

THE COMMISSION ON ADMINISTRATIVE JUSTICE

Office of the Ombudsman



“Hata Mnyonge ana Haki”

THE HURUMA TRAGEDY



**AN INVESTIGATION REPORT ON ALLEGED DERELICTION OF DUTY BY NAIROBI
COUNTY OFFICIALS IN RELATION TO THE RESIDENTIAL BUILDING THAT COLLAPSED IN HURUMA,
NAIROBI ESTATE ON 4TH JANUARY, 2015**

DECEMBER 2015



Foreword

Pursuant to its mandate as stipulated under Section 8 of its constitutive Act, the Commission undertook specific investigations into dereliction of duty by public officials who bear the duty to regulate and enforce building and construction regulations and in particular, possible omission or commission including inaction that may have precipitated the collapsing of the seven-storey residential building in Huruma Estate, Nairobi County on the night of 4th January, 2015, killing five people.

The Commission wrote to the Governor, Nairobi City County, Hon. (Dr) Evans Kidero, to notify him of its decision to undertake the investigations. CAJ investigations team visited the collapsed building in Huruma, Huruma Police Station, Starehe Police Division, CID, the City Court and Nairobi County Government to conduct interviews and recover relevant documents.

The compilation of this report was informed by analysis of the documents recovered from various offices as well as statements recorded by public officials and survivors of the Huruma incident.

The investigations by the Commission revealed dereliction of duty on the part of Nairobi County Officials charged with the responsibility of enforcing building regulations in the construction industry. The investigation also revealed the factors that led to the collapse of the building in Huruma estate.

The Commission has made appropriate recommendations to relevant authorities to take necessary remedial action based on the findings and conclusions drawn out of the investigation.

The Commission is confident that the recommendations made will address issues affecting the building industry in not only Nairobi City County but also in the country.

Signed this.....day of December, 2015

Dr. Otiende Amollo, E.B.S

**Chairperson of the Commission on Administrative Justice
(Office of the Ombudsman)**



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Preamble


The Commission on Administrative Justice (Office of The Ombudsman) is a Constitutional Commission established under Article 59 (4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011.

The Commission on Administrative Justice (CAJ) has a mandate, inter-alia, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

In addition to the CAJ's investigative powers under Article 252 (1) (a), Sections 26, 27, 28 and 29 of the CAJ Act gives the Commission powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue Summons and require that statements be given under oath, adjudicate on matters relating to Administrative Justice, obtain relevant information from any person or Governmental authorities and to compel production of such information.

Under Section 31 of its Act, CAJ has power not limited by other provisions to investigate an administrative action despite a provision in any written law to the effect that the action taken is final or cannot be appealed, challenged, reviewed, questioned or called in question.

After undertaking its investigations, the Commission is required under Section 42 of its constitutive Act, to prepare a report to the State organ, public office or organization to which the investigation relates. The report shall include the findings of the investigation, action the Commission considers to be taken and reasons whereof and recommendations the Commission deems appropriate.



CAJ may upon an inquiry into a complaint, undertake such other action as it may deem fit against a concerned person or persons where the inquiry discloses a criminal offence as provided for under Section 41 of the CAJ Act.

Section 8 (g) of the CAJ Act gives the Commission power to recommend compensation or other appropriate remedies against persons or bodies to which the Act applies.

Section 42 (4) states; If there is failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit to the National Assembly a report detailing the failure or refusal to implement its recommendations and the National Assembly shall take the appropriate action.

Section 52 (b) and (d) of the CAJ Act 2011, provides that a person who knowingly submits false or misleading information to a member of staff of the Commission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or both.

Further, Article 59(2) (j) of the Constitution of Kenya, 2010 empowers the Commission to report on complaints investigated under paragraph (h) and (i) and take remedial actions.

The layout of the report is as follows:

- Introduction to the investigation
- Investigations strategy
- Normative framework
- Analysis and Findings
- Consequential observations
- Conclusions
- Recommendations



Acronyms

HDD	Housing Development Department
CAJ	Commission on Administrative Justice
NCC	Nairobi City County

Executive Summary

The Commission undertook specific investigations into dereliction of duty by public officials who bear the duty to regulate and enforce building and construction regulations and in particular, possible omission or commission including inaction that may have precipitated the collapsing of the seven-storey residential building in Huruma Estate, Nairobi County on the night of 4th January, 2015.

The investigations were undertaken *suo moto* following media reports on the collapsed building where five (5) people lost their lives and thirty two (32) others were injured.

Issues investigated

- i. Dereliction of duty by public officials
- ii. Factors behind the collapse of the building in Huruma
- iii. Responsibilities and culpabilities

Summary of findings

The collapsed seven-storey residential building in Huruma estate

The seven-storey residential building in Huruma estate, Nairobi County, collapsed on 4th January, 2015 at around 9.00pm killing five (5) people and injuring thirty two (32) others. The incident was entered in the Huruma Police Station Occurrence Book as entry number 02/5/1/2015.

The collapsed building was constructed on plot number 17 which is registered under Ms. Margaret Magiri Mwaura, National Identification No. 4873264. The plot is within a Site and Service Scheme in Huruma estate.

According to Ms. Magiri, the collapsed residential building had 48 units (6 floors of 8 units each). All the 48 rooms were occupied by tenants. Among the tenants

was her daughter Ms. Anne Wanjiru Magiri, who had complained to her about the safety of the building.

Alleged dereliction of duty by Nairobi County Officials

While CAJ investigators recovered a copy of Enforcement notice dated 31st January, 2012 and served to the developer/owner of plot no. 17 in Huruma Ngei II for non compliance with the Physical Planning Act and the Building by-laws, it was noted that there was delay of 3 years in the implementation of the Enforcement Notice by Housing Development Department in Dandora. The Notice was issued on 31st January, 2012 and until the building collapsed on 4th January, 2015, nothing had been done about it.

Public Health Officers (Mr. Simon Gitau and Mr. Benson Marionya), while on routine inspection noted visible cracks on the building which posed danger to human life. Consequently, on 13th September, 2013 the officers served Mr. Francis Gikonyo, the caretaker of the building, with a four-day Notice of compliance with the Public Health Act Cap 242 and Nairobi City County By-laws.

In the Notice by the Public Health Officers, Ms. Magiri (owner) or Mr. Gikonyo (caretaker) was required to:-

- i. provide an approved plan for the building,
- ii. remove all tenants from the premises as construction was in progress,
- iii. provide protective equipment for the workers,
- iv. provide hoarding to the building and
- v. provide insurance cover for the workers.

The Public Health Officers charged the developer with noncompliance at the Magistrate's Court at City Hall, Nairobi. The matter was registered as Criminal Case No. 665A of 2014 on 13th May 2014 and came for plea on 27th October, 2014. However, the accused did not appear in court and a warrant of arrest

was issued against the developer/ caretaker. A warrant of arrest is in force and the matter is due for mention on 14th January 2016.

The County Government of Nairobi through HDD, did not evict the tenants nor demolish the said building, despite having established the danger posed to human life. Tenants had made several complaints relating to the collapsed building but no action was taken by the Nairobi County Government.

Responsibilities and culpability

CAJ found Mr. Jastus Kathenge, Director, Planning, Compliance and Enforcement, Ms. Jane Ndonga, former Director, HDD and Engineer Ndungu Ngure, former Assistant Director, Technical Section, HDD in Dandora culpable of dereliction of duty for failing to enforce building regulations. They also failed to oversee the demolition of the unsafe building despite having prior information about the building.

Engineer Ndungu Ngure was invited for an interview at the CAJ offices on 8th September, 2015 at 8.00am but he failed to honour the invitation. Several attempts by CAJ investigators to reach him on phone were futile. Therefore, the Commission has cited him for unresponsiveness.

Nairobi City County had suspended five public officers for abetting irregular constructions within the County. The officer included Ms. Rose Kalondu, County Chief Officer, Planning and Housing, Ms. Jane W. Ndonga Former Director Housing Development Department, Mr. Justus Kathenge Director Planning, compliance and Enforcement, Eng. Mwangi Chiera and Mr. Patrick Githinji Kahoro, Ag. Senior Works Officer. Out of the five, Ms. Kalondu was reinstated back to office.

Ms. Jane W. Ndonga, former Director HDD, Mr. Patrick Githinji, Ag. Senior Works Officer, Mr. Francis Gikonyo the caretaker and Ms. Margaret Magiri, the house owner were arrested by CID officers from Starehe Police Division in relation to

the collapsed building and taken to Makadara Law Courts vide Criminal Case No. 126/40/2015 CF. 293/15. The next hearing of the matter will be on 15th and 16th December, 2015.

Factors that led to the collapse of the Huruma building

The Nairobi County Structural Engineers attributed the collapsing of the building to the following:-

- i. Poor workmanship (substandard construction materials and lack of proper supervision of personnel hired to construct the building).
- ii. The top five floors of the building caved in due to a very shallow foundation set up on black cotton soil.
- iii. The building had structural defects such as cracks and deformations.
- iv. The building had inadequate and uneven structural reinforcements due to weak beams, columns and slabs.
- v. The concrete mix was not uniform and the columns were far apart and hence could not support a seven-storey building.

Survivors who were interviewed by CAJ investigators indicated that the collapsed building had cracks.

Consequential Observations

- i. There existed two parallel approval systems for building plans namely; normal application process where developers were required to apply for approvals through certified architects and Type Plans developed by Housing Development Department, Dandora and issued to developers upon payment. The two parallel approval processes gave room for developers to construct without approvals.
- ii. Interview with Deputy Director, Development Control revealed that rates charged for approval of building plans by Nairobi County Government are prohibitive and out of reach to a majority of developers, including the low income earners.

- iii. According to Director, Planning, there is lack of public participation in adopting the fees and charges levied by the City County regarding approval of building plans, among other services.
- iv. Interviews with officers revealed that there is lack of necessary skills and equipment to undertake demolition of high rise buildings.
- v. Developers carry on with their construction without the supervision of relevant County Government officials and that there is no organized system of tracking building constructions to ensure that developers adhere to the approved building plans.
- vi. Nairobi City is growing so rapidly that the County Government's capacity to ensure building developers comply with building regulations and standards is quite inadequate. In fact, most of the officials interviewed indicated that many houses in Nairobi City County have no completion or occupational certificates.
- vii. In an interview with the Deputy Director, Development Control revealed that there is low public awareness on the County's online approval of building plans as many potential developers in the County and in particular, those in the Site and Service Schemes do not know where and how to commence the process of building plans' approval.
- viii. There is a very high demand for housing in Nairobi County. This has led to some developers resorting to the use of short-cuts to construct buildings in a rush in order to make quick money at the expense of quality buildings.

Conclusions

- i. The seven-storey residential building in Huruma Ngei II estate collapsed on 4th January, 2015 at around 9.00pm killing five tenants (5) and injuring thirty two (32) others.
- ii. The collapsing of the residential building was attributed to poor workmanship, very shallow foundation on black cotton soil, structural defects due to poor concrete mix, use of sub-standard bars, lack of adequate reinforcements and lack of building supervision.

- iii. There was delay of 3 years in the implementation of the Enforcement Notice dated 1st January, 2012 by Housing Development Department in Dandora. The Notice was issued to the developer on 31st January, 2012 and until the building collapsed on 4th January, 2015, no action had been taken by the Department.
- iv. In spite of Public Health officers having charged the owner/caretaker of the collapsed building in 2014 vide case 665A, no effort has been made by the Nairobi County Inspectorate to effect a warrant of arrest issued on 27th October, 2014.
- v. CAJ noted that the conduct of Ms. Margaret Magiri Mwaura, the owner of the collapsed building in disregarding the approved building plan contributed to the death of the five tenants and injury to thirty two others. The matter is currently being handled by relevant agencies.
- vi. Investigations noted that at the time of the collapse, the building had in excess the number of floors approved by the Nairobi City County.
- vii. The collapse of the Huruma building could have been avoided if the Housing Development Department in Dandora and Directorate of Planning, Compliance and Enforcement had acted on time to demolish the unsafe building.
- viii. Ms. Jane Wanjiku Ndonga, former Director, HDD, Mr. Justus Kathenge, Director Planning, Compliance and Enforcement and Engineer Ndungu Ngure former Assistant Director, Technical Section, HDD are culpable for dereliction of duty for failing to enforce building and construction regulation in Nairobi County.
- ix. There is poor coordination among Nairobi County Government Departments in approving building plans and ensuring compliance and enforcement of building regulations in the County.
- x. There is rampant corruption in the building industry where officers are compromised to allow unauthorised constructions. Impunity and non-adherence to building regulations by developers, owners and contractors are common place in the industry.

- xi. The construction industry is infiltrated by non-professionals who call themselves Architects, Engineers and contractors and carry out shoddy construction works.
- xii. Engineer Ndungu Ngure was invited for an interview at the CAJ offices on 8th September, 2015 at 8.00am but he failed to honour the invitation. Several attempts by CAJ investigators to reach him on phone were futile. Therefore, the Commission has cited him for unresponsiveness.
- xiii. There are two building and constructions approval processes namely; normal application process and Type Plans which have created confusion for inspection, compliance and enforcement.
- xiv. Pursuant to section 36 of the CAJ Act, CAJ wrote to Ms. Jane Ndonga, former Director, HDD, Mr. Jastus Kathenge, Director, Planning, Compliance and Enforcement and Eng. Ndungu Ngure, former Assistant Director, Technical Section, HDD vide letters Ref: CAJ/IE/6/10 VOL. 1 dated 24th November, 2015, to make such representations and/or further responses as they may have before the Commission issues the final report. By the time the Commission released the report, they had not responded.

Recommendations

- i. The Nairobi City County Government should increase and strengthen the capacity of the Compliance and Enforcement Department to effectively discharge its role including continuous surveillance and inspections on existing buildings and ongoing constructions to ensure adherence to building and construction regulations.
- ii. The Nairobi City County Government to provide reporting hotlines for the public to report any unsafe buildings or suspicious constructions.
- iii. The County Government should procure adequate and appropriate equipment for demolition of condemned buildings.
- iv. The Nairobi City County Government in conjunction with National Construction Authority should develop standards and best practice to guide the building and construction industry in Kenya and publicise them.

- v. The Nairobi City County Government in conjunction with National Construction Authority should monitor the building and construction industry in order to identify and prosecute non-professionals operating as professionals.
- vi. The County Government of Nairobi should adopt one system of building and construction approval that encompasses all types of housing development in the County to avoid a lacuna potential for sub-standard construction.
- vii. Director, Nairobi City Inspectorate to take disciplinary action against his officers for failing to effect a Warrant of Arrest issued on 27th October 2014 by the City Court in respect of Case No.665A of 2014.
- viii. CAJ commends the County Government of Nairobi for suspending Ms. Rose Kalondu, County Chief Officer, Planning and Housing, Ms. Jane W. Ndonga, Former Director Housing Development Department, Mr. Justus Kathenge, Director Planning, compliance and Enforcement, Eng. Mwangi Chiera and Mr. Patrick Githinji Kahoro following the collapsing of the Huruma building.
- ix. CAJ commends Mr. Simon Gitau and Mr. Benson Marionya, Public Health Officers who while on routine inspection noted visible cracks on the building which posed danger to human life and served Mr. Francis Gikonyo, the caretaker of the building, with a four-day Notice of compliance with the Public Health Act Cap 242 and Nairobi City County By-laws.
- x. Director Public Prosecutions to ensure the speedy prosecution of the matter before courts. Namely Case No. 665A of 2014 at City court and Criminal Case No. 126/40/2015 CF. 293/15 at Makadara Law Courts.
- xi. Director Public Prosecutions and Director Criminal Investigations to investigate criminality in the conduct of Ms Jane W. Ndonga, former Director, Housing Development Department, Mr. Justus Kathenge, Director, Compliance and Enforcement and Engineer Ndungu Ngure, former Assistant Director, Technical Section and have them prosecuted for negligence of duty.

1.0 Introduction to investigations

On the 4th day of January, 2015, a seven-storey building collapsed in Huruma, Nairobi City County leaving five people dead, 32 others injured and properties of unknown value damaged.

Pursuant to Section 8 of CAJ Act, 2011, the Commission decided to undertake specific investigations *suo motu*, into the Huruma incident with a view to establish any omissions and commissions by relevant public officials who have the responsibility of ensuring that safe buildings are developed in Nairobi County.

1.1 Issues under Investigation

- i. Factors behind the collapse of the Huruma building
- ii. Dereliction of duty by public officials in Nairobi County
- iii. Responsibility and culpabilities

1.2 Investigative Process

1.2.1 Notification

The Commission notified the Governor, Nairobi City County, vide a letter Ref: CAJ/IE/6/10 VOL.1 (8) dated 6th January, 2015 of its decision to undertake investigations into collapsed buildings in Nairobi City County. **(See annexure A1)**

1.2.2 Offices Visited and Interviews Conducted

- i. Governor, Nairobi City County
- ii. County Government Executive in-charge of Planning and Housing
- iii. Chief Officer, Lands
- iv. Chief Officer, Health Services
- v. Director, HDD
- vi. Director, urban planning
- vii. Director, Public Health
- viii. Ag. Director, Planning, Compliance and Enforcement
- ix. Deputy Director, Development Control

- x. Ag. Chief Public Health Officer
- xi. Deputy Chief Public Health Officer
- xii. Structural Engineer
- xiii. Public Health Officer in-charge of Mathare Sub-county
- xiv. Two Public Health Officers based in Mathare Sub-County
- xv. Building inspector attached to Huruma Area
- xvi. Randomly selected residents of Huruma

1.2.3 Documents recovered

- i. Enforcement Notice
- ii. Conditions of building plans approval
- iii. Indemnity form
- iv. December 2014, agenda items for Technical Planning Meeting
- v. Building Plan approval procedure
- vi. HDD Layout Plan of Ngei I & II
- vii. HDD Beacon Certificate
- viii. List of people affected by the incident
- ix. Conditions for approval
- x. Report on Collapsed Building in Huruma
- xi. Report on collapsed Makongeni Building
- xii. Report on Collapsed Ronald Ngala Building
- xiii. Memo by County Chief Officer, Health Services briefing the Governor on the Huruma Collapsed Building
- xiv. Nairobi City County Charge Sheet No. 665A/14
- xv. Notice issued by Public Health Department, Nairobi City County.
- xvi. Inspection Statement by PHOs Mr. Simon Gitau and Mr. Benson Kimani
- xvii. Statements recorded by:
- xviii. Ojwang John Amol, Assistant Director, Development Control
- xix. Mr. George Wairua Maagu, Ag. Head of Structural Section.
- xx. Mr. Nyasende, Ag. Director, Planning, Compliance and Enforcement Department
- xxi. Mr. Stephen Mwangi, Chief Officer, Land Section.

- xxii. Ms. Jane Ndonga, Former Director, HDD
- xxiii. Mr. Patrick Githinji, Draughtsman, Huruma Area

1.3 Normative Framework

Following are excerpts of some of the relevant provisions:

Physical Planning Act, CAP 286 Laws of Kenya

Section 29- Powers of Local Authorities

Subject to the provisions of this Act, each local authority shall have the power—

- (a) to prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
- (b) to control or prohibit the subdivision of land or existing plots into smaller areas;
- (c) to consider and approve all development applications and grant all development permissions;
- (d) to ensure the proper execution and implementation of approved physical development plans;
- (e) to formulate by-laws to regulate zoning in respect of use and density of development; and
- (f) to reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan.

Section 30- Development permission

- (1) No person shall carry out development within the area of a local authority without a development permission granted by the local authority
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment not exceeding five years or to both.
- (3) Any dealing in connection with any development in respect of which an offence is committed under this section shall be null and void and such development shall be discontinued.

Section 31- Development application

(1) Any person requiring development permission shall make an application to the clerk of the local authority responsible for the area in which the land concerned is situated.

(2) The application shall be accompanied by such plans and particulars as are necessary to indicate the purposes of the development, and in particular shall show the proposed use and density, and the land which the applicant intends to surrender for—

(a) purposes of principal and secondary means of access to any subdivisions within the area included in the application and to adjoining land;

(b) public purposes consequent upon the proposed development.

Public Health Act, CAP 242 Laws of Kenya

Section 115- Nuisances prohibited

No person shall cause a nuisance or shall suffer to exist on any land or premises owned or occupied by him or of which he is in charge any nuisance or other condition liable to be injurious or dangerous to health.

Section 117- Health authorities to prevent or remedy danger to health from unsuitable dwellings

It shall be the duty of every health authority to take all lawful, necessary and reasonably practicable measures for preventing or causing to be prevented or remedied all conditions liable to be injurious or dangerous to health arising from the erection or occupation of unhealthy dwellings or premises, or the erection of dwellings or premises on unhealthy sites or on sites of insufficient extent, or from overcrowding, or from the construction, condition or manner of use of any factory or trade premises, and to take proceedings against any person causing or responsible for the continuance of any such condition.

Section 118- What constitutes nuisance

(1) The following shall be deemed to be nuisances liable to be dealt with in the manner provided in this Part—

(b) any dwelling or premises or part thereof which is or are of such construction or in such a state or so situated or so dirty or so verminous as to be, in the opinion of the medical officer of health, injurious or dangerous to health, or which is or are liable to favour the spread of any infectious disease;

(s) any act, omission or thing which is, or may be, dangerous to life, or injurious to health.

(2) The author of a nuisance means the person by whose act, default or sufferance nuisance is caused, exists or is continued, whether he is the owner or occupier or both owner and occupier or any other person.

The Local Government (Adoptive By-Laws), Building Order 1968

4. The council shall not approve the erection of any building which is to be erected in contravention of these By-laws or where-

(a) the land concerned is unsuitable for any reason for the development purposes;

(b) that the plot is located outside the boundaries of an existing or proposed municipality, township, trading centre, market or residential area;

(c) the proposed conflict with the proper planning of the area;

(d) the site concerned forms part of the an area for which an approved comprehensive layout is, in the opinion of the council, desirable.

5. Every person who proposes to erect a building on any land within the area specified under by-law 3 of these By-laws shall comply with the requirements of these By-laws, and for the purposes of these By-laws any of the following operation shall be deemed to be the erection of a building after the date on which these By-laws become operative-

(a) the erection of any new building;

(b) the erection of any addition to an existing building;

(c) the re-erection or alteration of any part of any existing building;

25. every person proposing to erect any building in an area to which these By-laws apply shall lodge with the council an application on a form obtainable from the council and three copies of the plan of the proposed building showing its siting and the layout of the site together with the back and front elevation of the building and section of the building from the foundations to the uppermost part of the structure to illustrate the construction thereof, with all drawings delineated in a clear and intelligible manner and signed by the applicant or his duly authorized agent. The plan shall specify the proposed use of each room and give details of the method of construction and materials to be used.

Provided that where an approved council "type" plan is used, the provisions of this by-law shall be met if the owner signs and deposits three copies of such plan together with the application form duly completed with the council.

26. Applications made under by-la 25 of these By-laws shall be accompanied by a fee of sh. 40 for a single dwelling or alterations thereto and an additional fee of sh. 20 for each additional dwelling included in the application.

27. The council shall approve or disapprove the plan for the erection of a building and it shall signify notice of its decision thereon as soon as practicable after receipt thereof. Such notification shall be given within a maximum a period of two months of the receipt of an application in accordance with these By-laws.

28. The approval of the council of any plans for the erection of a building shall be null and void if –

- (a) the erection has not been commenced within three months after the date of such approval; or
- (b) erection has been commenced but the building has not been completed within a period of twelve months from the date of approval, unless the council has agreed to grant an extension of time

29. No person shall-

- (a) commence to erect a building without plans thereof having been approved by the council, or in respect of which the approval of plans has become null and void; or
- (b) having obtained the council's approval to the plans for the erection of a building, erect such building otherwise than in accordance with the approved application and plans thereof.

(2) Without prejudice to the liability of any person under paragraph (1) of this by-law, the council may serve upon such person or upon the owner of the land upon which the building is erected, a notice under the hand of the clerk requiring him within a period of time specified in such notice to do all or any of the following things-

- (a) to cease the erection of such building;
- (b) to erect such building strictly in accordance with the approved plans;
- (c) to execute such work or alterations or additions to such building as may be prescribed in such notice in order to render such building safe and sanitary or otherwise conform with the requirements of these By-laws;
- (d) to remove or demolish such building.

Building code 1968, Local Government (Adoptive By-laws), revised 2009

3(1) A person who erects a building or develops land or changes the use of a building or land, or who owns or occupies a building or land shall comply with the requirements of these By-laws.

(2) For the purpose of these 'By-laws any of the following operations shall be deemed to be the erection of a building the re-erection of any building or part of a building when an outer wall of that building or', as the case may be, that

- (a) part of such building has been pulled down, burnt or damaged;
- (b) the roofing over of any open space;
- (c) the alteration or extension of a building;

- (d) the erection, alteration or extension of a chimney shaft;
- (e) the changing of the use or uses to which land or a building is put;
- (f) increasing or reducing the number of dwellings in a building;
- (g) the carrying out of any drainage work;
- (h) the installation of any fittings to which By-laws 143 to 149 or By-laws 167 to 179 of these By-laws refer;
- (z) the formation or laying out of an access to a plot;

Notwithstanding anything contained in these By-laws shall not apply in the case of areas scheduled by the council, with the approval of the Minister by notice in the Gazette, and the areas so scheduled shall be subject to either the Local Government.

4. A person who intends to erect a building shall submit a written application to do so in such form as the council may require completing all details required therein in so far as they apply to the proposals. The application form shall be completed in ink, signed by the developer or by a person representing himself to be his duly authorized agent in which event it shall state the name of the person on whose behalf it has been submitted. The form shall be attached to any plans or documents submitted.

8(1) Notwithstanding anything contained in these By-laws, the council may grant permission in writing to any person to proceed with any minor alteration or addition to a building or the erection of any boundary wall, screen wall, fence or of a hoarding, or the formation of any access, which complies generally with the intent and purpose of these By-laws, but which is regarded by the council as of minor importance:

Provided that such permission shall automatically lapse in the event of not being acted upon within six months of the date of its grant

(2) The council may delegate its powers under this by-law to an officer of the council or such other person as the council may appoint.

9(1) The approval by the council of any plans for the erection of any buildings shall be subject to conformity with these By-laws and shall be null and void if-

(a) the work shall not have been commenced within twelve months from the date of such approval; or

(b) a notice of commencement, in accordance with by-law 16 (1) (a) (i) of these By-laws has been given but the work is not completed within two years from the date of approval of the plans or such other extended period as the council may authorize; or

(c) Compliance is not made with any conditions imposed at the time of such approval.

(2) Any person who causes any building to be erected, in whole or in part, after the approved plans thereof have become invalidated by virtue of paragraph (1) of this by-law shall be guilty of an offence.

(3) Unless the council otherwise agrees, the approval of plans under these By-laws shall not be deemed to authorize any unauthorized building work or change of existing use of the premises to which such plan relates at the date of approval.

10. Subject to any power of relaxation conferred upon the council by these By-laws, the council shall disapprove the plans for the erection of a building if-

(a) the plans are not correctly drawn or do not provide sufficient information or detail to show whether or not the submission complies with these By-laws;

(b) such plans disclose a contravention of these By-laws or of any other written law.

16(1) Any person who erects a building, to which these By-laws apply shall give to the council in writing on a "Notice of inspection" card, obtainable from the council, not less than thirty hours notice (such period to count from the hour and date of receipt by the council) of the date and time at which-

(a) (i) the erection of the building will begin;

(ii) the work of plumbing and drain-laying will begin; and

(b) the following shall be ready for inspection or testing either in part or in whole-

- (i) the foundation bed;
- (ii) the foundation concrete;
- (iii) the damp proof course;
- (iv) the filling;
- (v) the concrete after shuttering is removed;
- (vi) the concrete after shuttering is removed;
- (vii) the drainage;
- (viii) the plumbing installations;
- (ix) the sewer connection.

(3) A person who has erected a building shall forthwith give to the council notice in writing of its completion to enable a final inspection to be made and a certificate of completion to be issued.

(4) No person shall occupy, use or permit the occupation or use of any building before a certificate of completion has been issued by the council in respect thereof.

(256) Officers of the council duly authorized, shall have the right to inspect and visit any plot or building in order to ascertain that the requirements of these By-laws are being observed.

257. (1) A person who contravenes or fails to comply with any of the provisions of these By-laws shall be guilty of an offence.

(2) Any person who is guilty of an offence under these By-laws shall be liable to a fine not exceeding two thousand shillings or imprisonment for a term not exceeding six months or to both such fine and such imprisonment and if the offence is of a continuing nature, to a further fine not exceeding twenty shillings for every day or part thereof during which such offence shall continue but in any event the aggregate of any such fine imposed shall not, in the case of any one continuing breach of the by-law exceed two thousand shillings.

242. (1) Any person who shall erect a building otherwise than in accordance with the approved plans relating to such building, shall be guilty of an offence.

(2) The council may serve upon the owner of a building, referred to in paragraph (1) hereof, a notice requiring him within the period specified in such notice-

(a) to execute such work as may be prescribed therein to make the building conform to the requirements of these By-laws; or

(b) to demolish and remove the building.

252. (1) Any person, who shall erect or permit the erection of a building, without first obtaining the approval of the council to plans submitted in accordance with these By-laws, shall be guilty of an offence.

(2) Any person who shall, except with the permission of the council, use any building or part of a building otherwise than for the purpose specified in the approved plan thereof, shall be guilty of an offence.

Commission on Administrative Justice Act, 2011:

Sections 8:

- (a) investigate any conduct in state affairs, or any Act or omission in public administration by any state organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice;
- (b) investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;
- (c) inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service.



Public Officers Ethics Act, 2003 (Revised 2009)

Section 9 of Public Officer's Ethics Act, 2003 states

“...A public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly...”

Section 19 of Public Officer's Ethics Act, 2003 states

“...A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer...”

1.4 Overview of Dandora Site and Service Schemes

The collapsed building in Huruma is situated in the Dandora Site and Service Scheme and was managed by the Housing Development Department (HDD) of the defunct City Council of Nairobi.

The Scheme was introduced in Mathare, Huruma, Kayole, Umoja and Dandora estates to provide low income groups with affordable housing. The project was funded by the World Bank, European Union and USAID in conjunction with the defunct Nairobi City Council. The Council created a Housing Development Department (HDD) based in Dandora, to manage and supervise implementation of the scheme.

The houses in the Site and Service Schemes were developed by plot beneficiaries through their labour and financial support channelled through the Housing Development Department.

The allottees were given a limited range of house plans from which they could choose the design of their houses. HDD's Community Development workers would then help the allottees in the choice of plans, amount and disbursement of material loans, building options and payment of plot fees.

The allottees acquired designed House Plans at Dandora HDD office at an affordable cost. The terms and conditions were that the allottees would complete construction of permanent houses within eighteen months. The house units comprised of a kitchen, a toilet, shower room and one other room. If the progress of construction was unsatisfactory, the offer would be withdrawn by the City Council of Nairobi and the plot allocated to another person.

The allottees were entitled to loans to acquire materials for constructing permanent houses. The loans were managed by the Community Development Division of the Housing Development Department in Dandora .

2.0 Findings and Analysis

2.1 The Collapsed Seven-Storey Residential Building in Huruma Estate

CAJ confirmed that the building collapsed on 4th January, 2015 at around 9.00pm killing five (5) people and injuring thirty two (32) others. According to a copy of Occurrence Book entry number 02/5/1/2015 obtained from Huruma Police Station and a copy of a Charge Sheet bearing Police Case Number 126/40/2015 and Court file Number 293/15, dated 9th February, 2015 the building collapsed at around 9.00pm on the night of 4th January, 2015 **(Annexure A2, A3 & A4).**

CAJ investigators established through interviews with survivors that the building had visible cracks on the walls and they brought it to the attention of the owner, Ms. Margaret Magiri Mwaura, the caretaker, Mr. Francis Gikonyo and the Huruma location Chief, Mr. Benard Isandura Kanzika.

Mr. Benard Isandura Kanzika, chief, Huruma Location confirmed in his statement that in November, 2013, the fourth floor of the same building had collapsed. He visited the site and ordered the developer to stop construction forthwith. However, the construction resumed three weeks later and upon enquiry by the Chief, he was shown an approved plan by the caretaker, Mr. Francis Gikonyo. Therefore, the Chief felt that he had no authority to stop the construction. The Chief advised the tenants to vacate the unsafe building. Some of the tenants heeded his advice and vacated the building while others decided to stay. **(Annexure A5).**

2.2 Details of the collapsed building

Investigations established that the seven-storey building which collapsed in Huruma estate, Nairobi City County, was built on Plot No. 17, Ngei 11 and owned by Ms Margaret Magiri Mwaura, National Identification Card No. 4873264. Ms Margaret Magiri Mwaura bought plot No 17, in August 2009 from Mr. Peter Ndungu Gitau, ID. No. 0491676. Ms Margaret stated that she paid KSh.

5,000 at the defunct Nairobi City Council for change of ownership from Mr. Peter Ndungu Gitau to her name. **(Annexures A6, A7 & A8)**

Investigation revealed that on 25th July, 2011 Ms Magiri wrote to the Director HDD, applying for a Beacon Certificate for plot no. 17, in Ngei 11. She was issued with a Beacon Certificate serial number 3883. **(Annexure A9 & A10)**

Investigations revealed that Ms. Magiri was authorised to develop plot 17 on approval of a building plan on 25th November, 2011 by Engineer Ndungu Nguni, Assistant Director, Technical Section, HDD of defunct Nairobi City Council. The building plan indicates that Ms. Magiri was authorised to construct a two-storey building on payment of approval fees of KSh 30,000 to City Council of Nairobi. Despite approval to construct a two-storey building, she constructed a seven-storey structure which subsequently collapsed on 4th January, 2015 **(Annexure A11)**

In her interview with CAJ investigators, Ms. Magiri indicated that the collapsed residential building had 48 units (6 floors of 8 units each). All the 48 rooms were occupied by tenants. Among the tenants of the building was her daughter who had complained to her about the safety of the building. **(See annexure A8)**

2.3 Alleged dereliction of duty by Nairobi County Officials

The investigations established that an Enforcement Notice dated 31st January, 2012, signed by Assistant Director, Technical Section, HDD was duly served to the owner of plot no. 17, Huruma, Ngei II by Mr. Patrick Githinji, an officer deployed in Huruma estate to oversee compliance with construction regulations. The Notice was served because the said building had exceeded the number of floors authorized by HDD. In addition, it was occupied by tenants without an Occupation Certificate by HDD. The Notice required the owner to stop construction work immediately, evict all tenants and demolish the extra floors and extensions within a period of seven days from the date of the Notice. **(Annexure A12)**

Investigations noted that the Notice bears comments from Assistant Director, Technical Section, asking the Director to provide demolition facilities on expiry of the Notice, the Director City Inspectorate Department to assist in stopping the construction and the Medical Officer of Health to enforce eviction of tenants. **(See Annexure A12)**

It is important to point out that there was delay of 3 years in the implementation of the Enforcement Notice by Housing Development Department in Dandora. The Notice was issued on 31st January, 2012 and until the building collapsed on 4th January, 2015, nothing had been done about it.

CAJ investigations revealed that two Public Health Officers, Mr. Simon Gitau and Mr. Benson Marionya, while on routine inspections, saw visible cracks on the walls of the building which posed danger to tenants. Consequently, they served Mr. Gikonyo Francis, the caretaker, with a four-day notice commencing 13th September, 2013. **(Annexure A13 and A14)**

In the Notice, the owner of the building was required to provide approved plan for the building, remove all tenants from the premises since construction was in progress, provide protective equipment for the workers on site, provide hoarding to the construction site and provide insurance cover for the workers. **(See annexure A13)**

Upon expiry of the notice, the Public Health Officers revisited the site to find out whether the Notice had been complied with. They noted non-compliance by the owner/caretaker of the building and charged the owner/caretaker/developer for failing to comply with the notice contrary to the Public Health Act. The case was registered with the Magistrate's Court at City Hall, Nairobi vide Criminal Case No. 665A of 2014. The case was taken for plea on 27th October, 2014 but the accused persons did not appear in court and a warrant of arrest was issued against the developer/caretaker. Investigations

noted that the warrant of arrest remained unexecuted until the building collapsed and the owner was arrested and charged with manslaughter on 9th February 2015 (**Annexure A13, A14, A15, A16 & A4**).

Interviewed officers from the Planning, Compliance and Enforcement Department cited fear while undertaking enforcement assignments. The officers mentioned several instances where hired people attacked them at construction sites preventing them from conducting evictions and demolitions.

2.4 Responsibilities and culpability

CAJ found Mr. Jastus Kathenge, Director, Planning, Compliance and Enforcement, Ms. Jane Ndonga, former Director, HDD and Engineer Ndungu Ngure, former Assistant Director, Technical Section, HDD in Dandora culpable of dereliction of duty for failing to enforce building regulations. They also failed to oversee the demolition of the unsafe building despite having prior information about the building.

It is worth noting that the then Assistant Director, Technical Section at Housing Development Department, Engineer Ndungu Ngure resigned soon after the building collapsed in Huruma.

Engineer Ndungu Ngure was invited for an interview at the CAJ offices on 8th September, 2015 at 8.00am but he failed to honour the invitation. Several attempts by CAJ investigators to reach him on phone were futile. Therefore, the Commission has cited him for unresponsiveness.

It was noted that Nairobi City County had suspended five public officers for abetting irregular constructions within the County. The officer included Ms. Rose Kalondu, County Chief Officer, Planning and Housing, Ms. Jane W. Ndonga Former Director Housing Development Department, Mr. Justus Kathenge Director Planning, compliance and Enforcement, Eng. Mwangi Chiera and Mr.

Patrick Githinji Kahoro, Ag. Senior Works Officer. Out of the five, Ms. Kalonde was reinstated back to office (**Annex A19**).

Investigators noted that Ms. Jane W. Ndonga, former Director HDD, Mr. Patrick Githinji, Ag. Senior Works Officer, Mr. Francis Gikonyo the caretaker and Ms. Margaret Magiri, the house owner were arrested by CID officers from Starehe Police Division and taken to Makadara Law Courts vide Criminal Case No. 126/40/2015 CF. 293/15. The matter is still pending in court.

2.5 Factors that led to the collapse of the Huruma building


The Nairobi County Structural Engineers attributed the collapsing of the building to the following:-

- i. Poor workmanship (substandard construction materials and lack of proper supervision of personnel hired to construct the building).
- ii. The top five floors of the building caved in due to a very shallow foundation set up on black cotton soil.
- iii. The building had structural defects such as cracks and deformations.
- iv. The building had inadequate and uneven structural reinforcements due to weak beams, columns and slabs.
- v. The concrete mix was not uniform and the columns were far apart and hence could not support a seven-storey building.

Survivors who were interviewed indicated that the collapsed building had cracks (**Annexure A17 and A18**).

3.0 Consequential observations

There existed two parallel approval systems for building plans namely; normal application process where developers were required to apply for approvals through certified architects and Type Plans developed by Housing Development Department, Dandora and issued to developers upon payment. The two



parallel approval processes gave room for developers to construct without approval (**Annexure A11**).

Interview with the Deputy Director, Development Control and perusal of some building plans by CAJ investigators revealed that the rates charged for approval of building plans by Nairobi County Government are prohibitive and out of reach to a majority of developers, including the low income earners.

Many respondents indicated that there is lack of public participation in adopting the fees and charges levied by the City County regarding approval of building plans, among other services.

Majority of the officers interviewed at Nairobi City County complained of lack of promotion in Nairobi City County. This has resulted in low retention and demotivation amongst the officers. One of the officers interviewed said that he has been acting in the capacity of a Director for over ten years in different Departments.

CAJ noted deployment of staff without consideration of professional qualifications and competencies, hence affecting productivity of the officers.

Some of the County officials who were interviewed indicated that the members of staff involved in building demolitions do not have adequate training for the job and often use equipment not suitable for demolishing high rise buildings.

Developers carry on with their construction without the supervision of relevant County Government officials and that there is no organized system of tracking building constructions to ensure that developers adhere to the approved building plans.

Nairobi City is growing so rapidly that the County Government's capacity to ensure building developers comply with building regulations and standards is

quite inadequate. In fact, most of the officials interviewed indicated that many houses in Nairobi City County have no completion or occupational certificates.

The investigations noted that there is low public awareness on the County's online approval of building plans as many potential developers in the County and in particular, those in the Site and Service Schemes do not know where and how to commence the process of building plans' approval.


There is a very high demand for housing in Nairobi County. This has led to some developers resorting to the use of short-cuts to construct buildings in a rush in order to make quick money at the expense of people's lives. Most of them put up buildings without following due diligence including the use of sub- standard materials. Further, some developers put up quite a number of floors up against the recommended number of floors authorized by Nairobi City County.

4.0 Conclusions

The seven-storey residential building in Huruma Ngei II estate collapsed on 4th January, 2015 at around 9.00pm killing five occupants (5) and injuring thirty two (32) others. The injured persons were rushed to Guru Nanak and Kenyatta National Hospitals for treatment.

The collapsing of the residential building was attributed to sub-standard building materials, poor workmanship, very shallow foundation on a black cotton soil, structural defects, lack of adequate reinforcements, non-compliance with the approved building by developer and lack of supervision, poor inspection and monitoring.

There was delay of 3 years in the implementation of the Enforcement Notice dated 31st January, 2015 by Housing Development Department in Dandora. The Notice was issued on 31st January, 2012 and until the building collapsed on 4th January, 2015, no action had been taken by the Department.



The collapse of the Huruma building could have been avoided if the Housing Development Department in Dandora and Directorate of Planning, Compliance and Enforcement had acted urgently to demolish the unsafe building. Therefore, Ms. Jane Wanjiku Ndonga, former Director, HDD, Mr. Jastus Kathenge, Director Planning, Compliance and Enforcement and Engineer Ndungu Ngure former Assistant Director, Technical Section, HDD are culpable for dereliction of duty for failing to demolish the unsafe building despite having prior information.

There is poor coordination among relevant Nairobi County Government Departments in the approval of building plans and enforcement of building regulation in the County.

There are two building and constructions approval processes namely; normal application process and Type Plans which have created confusion for inspection, compliance and enforcement.

There is rampant corruption in the building industry where officers are compromised to allow unauthorised constructions. Impunity and non-adherence to building regulations by developers, owners and contractors are common place in the industry.

The construction industry is infiltrated by non-professionals who call themselves Architects, Engineers and contractors. Due to the apparent high cost of hiring professionals, more often, developers turn to the use of draftsmen who draw the buildings for them. At the construction site, the draftsmen act as the architects, structural engineers, mechanical engineers and quality surveyors. The real job is largely left in the hands of masons with no technical know-how, while the draftsman appears once every one or two weeks to pick a few thousand shillings from the developer and give the job his green light. Professional input is not taken into consideration in most building activities.

The Nairobi City County lacks appropriate demolition equipment for bringing down high rise buildings.

The former Assistant Director, Technical Section, HDD failed to honour CAJ's invitation for an interview on 8th September, 2015 at 8.00am. The Commission cited him for unresponsiveness.

Pursuant to section 36 of the CAJ Act, CAJ wrote to Ms. Jane Ndonga, former Director, HDD, Mr. Justus Kathenge, Director, Planning, Compliance and Enforcement and Eng. Ndungu Ngure, former Assistant Director, Technical Section, HDD vide letters Ref: CAJ/IE/6/10 VOL. 1 dated 24th November, 2015, to make such representations and/or further responses as they may have before the Commission issues the final report. By the time the Commission released the report, they had not responded (**Annexures A20, A21 and A22**).

5.0 Recommendations

- i. The Nairobi City County Government should increase and strengthen the capacity of the Compliance and Enforcement Department to effectively discharge its role including continuous surveillance and inspections on existing buildings and ongoing constructions to ensure adherence to building and construction regulations.
- ii. The Nairobi City County Government to provide reporting hotlines for the public to report any unsafe buildings or suspicious constructions.
- iii. The County Government should procure adequate and appropriate equipment for demolition of condemned buildings.
- iv. The Nairobi City County Government in conjunction with National Construction Authority should develop standards and best practice to guide the building and construction industry in Kenya and publicise them.
- v. The Nairobi City County Government in conjunction with National Construction Authority should monitor the building and construction

industry in order to identify and prosecute non-professionals operating as professionals.

- vi. The County Government of Nairobi should adopt one system of building and construction approval that encompasses all types of housing development in the County to avoid a lacuna potential for sub-standard construction.
- vii. Director, Nairobi City Inspectorate to take disciplinary action against his officers for failing to effect a Warrant of Arrest issued on 27th October 2014 by the City Court in respect of Case No.665A of 2014.
- viii. CAJ commends the County Government of Nairobi for suspending Ms. Rose Kalondu, County Chief Officer, Planning and Housing, Ms. Jane W. Ndonga, Former Director Housing Development Department, Mr. Justus Kathenge, Director Planning, compliance and Enforcement, Eng. Mwangi Chiera and Mr. Patrick Githinji Kahoro following the collapsing of the Huruma building.
- ix. CAJ commends Mr. Simon Gitau and Mr. Benson Marionya, Public Health Officers who while on routine inspection noted visible cracks on the building which posed danger to human life and served Mr. Francis Gikonyo, the caretaker of the building, with a four-day Notice of compliance with the Public Health Act Cap 242 and Nairobi City County By-laws.
- x. Director Public Prosecutions to ensure the speedy prosecution of the matter before courts. Namely Case No. 665A of 2014 at City court and Criminal Case No. 126/40/2015 CF. 293/15 at Makadara Law Courts.
- xi. Director Public Prosecutions and Director Criminal Investigations to investigate criminality in the conduct of Jane W. Ndonga, former Director, Housing Development Department, Mr. Justus Kathenge, Director, Compliance and Enforcement and Engineer Ndungu Ngure, former Assistant Director, Technical Section and have them prosecuted for negligence of duty.