

Good evening Members!

The festive season is here with us and with it comes visitors from all corners of the globe. We shall re-visit the matter in our November /December newsletter.

In other latest news IN THE ENVIRONMENT & LAND COURT AT KWALE

ELC CASE NO. 12 OF 2021, a ruling was finally delivered. I have shared the full ruling below for your perusal.

However, the ruling affirms quite a lot of issues raised by the membership in various forums at the same time sets very important jurisprudence which is likely to be followed in any such similar matters in the future.

Quick reads and worth noting points: -

The development permission is a requirement of the Physical Planning Act Chapter 286 of the Laws of Kenya (now repealed) and which provisions have been retained by the Physical and Land Use

Planning Act 2019 (herein the Act). The Act commenced on 5/8/2019 to make provision for the planning, use, regulation and development of land and for connected purposes. Key among these is development control whose objectives are stipulated under section 55 as follows;

The objectives of development control are —

- (a) to ensure orderly physical and land use development;
- (b) to ensure optimal land use;
- (c) to ensure the proper execution and implementation of approved physical and land use development plans;
- (d) to protect and conserve the environment;
- (e) to promote public safety and health;
- (f) to promote public participation in physical and land use development decision-making;
- (g) to ensure orderly and planned building development, planning, design, construction, operation and maintenance; and
- (h) to promote the safeguarding of national security.

Development permits: -

Its mandatory to obtain a development permission before one can carry out a development. It also stipulates the consequence for noncompliance thereof. Section 57 of the Act provides as follows; -

(1) A person shall not carry out development within a county without a development permission granted by the respective county executive committee member.

(2) A person who commences any development without obtaining development permission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

(3) A county executive committee member shall require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as near to its original condition as is possible and that such restoration shall take place within ninety days.

(4) Where a person who is required to do so fails to comply with the provisions of sub-section (3), the relevant county executive committee member may undertake to restore the land as required and shall recover the cost of the restoration from the person required to undertake the restoration.

(5) A county executive committee member may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause.

EIA Applications

The Director-General shall respond to the applications for environmental impact assessment license within three months.

Any person who upon submitting his application does not receive any communication from the Director-General within the period stipulated under subsection (8) may start his undertaking.

A person who knowingly submits a report which contains information that is false or misleading commits an offence and is liable on conviction, to a term of imprisonment of not more than three years, or to a fine of not more than five million shillings, or to both such fine and imprisonment and in addition, his license shall be revoked.

Land Use

The buildup area shall not surpass the 50% coverage of the land size as permitted under the zoning plan

Summary

The ruling re-affirms SCRA agenda and at the same time legitimizes the existence of the Zoning plan. A big caution to all residents and developers, to follow the due process while initiating any development. Public participation is vital.

We have contacted our lawyers to do a brief summary of the ruling and shall circulate the same in due course.

Regards,

Chairman SCRA.