with any of the requirements submitted ought to have raised this at the earliest point. In fact, upon the commencement of the BCA, the BC was empowered to ensure that the Act is complied with under Section 29. The BC may issue a stop order under Section 40 and order the person to make remedial measures to the satisfaction of the Building Committee before continuing with the building operation. It should also be noted that the same building operation was inspected in line with section 33(d) of the BCA, with proof of Job Cards attached to this appeal.

Further still, Regulation 25 BCR read with Section 40 BCA of the act provides that a building permit may be revoked by the BC for reasons thereunder, however, the Board notes that no such revocation by the BC is on record.

Approval for construction was granted in 2016 and it is presumed that at that time, the PPC was satisfied with all requirements for grant of a building permit (building approval then). Had there been need for the appellant to furnish the respondent with any information or the respondent felt need for clarification, then they would have after commencement of the Act in 2018, invoked their power under section 40 of the BCA.

Worthy to note is that the building operation has been running since 2020 and inspected by officers of the respondent, which initially approved building plans in 2016. This was therefore sufficient time to raise any objections concerning the ownership of land, before construction of the same had been advanced. The issue on ownership of land ought to have been raised within reasonable time.

Whether delay is unreasonable will depend on the peculiar facts of each case. Delay must be assessed according to the circumstances of each case. The reckoning of time to determine if a delay is unreasonable begins at the time when a person / body becomes aware of a certain happening. Different cases will require different time frames to amount to delay and subject to any other happening such as investigations or court cases for the period to be rendered



reasonable or unreasonable. The facts at hand bring to light the fact that construction commenced within the 2020 and run until 2023. Furthermore, approvals of the building plans had initially been granted by the PPC in 2016 without objection.

The same PPC(whose mandate is carried out by the BC now) having renewed the building permission in 2020 and the respondent having inspected the construction did not raise any objections on record concerning the ownership of land.

### 3. Occupation Permit Requirements

**Section 44** of the BCA provides that upon the completion of a building, the owner of the building shall—

- (a) notify the Building Committee of the practical completion of the building in accordance with the approved plans and the regulations; and*
- (b) apply to the Building Committee for an occupation permit*

**Regulation 34(2)** of the BCR provides as follows:

*An application referred to under sub regulation (1) shall be accompanied by the following, where applicable—*

- (a) at least two sets of **as-built drawings** for the building layout;*
- (b) at least two sets of **as-built** electrical drawings;*
- (c) at least two sets of **as-built** mechanical engineering drawings;*
- (d) at least two sets of **as-built** structural engineering drawings;*
- (e) a certificate of fitness of the electrical installations issued by an engineer;*
- (f) a certificate of fitness of the mechanical installation issued by an engineer;*
- (g) **a certificate of practical completion**; and*
- (h) any other document as may be required by the Building Committee*

The requirements speak to the rationale of the Occupation Permit. The purpose of the Occupation permit from the wording of the regulation and the required documents is to ascertain the integrity of the building and as to whether there wasn't any substantial deviation from the plans that were initially approved. The requirements also speak to the fact that at this stage, the building is deemed to be reasonably completed. At this level, the BC is concerned with the structural integrity as well as the building's fitness.

Regulation 34(h) provides for **any other document as may be required by the Building Committee**. Much as the BC's discretion is recognized in this aspect, such discretion should be exercised in conformity with the purpose of the occupation permit. The "**any other**" documents should therefore speak to the occupation permit- the integrity of the building and to the fitness for purpose, the documents that could be envisaged in such circumstances could include the structural integrity test.



It would therefore defeat the purpose of the section for the BC to require documents that do not support their role in scrutinising an application for an occupation permit. For example, the Building Committee, much as it is mandated to require any other document would defeat the purpose of the subsection in relation to an occupation permit by requiring an applicant to provide a CoVID Vaccination card as an additional document for grant of an occupation permit since it would have nothing to do with soundness of the structure in question.

In the instant case, the requirement for proof of ownership of land or consent by KDLB regarding use of the land at the stage of an occupation permit, while pertinent to an application for a building permit **before commencement** of building operations, is not a requirement or consideration for a grant of an occupation permit under the law, as it defeats the purpose.

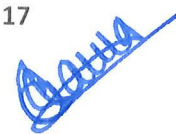
The law envisions that the same BC which issued a building permit and satisfied itself with land ownership of an applicant has also been actively involved in inspection of the building until its completion. The same BC is empowered to issue stop orders to any developers for buildings that are not in conformity with the Act under Section 40, as part of the BC's mandate to ensure the Act is complied with.

Previously, Rule 20(1) of the Public Health (Building Rules) SI 281-1 required "every owner who intends to occupy a new building, or permit it to be occupied, to furnish to the local authority a certificate signed by him or her, or by his or her architect, to the effect that the building has been constructed in every respect in conformity with the approved plans of the building and these Rules, and shall apply for a permit of occupation".

*"On receipt of the certificate and application, the local authority or any officer duly authorised for that purpose shall examine the building and, if satisfied that it **has been built in conformity with such plans and with these Rules, and that it is fit for occupation**, shall issue a written permit of occupation on the Form G in the Schedule to these Rules,"*

The wording of the regulation puts into perspective the duty of the local authority (BC) regarding an occupation permit application which is examining the building to find whether it is in conformity with the plans, rules and if it is fit for occupation and if it is, the occupation permit shall be issued. Ownership of land is therefore not a consideration at this stage, as the law presumes it was taken care of satisfactorily prior to commencement of construction.

Given the nature of the use of the buildings (appellate court buildings both Supreme and Appeal Courts), it is in the public interest that if the structures are in conformity with the required standards as to the fitness of purpose of the building then the BC ought to make a decision based on the requirements under the act, since such delays may stifle the role of the Judiciary which shall affect the rights and freedoms of Ugandans to obtain justice.





Further still, the NBRB is cognizant of the Appellant's submission which included, a Memorandum of Understanding dated 20<sup>th</sup> March 2024 signed by the Appellant and the Respondent concerning the land in question. The MOU reveals under article 2 that *"KCCA shall provide an occupational permit to the judiciary on the signing of the memorandum"* and that *"the judiciary shall follow all legal steps to ensure that they acquire the portions of the land and fully compensate KCCA for the said plots"*. It appears that the parties have entered an agreement and should be bound by the same concerning the reason for deferral of the occupation permit application. Regarding such an MOU, Hon. Justice Ssekaana Musa in **Watoto Limited v Markmat Agro Processing Limited and Jonathan Tugumisirize HCCS 526 of 2019 [2023] UGHCCD** stated that *"when parties enter into a contract, they are bound by the terms of the contract as set out by them. It is not the business of the court to rewrite a contract for the parties."*

It is therefore NBRB's considered opinion that the parties be bound by the terms as stated out in the Memorandum of Understanding.

- **Decision of the Board on Issue 2**

The NBRB finds that much as the Building Committee has the discretion to issue a decision on an application which may be approval, rejection or deferral under Regulation 24 of the BCA, 2020, the discretion ought to be made judiciously.

In the persuasive **Nigerian case of African Continents Bank V Nuamani [1991] NWLI (part 86) 486**, it was observed, regarding judicious use of discretionary powers that,

*"...An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties..."*

Having issued a building plan approval (initially in 2016 and a renewal in 2020) and not revoked the same based on concerns of land ownership, the BC is estopped from raising issues of land ownership at the point of application for an occupation permit by the Appellant as it defeats the purpose of the occupation permit under the law.

Moreover, the BC's reason for deferring the permit cannot stand as land ownership is not one of the requirements for an occupation permit application under Section 44, since the law envisions that at the point of completion of a building operation, land ownership was already considered and verified at the stage of scrutiny and approval of the building permit application.



## Decision of the NBRB on prayers of the Appellant

**Table 2: Decision of the NBRB on prayers of the appellant**

s/n	Prayer	Decision of the NBRB
1	The Board should declare that the decision of the BC is illegal for being issued out of time	The BC though legally mandated to issue a decision on an occupation permit application, issued it beyond the statutory timelines without any notification to the Appellant as to the delay.
2	That the NBRB reviews the report submitted by M/S Seyani and company (U) Ltd & Parbat Siyani Construction Limited Joint Venture dated February 2 <sup>nd</sup> 2024 and finds that the building had been erected in conformity with the approved plans and regulations and thereby issues an occupation permit for the newly constructed appellate court building on Plot 2, The Square, Kampala.	<p>Since the appeal is against the ground for deferral relating to ownership of the land, and not the fitness for purpose of the construction, NBRB cannot look into the construction's conformity with the BCA, which is the mandate of the BC, unless brought as a ground of appeal, in which case the NBRB can either confirm, reverse or modify the decision of the BC or order a fresh consideration of the application by the BC.</p> <p>NBRB however finds that the ground for deferral of the occupation permit application was unreasonable/irrational and is not a valid ground for deferral at the stage of completion of building operations.</p>





## Decision by the Board

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 a decision for an application for an occupation permit after the lapse of the statutory period.
2. The BC of KCCA erred in deferring the application for an occupation permit based on land ownership of the Appellant, which is expected to have been considered at the point of issuing building plan approvals/ building permission by the same Committee or its predecessor.
3. In line with Section 44(2) of the BCA, the BC is mandated to consider an application for an occupation permit after examining the building and issue a decision based on that examination. All factors considered and owing to the fact that no issues were raised pertaining to safety and fitness for purpose, it is implied that all aspects under Section 44 of the BCA, read together with Regulation 34 of the BCR, were in order, save for only land ownership, which fails as a ground for deferral as discussed herein. Pursuant to Reg.12(2) of the Building Control (Appeal procedure) regulations, 2021, the NBRB hereby reverses the decision of the BC and orders the BC to issue an occupation permit with immediate effect.

Decision made on this.....<sup>15<sup>th</sup></sup>.....day of <sup>April</sup>..... 2024



**Signed, Executive Secretary**

### **Attached:**

- A copy of the appeal filed with the NBRB dated April 5, 2024.
- A copy of the letter from NBRB to the KCCA Building Committee dated April 5, 2024
- A copy of the letter from NBRB to the Appellant dated April 5, 2024
- Submission of the appellant at the hearing
- A copy of the record of attendance for the appeal hearing on April 9, 2024







**NATIONAL  
BUILDING  
REVIEW  
BOARD**

Safe Building. Better Living

OFFICE OF THE  
PERMANENT SECRETARY /  
SECRETARY TO THE JUDICIARY

★ 05 APR 2024 ★

RECEIVED

2nd Floor South Wing Rume Building  
Lumumba Avenue, Kawempe  
Kampala, Uganda  
info@nbrb.go.ug  
+256 392 241140 / +256 3 92 592  
Toll-free line: 0800 220746  
P.O. Box 7249, Kampala

**NBRB/02/05**

**April 5, 2024**

The Permanent Secretary / Secretary to the Judiciary,  
Courts of Judicature,  
P.O. Box 7985  
**Kampala.**

**APPEAL AGAINST THE BUILDING COMMITTEE OF KAMPALA CAPITAL CITY  
AUTHORITY (KCCA).**

Reference is made to the above captioned subject.

The National Building Review Board (NBRB) received your appeal on April 5, 2024 against the Building Committee of Kampala Capital City Authority (KCCA) for failure to issue an occupation permit wherein you allege that despite having complied with the requirements for obtaining a full occupation permit, the application was deferred pending the submission of the consent and clearance from Kampala District Land Board on right of use of KCCA land.

One of the key functions of the NBRB under Section 9 (e) and Section 37 of the Building Control Act, 2013 is to hear and determine appeals from persons dissatisfied with the decisions of a Building Committee. Therefore, the purpose of this letter is to invite the Appellant in line with Regulation 8(1)(a) of the Building Control (Appeal Procedure) Regulations, 2021, for a hearing on the **9<sup>th</sup> day of April 2024 at 10:00 am** at the **NBRB Secretariat** located at Lumumba Avenue Rume Building 2<sup>nd</sup> floor South wing to make representations as to your side of the matter. The Chairperson of the KCCA Building Committee has been invited for the hearing.

Please note, should the public holiday (Eid-el-Fitr) be on the above-mentioned date, then the hearing shall take place on the following date (**10<sup>th</sup> day of April 2024.**)

You may present any additional documentary evidence at the hearing to support your side and give the NBRB further clarity on the matter.

In addition, the NBRB may require further evidence to be submitted by the appellant and/or appearance of other witnesses for hearing should this be deemed necessary for the resolution of the appeal.

**Safe Building, Better Living!**

Eng. Flavia G Bwire (Mrs.)  
**EXECUTIVE SECRETARY**





April 5, 2024

**APPEAL AGAINST THE BUILDING COMMITTEE OF KAMPALA CAPITAL CITY  
AUTHORITY (KCCA).**

The National Building Review Board (NBRB) received an appeal on April 5, 2024 from The Judiciary against the Building Committee of Kampala Capital City Authority (KCCA) for failure to issue an occupation permit.

The Appellant alleges that despite having complied with the requirements for obtaining a full occupation permit, the application was deferred pending the submission of the consent and clearance from Kampala District Land Board (K.D.L.B) on right of use of KCCA land. ***(A Copy of the appeal is hereby attached)***

One of the key functions of the NBRB under Section 9 (e) and Section 37 of the Building Control Act, 2013 is to hear and determine appeals from persons dissatisfied with the decisions of a Building Committee. Therefore, the purpose of this letter is to:

1. Inform you that the appeal is before the NBRB for resolution and the NBRB requires your cooperation in the process;
2. Invite you in line with Regulation 6 and 8(1)(a) of the Building Control (Appeal Procedure) Regulations, 2021, for a hearing on **the 9<sup>th</sup> day of April 2024 at 10:00 am** at the **NBRB Secretariat** located at Lumumba Avenue Rume Building 2<sup>nd</sup> floor South wing to make representations as to the Building Committee's Decision.

The hearing shall be held in the presence of the Appellant so as to accord all concerned parties an opportunity to be heard.

Please note, should the public holiday (Eid-el-Fitr) be on the above-mentioned date, then the hearing shall take place on the following day (**10<sup>th</sup> day of April 2024.**) You are also required to attend the hearing with all necessary documentary evidence to support your Decision and any other information that may give the NBRB clarity on the Building Committee's side of the matter.

Please note that the NBRB may require further evidence to be submitted by the Building Committee and or appearance of other witnesses for hearing should this be deemed necessary for the resolution of the appeal.

***Safe Building, Better Living!***



Eng. Flavia G Bwire (Mrs.)  
**EXECUTIVE SECRETARY**



**IN THE MATTER OF THE BUILDING CONTROL ACT, 2013 AND  
THE BUILDING REGULATIONS, 2020  
AND  
IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE  
BUILDING COMMITTEE DATED 3<sup>RD</sup> APRIL, 2024  
AND  
IN THE MATTER OF AN APPLICATION FOR A FULL OCCUPATION  
PERMIT FOR CONSTRUCTION OF APPELLATE COURT  
BUILDINGS ON PLOT 2, THE SQUARE, KAMPALA:**

**STATEMENT ON THE APPEAL AGAINST THE DECISION OF THE  
BUILDING COMMITTEE OF KCCA.**

Honourable Chair and Members of the Board the background of this appeal is as follows:

The Judiciary in a bid to limit the cost of renting premises for the Court of Appeal and Supreme Court embarked on a project to build premises for the said courts. Land was identified at the Old High Court Premises comprised in Plot 2, Square Road. A contractor was also identified, Architectural designs drawn and approved by the Building Committee in 2016. An application for a building permit was made and the same was granted in accordance to the law. Construction works then began and at all stages approvals in accordance to the law were made by the relevant authorities to wit directorate of Physical Planning, KCCA and the Building Committee.

Hon. Chair and members, upon completion of the construction works and in accordance to the Building Control Act, 2013 and Regulations thereunder, M/S Seyani Brothers and company (U) Limited & Parbat Siyani Construction Limited Joint venture on 2<sup>nd</sup> February, 2024 wrote to the Director Physical Planning, Kampala Capital City Authority applying for a Full Occupation Permit for the above mentioned project following the completion of the construction works.

To our utter shock and dismay, on the 3<sup>rd</sup> April, 2024, an email communication was sent to our agent that the Application was deferred by the Building Committee at its sitting on Monday, 25<sup>th</sup> March 2024 pending the

submission of the consent and clearance from Kampala District Land Board (K.D.L.B) on right of use for KCCA land.

Hon. Chair and Members, it is our submission that the said decision of the Committee is illegal and contrary to the law.

I am advised by the Hon. Attorney General that Section 44(2) of the Building Control Act which provides that:

*The Building Committee shall, within fourteen days after receipt of notification of completion of a building and receipt of an application for an occupation permit, examine the building, and may—*

*(a) if satisfied that the building has been erected in conformity with the approved plans and regulations, issue an occupation permit; or*

*(b) if the building has not been erected in accordance with this Act, refuse to issue an occupation permit, and give reasons in writing for its refusal.*

It is therefore our argument that the Building Committee's mandate or jurisdiction in as far as an application of an occupation permit is concerned, is restricted to either allowing the application or rejecting it, within 14 days. The Committee has no residual powers to defer an application for any reason whatsoever, let alone after failing to render a decision within 14 days without any explanation.

For emphasis, the Building Committee in our case went beyond its mandate and purported to defer their decision, way beyond the 14 days within which they were supposed to have rendered a decision. This is wrong and not permissible that the committee fails to make a decision within the allowed time and then chooses to defer its decision in total disregard of the law. We therefore move you, honourable members to find that the impugned decision of the Building Committee is illegal for being outside the law and beyond their powers.

Be that as it may, the reason for the deferment is even more outrageous as it is outside the Building Committees' mandate. I am informed by the Hon. Attorney General that a cursory look at requirements an applicant needs prior to making an application for a permit as provided under Regulation 34(2) does not include proof of ownership of a property on which a building sits. How then can the Building Committee purport, in this instance to defer a decision to



inquire whether the applicant has legal ownership/proprietorship/permission to use the land on which the property sits.

Regulation No. 34(2) of the Building Control Regulation, 2020 reads as follows:

*(2) An application referred to under sub regulation (1) shall be accompanied by the following, where applicable—*

- a) at least two sets of as-built drawings for the building layout;*
- b) at least two sets of as-built electrical drawings;*
- c) at least two sets of as-built mechanical engineering drawings;*
- d) at least two sets of as-built structural engineering drawings;*
- e) a certificate of fitness of the electrical installations issued by an engineer;*
- f) certificate of fitness of the mechanical installation issued by an engineer;*
- g) a certificate of practical completion;*
- h) and any other document as may be required by the Building Committee.*

It is our submission that the mandate of the Building Committee is restricted to whether the building is in compliance with the approved building Plan and whether the building is fit and safe for habitation. Therefore, the decision to defer the decision is wrong, illegal and ultra vires. We pray that Hon. Chair and members makes a holding to that effect.

That notwithstanding and without prejudice, the issues of ownership of the alleged disputed Plot is in its advanced stages of resolution. Boundary opening of the said land was undertaken by Ministry of Lands and a report dated 29<sup>th</sup> February, 2024 was issued to that effect. Further a memorandum of understanding was executed between the judiciary and the Executive Director of KCCA on the use and future acquisition of rights of use of part of the land on Plot 2 square Road in dispute. It is our position that despite all this, the Committee has no mandate to inquire into the efficacy or lack thereof of ownership of any property, prior to consideration of an application for an occupation permit; that is a preserve of the Courts of law based upon evidence placed before it!

Secondly, Hon. Chair and Hon Members of the Board, we bring it to your notice that as a result of the injudicious decision of the Building Committee of KCCA, the judiciary is at a risk of incurring a financial loss of UGX 500,000,000/- as monthly rent for the Supreme Court and Court of Appeal.

These funds can be put to better use if an occupation permit is issued to the applicant, since the said buildings have been made in accordance with the approved building Plans and are fit for human habitation.

Hon. Chair and members, I would equally wish to bring to your attention that the said building that we seek for an occupation permit is comprised of 7 Floors, 2 basement floors for car parking. The said building is furnished, electric installations have been finalized, computers, internet and court recording equipment are installed, offices, court halls and chambers of justices and are all ready for occupation. Hon. Members, I invite you to pay a visit to the structure so that I can take you around before you can make a decision. It is my singular and utmost belief that this visit will aid the board to reach a fair and just decision.

Hon Members it is upon these grounds that we move this board to exercise its mandate and review the decision of the Building Committee of KCCA, set it aside and direct that the appellant is granted an occupation permit without any further delay.

We so pray

.....

Pius Bigirimana, PHD

**PERMANENT SECRETARY/SECRETARY TO THE JUDICIARY**







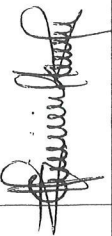

c.c. National Physical Planning Board





TITLE: HEARING OF APPEAL - THE JUDICIARY Vs. KCCA < CONCERNING AN APPLICATION FOR AN OCCUPATION PERMIT >

LOCATION: N.B.R.B. BOARD ROOM

DATE: April 9th 2024

S/N	NAME	TELEPHONE NO.	EMAIL ADDRESS	ORGANISATION	DESIGNATION	SIGNATURE
1	Flana G. Bwire	0312421600	flana.bwire@nrb.org.ug	NBRB	ES	
2	Rus Bigirimana	0772700201	plusbigiman@yahoo.com	Judiciary	PS/SJ	
3	C. L. S. S. S.	0772404365	chrachmsignment@nrb.org.ug	Judiciary	ETS	
4	George KALEMERA	0776005566	George.kalemere@justice.go.ug	Mojca	cel	
5	Uday Kiran	0755759054	u.kiran@nrb.org.ug	Mojca	State Attorney	
6	Uday Kiran	0755759054	u.kiran@nrb.org.ug	Seyani Brothers	Contract Coordinator	
7	Emory Jason	0755789014	Emory.jason@outlook.com	Seyani Brothers	Quantity Surveyor	
8	Rushy Anthony	0757302222	Rushy.anthony@nrb.org.ug	NBRB	Manager Investigations	

DATE:.....

S/N	NAME	TELEPHONE NO.	EMAIL ADDRESS	ORGANISATION	DESIGNATION	SIGNATURE
9	Elina Kachukunda	0781290801	celline842@gmail.com	NBRB	L.A	
10	Helda Katusiime	-	helda.katusiime@nbrb.go.ug	NBRB	LC	
11	Arikei Joan	0781447772	joan-arikei@nbrb.go.ug	NBRB	LO	