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May 7, 2024

To:

1. BALUMYA DAVID
2. THE BUILDING COMMITTEE, KAMPALA CITY

## ABBREVIATIONS

BC - Building Committee

BCA - Building Control Act, 2013

BIMS - Building Industry Management System

BCR - Building Control Regulations, 2020

KCCA - Kampala Capital City Authority

NBRB - National Building Review Board

## DECISION OF THE NATIONAL BUILDING REVIEW BOARD

### 1.0 Background of the Appeal:

1. An appeal was lodged with the National Building Review Board (NBRB) on February 19, 2024 by Mr. Balumya David against the Building Committee of Kampala Capital City Authority (KCCA) for a decision deferring his Notice of Commencement of building operations. The Building Committee's reason for deferral of the said notice was that the Appellant was required to apply for a class A building permit.
2. The Appellant issued a Notice of Commencement of building operations for a Class B building to the Respondent in line with the Building Control Act (BCA),2013.

3. The Building Control Officer Eng. Wanyama Peter Paul, on February 18, 2024 18:55:10 deferred the filed notice with the following comments: **'apply for Class A building'** while the appellant had been issued a Building permit for a class B building by the Respondent.
4. The Appellant attached to his appeal, a copy of the issued Class B building permit by the Building Committee of KCCA endorsed on December 21, 2023.
5. The appellant therefore lodged an appeal being dissatisfied with the Respondent's decision to defer the notice of commencement of building operations for reason that he was required to apply for a Class A building permit instead.

## **2.0 Application for Review by the NBRB:**

The Appeal raises one ground for resolution:

**The decision arrived at by the Building Committee was contrary to the Law since the structure which is the subject of the appeal, falls within the description of a Class B building in line with the Building Control Act and its regulations.**

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

The Appellant's prayer was for NBRB to recommend that the KCCA Building Committee abandon the request to change the building class from Class B to Class A.

## **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 BCA, 2013 and Building Control Regulations, 2020 (BCR) and Building Control (Appeal Procedure) Regulations, 2021**

S/N	Qualities of an appeal	Yes	No	Comments
1.	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>
2.	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>
3.	Timelines	ü		<ul style="list-style-type: none"> <li>· Decision for deferral was issued on February 18,2024 and the appeal was lodged on 19<sup>th</sup> February, 2024 which is within the 30-day timeline under Section 37 (1) of the Building Control Act, 2013</li> </ul>
4.	Decision and irregularities in the procedure appealed against were made by the Building Committee of KCCA	ü		<ul style="list-style-type: none"> <li>· Established Building Committee of KCCA under section 28(1) BCA</li> <li>· Appointed BCO of KCCA who advises the Building Committee of KCCA on technical matters</li> </ul>
5.	Right of Appeal under Section 37 of the BCA, 2013	ü		Matter falls within the ground of appeal under Section 37 (1)

### **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 operation subject of the appeal falls under the classification of Class A or Class B in line with the Building Control Regulations, 2020.*

#### **Issue 2**

*Whether the decision by the Building Control Officer to demand that the developer applies for Class A permit, in response to a Notice of Commencement was contrary to the law.*

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

A hearing did not take place as the appellant did not proceed to pursue the case upon request for further and better particulars on the subject matter. NBRB was duly notified by the Respondent's BCO, though not in writing, that the comment of the deferral was made in error.

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

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

NBRB required the Appellant to make submissions on the matter in order to inform a date for hearing of the appeal however, the Appellant did not respond to this request.

#### **Submission from the Respondent(BC)**

NBRB required the Respondent to make submissions on the matter in order to inform a date for hearing of the appeal however, the Respondent did not respond to this request.

### **3.5 Analysis of the facts by the NBRB**

Issue 1: Whether the building operation subject of the appeal falls under the classification of Class A or Class B in line with the Building Control

## Regulations, 2020?

Schedule 2 of the Building Control Regulations, 2020 classifies buildings as follows:

1. **Class A Buildings:** *Complex structural forms; public buildings, multi storeyed buildings more than 12m high, building complexes (mixture of all) such as schools, hospitals, shopping malls, buildings of high social impact or to be located in sensitive ecosystem among others.*
2. **Class B Buildings:** *Residential or commercial buildings; floor area >30m<sup>2</sup>; single or multi-storeyed of up to 12m high of simple structural form, boundary wall built of bricks, concrete or other solid material of permanent nature.*
3. **Class C Buildings:** *Minor and temporary buildings; Floor area <30m<sup>2</sup>; single storey; of simple structural form.*

The Appellant submits that the structure for which the notice of commencement was made to the Building Committee was a class B building as required by the building regulations. He submitted that according to the regulations, a class B structure pertains to a commercial or residential building with a floor area greater than 30m<sup>2</sup>; can be single or multistoried, reaching heights of up to 12m, and must have a simple structural form with a boundary wall constructed of brick, concrete or other durable materials, which according to him, the structure in question reflected.

Despite writing to the appellant on February 22, 2024 to provide the drawings submitted to KCCA for approval of the construction, approved drawings accompanying the permit, and any other documentation of value to the appeal determination particularly determining the classification of the building, the appellant did not respond. Telephone reminders for feedback on the same have also not yielded response from the Appellant.

Section 34 of the BCA provides that a person shall not carry out a building operation unless he or she has a valid building permit issued a Building Committee. It is therefore deemed that the Building Permit validly issued under the BCA is conclusive proof of building permission and the details stated therein are correct unless amended by the Building Committee that issued the same.

By implication therefore, from the building permit issued to the Appellant by the Building Committee of KCCA dated December 21, 2023 (attached to the Appeal), the proposed residential apartments were stated as a Class B building operation. **The same permit has not been revoked or amended by the issuing authority.**

Issue 2: Whether the decision by the Building Control Officer to demand that the developer applies for Class A permit, in response to a Notice of Commencement was contrary to the law.

The BCA envisions that a building permit for minor building operations (Class C) is issued by a **Building Control Officer** (Section 39, Section 33 (b)). The same Act further mandates the **Building Committee** to issue building permits for Class A and Class B buildings (Section 29 (1)(a), (b) and (d))

Upon receipt of a building permit by a developer, a key obligation is to notify the Building Committee accordingly of their intention to commence building operations on site.

**Regulation 27** of the BCR,2020, requires that

1. A person shall not commence a building operation prior to giving a notice in writing to the **Building Committee** specifying the date on which the building operation shall commence
2. (b) The notice shall be issued to the **Building Committee** at least seven days in case of erection of a building
3. The notice shall be signed by the applicant or his or her representative and shall be in Form 6 as set out in Schedule 3.

Form 6 of Schedule 3 of the BCR, 2020 only requires the application to provide details of the location of the operations, the building permit Number, particulars of the applicant, particulars of the engineer on site, actual date of commencement and estimated date of completion of the operations. The law also emphasizes that the same notification ought to be made to the BC.

It should be noted under Schedule 3, Form 6 that the same form may be addressed to and signed off by either the Building Committee (Class A and Class B buildings) or to the Building Control Officer (Class C buildings) based on the respective mandates under Section 39, Section 33 (b) and Section 29 (1)(a), (b) and (d) therefore, whichever party signs the Notice of Commencement is in line with the nature of the building operations.

In the instant case, the Appellant initiated a Notice of Commencement (NO. 2303061082) on 6th March 2023, proposing to start the building operations on 30th April 2023 for a Class B building to be constructed by Eng. Kyobe Victor. An assessment was done by the system on 6th March,2023 for a sum of Shs. 1,054,900. On 16th March, 2023, payment was received. On 22nd March 2023, the application was submitted to the local authority after acknowledgement by Architect Kasumba Felix.

It should be noted that by the time the developer submitted the notice of commencement (March 2023), he did not possess a building permit. In line with the law, a Building Permit is a precondition for application for notice of commencement of building operations (**Reg.27**). The Appellant only received a building permit **9 months** later, in December 2023.

in addition, the BCA, 2013 recognizes the following chronology for building operations:

1. *Application for a building permit (Section 34,35)*
2. *Notice of Commencement of Building operations (Reg.27)*
3. *Site works (Reg.29)*
4. *Inspections of site works by the BCO (Sec. 33)*
5. *Application for and issuance of an occupation permit (Section 44)*

On the basis of this fact, the Notice of Commencement filed prior to attainment of building permission was inadmissible at the time it was filed on the System and could not be acknowledged by the Building Committee/Building Control Officer.

The BIMS audit shows that the Appellant only uploaded a building permit on February 19, 2024 23:06:22, which was the only outstanding condition for a successful Notice of commencement.

Without the building permit attached, any Notice of Commencement would not be admissible. The deferral by the KCCA BCO on 18<sup>th</sup> February 2024, 11 months after the application was made, with the comment 'Apply for a class A building' was therefore premature since the permit details were not available on the application.

The Notice of commencement is a requirement of the law for a permit holder before he starts a building operation. It is not meant to be subject to any conditions or even elicit a response other than an acknowledgement by the Building Committee. The appellant provided proof of possession of a building permit NO. 2152/2023 dated 21<sup>st</sup> December 2023, which is the only condition for giving a Notice of commencement. **There is no evidence of that permit ever being revoked.**

NBRB notes however, that the BC is at liberty to exercise its powers in line with the BCA, if they find that circumstances surrounding the approval of the building permit granted have changed.

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

#### **Issue 1:**

NBRB therefore by inference concludes that the intention of the Appellant was to indeed apply for a building permit for a class B building operation and the BC issued the same having scrutinized the relevant submitted building plans in line with Section 29(1)(a) of the Act. We note however that given that the building permit was issued outside BIMS, NBRB could not access further documents on the system for further assessment on this issue. The Appellant too, opted to offer no response to NBRB's request for further documentation on this appeal.

## **Issue 2:**

The decision was premature as elaborated herein above, the NBRB notes further as follows:

1. That the reason for deferral itself was contrary to the building permit later issued by the same BC for a Class B building;
2. That the comments (if any) on the Notice of Commencement ought to have been made by the BC, not the BCO (**Reg. 27 and Form 6 BCR**);
3. That the law envisions a Notice of Commencement to simply be a notification of the developer's intention to commence works on site and not an application for permission to commence work. It is assumed that by the time a building permit is issued, the BC is satisfied with all requirements submitted concerning the building operations. The Notice therefore serves to ensure that the BC/BCO are duly informed of commencing works for purposes of inspection (**Reg 27 (4)-(13)**).

## **4.0 Decision of the NBRB on prayers of the Appellant**

The Building Control Officer/Building Committee should recall the request to apply for a building permit for a Class A since a building permit was issued by the BC for a Class B building, and which has not been revoked.

## **5.0 Decision by the Board**

The NBRB reiterates that fact that both the Appellant and the Respondent neglected to submit further information regarding the appeal, therefore the Board was constrained to decide based on the limited information in its custody. The NBRB decides as follows: The Building Control Officer/Building Committee should recall the request to apply for a building permit for a Class A since a building permit was issued by the BC for a Class B building, and which has not been revoked.



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

Flavia

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

