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THE NATIONAL ASSEMBLY

12<sup>TH</sup> PARLIAMENT - THIRD SESSION - 2019

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON A PETITION REGARDING THE DEMOLITION NOTICE ISSUED BY  
NEMA AND WRA TO HOME OWNERS OF SEEFAR APARTMENTS

 THE NATIONAL ASSEMBLY PAPERS LAID	
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CLERK AT THE TABLE:	

DIRECTORATE OF COMMITTEE SERVICES,  
CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI

MAY, 2019



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## LIST OF ABBREVIATION

NEMA	-	National Environment management Committee
WRA	-	Water Resource Authority
EMCA	-	Environmental Management and Coordination Act
WARMA	-	Water Resources Management Authority
EPL	-	Edermann Properties Limited
AWSB	-	Athi Water Service Board
NCC	-	Nairobi City Council
EIA	-	Environment Impact Assessment

## FOREWORD

The Petition regarding the Demolition Notice issued by the National Environment Management Authority (NEMA) and Water Resources Authority (WARMA) to home owners of Seefar Apartments was presented to the National Assembly by the Hon. Nixon Korir, MP, Langata Constituency on 15<sup>th</sup> November, 2018. The Petition was subsequently committed to the Departmental Committee on Environment and Natural Resources for consideration pursuant to Standing Order 227.

Seefar Apartments registered under LR. No. 209/12108 consisting of a development that comprised of 288 residential apartments is located within Nyayo Highrise Estate along Mbagathi Road. It was constructed by Edermann Property Limited in 2011. The apartments had a total population of 1000 people with approximately 60% of the persons working and residing there, were women and children. About 40% of homeowners of Seefar Apartments had acquired mortgages with various financial institutions and were still servicing loans.

NEMA had issued an Improvement Notice (NEMA/5/4/Vol.II) while the Water Resources Authority (WARMA) had issued Order Serial Number 30366 earmarking the apartments for demolition on allegation that they had been constructed on the riparian land along the Nairobi Dam and Ngong River. However, it is important to note that the development of the apartments had been approved by NEMA vide letters Reference Nos. Appl. Ref. No. PR/8208 dated 29<sup>th</sup> June, 2011 and WARMA's letter Ref. No. WRMA/NRB/RIPARIAN/1(56) dated 17<sup>th</sup> April, 2015 respectively.

On 12<sup>th</sup> October, 2018, Inspectors from NEMA had visited the apartments and issued an Improvement Notice requiring Edermann Property Limited to demolish the structure within 14 days contrary to its earlier admission that the same was not on the riparian reserve vide a Stop Order Ref. No. WRMA/NRB/RIPARIAN/1/ (55) dated 25<sup>th</sup> July, 2011. The Notice and Order issued did not however specify provisions breached either in the Environmental Management and Coordination Act (EMCA Cap 387) Act or the Water Act;

The Petitioners prayed that the Departmental Committee on Environment and Natural Resources:

- i. Intervenes and causes stay of the earmarked demolition pending conclusive investigations; and
- ii. Makes any other order or direction that it deems fit in the circumstance of the matter.

The Committee consequently seized the matter raised in the Petition and invited the Hon. Nixon Korir, the Ministry of Water and Sanitation, the Ministry of Environment and Forestry, the National Environment Management Authority, the Water Resources Authority, the Home owners'

representatives and the Representative of Edermann Property Limited to a meeting on Thursday, 22<sup>nd</sup> November, 2018.

Having reviewed the oral and written evidence submitted to it, the Committee observed that:

1. The notices for demolition issued by NEMA and WRA were wanting since the same entities gave approvals for the construction of the apartments. The doublespeak by the government agencies was scaring away the investors in real estate in the country.
2. There was manifest laxity and lack of diligence among some officers at NEMA and WRA since it had taken too long to establish the alleged encroachment on the said riparian zone. The officers directly involved in the approvals that were being questioned ought to take responsibility for their laxity.
3. It was important for the government to establish who ought to compensate the homeowners in case the Seefar Apartments were demolished since the owners were servicing mortgages used to acquire units in the apartments. The proposed demotion was against the government's Big Four Agenda on affordable housing.
4. The dam was upstream while the Seefar Apartments were down stream. This posed a danger in case of collapse of the dam.
5. There was need to consider the usefulness of the Nairobi dam considering its current status and propose the next course of action for the dam;
6. The residents of Seefar Apartment had hired Eng. J.K. Rutere, a dam expert through the developer, to inspect and give a technical and professional opinion on the safety of the said dam. The Engineer gave the dam a clean bill of health. However, the same had not been authenticated by the relevant government agencies.
7. Various laws such as the Water Act, the Environmental Management and Coordination Act, the Survey Act, the Physical Planning Act and the Agriculture Act provided various definition to the riparian land thereby causing confusion in the implementation of law.
8. There was need for definite timelines for conclusion of the report on the status of the dam by the independent expert. Such timelines ought to tally with the timelines in the extended demolition order.
9. The technical team was working on the technical report on the safety of the dam, yet demolition orders had been issued against Seefar Apartment without any technical report. This was a sign of casualness in handling of matters among the state agencies involved.
10. There was need to lift the demolition orders until such a time that the government had come up with a comprehensive technical report to chart the way forward.
11. The government was engaged in erratic demolition of buildings and therefore there was a was need for a structured, systematic demolition of identified structures. Otherwise the entire exercise risked being viewed as discriminatory.

Consequently, the Committee recommends that:

**1. Prayer One:**

The Committee recommends that:

The Water Resources Authority (WRA) and the National Environment Management Authority (NEMA), *should indefinitely* extend the suspension of demolition orders of Seefar Apartments until submission to the Committee of:

- (a) the report of the Multi-Agency Technical Team relating to a comprehensive study on the safety of the Nairobi Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it as agreed upon during the meeting held between the Ministry of Environment and Forestry and the Committee on 4<sup>th</sup> December, 2018; and
- (b) the report of dam safety analysis commissioned by WRA on the 25<sup>th</sup> October, 2018,

**2. Prayer Two:**

The Committee makes any other order or direction that it deems fit in the circumstance of the matter.

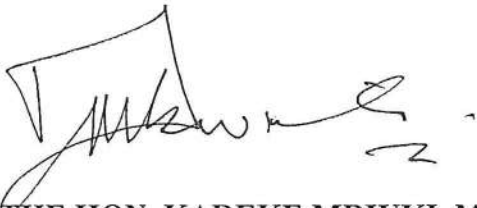
**Recommendations:**

The Committee recommends that:

- I. NEMA and WRA undertakes an audit of all the licences issued across the country to verify the levels of compliance with licence conditions, the extent and reasons for causes of non-compliance, if any, with a view to taking appropriate action against any person whose actions are established to be inconsistent with the law, and table a report before the National Assembly within three months of the tabling of the Report.
- II. The Ministry of Environment and Forestry, the Ministry of Water and Sanitation and the County Government of Nairobi should set up a taskforce to undertake a comprehensive study on the safety of the Nairobi Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it, and table a report before the National Assembly within three months of the tabling of the Report.
- III. The Inter-Agency Technical Team commissioned to assess the safety and viability of the dam should expedite its report to facilitate for further discussion between the home

owners and the government to determine the way forward. In the meantime, the Team should address any immediate safety concerns.

- IV. The Ministry of Water and Sanitation and the Ministry of Environment and Forestry should spearhead consultations with the Ministry of Lands and Ministry of Agriculture to harmonize the definition of the riparian land and subsequently submit an amendment to Parliament for consideration and enactment, and table a report before the National Assembly within three months of the tabling of the Report.
- V. The Government should adopt a harmonized position relating to the principles and process of the demolition exercise so as to assure the investors that the exercise is being undertaken in a manner that is not discriminatory.
- VI. The Ministry of Water and Sanitation should expedite the installation of sewer line/facilities under the Nairobi Regeneration Programme to mitigate the pollution of the Nairobi Dam by effluent from the neighbouring residential areas.



**THE HON. KAREKE MBIUKI, M.P**  
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND**  
**NATURAL RESOURCES**



## 1.0 PREFACE

### 1.1 Establishment and Mandate of the Committee

The Departmental Committee on Environment and Natural Resources is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* whose mandate, pursuant to the *Standing Order 216 (5)*, is as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

The subject matter of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

## 1.2 Oversight

In executing its mandate, the Committee oversees the following State Departments, namely:

- The Ministry of Water and Sanitation;
- The Ministry of Environment and Forestry;
- The State Department for Wildlife; and
- The State Department for Mining

## 1.3 Committee Membership

The Committee on Environment and Natural Resources was constituted by the House in December, 2017 and comprises of the following Members: -

1. **The Hon. Kareke Mbiuki, M.P.** **Chairperson**
2. **The Hon. Sophia Abdi Noor, M.P.** **Vice Chairperson**
3. The Hon. Benjamin Jomo Washiali, M.P., CBS<sup>2</sup>
4. The Hon. David Kangogo Bowen, M.P.
5. The Hon. Francis Chachu Ganya, M.P.
6. The Hon. Ali Wario Guyo, M.P.
7. The Hon. Beatrice Cheron Kones, M.P.
8. The Hon. Charity Kathambi Chepkwony, M.P
9. The Hon. Hilary Kiplang<sup>3</sup> at Kosgei, M.P.
10. The Hon. Peter Kimari Kihara, M.P
11. The Hon. Benjamin Dalu Tayari, MP.
12. The Hon. Charles Ong<sup>4</sup>ondo Were, M.P.
13. The Hon. Nasri Sahal Ibrahim, M.P.
14. The Hon. Rossa Buyu. M.P.
15. The Hon. Said Hiribae, M.P.
16. The Hon. Hassan Oda Hulufu, M.P.
17. The Hon. Amin Deddy Mohamed Ali, M.P.
18. The Hon. Rehema Hassan, M.P.
19. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.

## 1.4 Committee Secretariat

1. Ms. Esther Nginyo - Second Clerk Assistant/Lead Clerk
2. Mr. Dennis Mogare Ogechi - Third Clerk Assistant
3. Mr. Sydney Lugaga - Legal Counsel II
4. Ms. Winnie Kulei - Research officer III
5. Ms. Yunis Amran - Fiscal Analyst III

## 2.0 BACKGROUND INFORMATION

Seefar Apartments registered under LR. No. 209/12108 consisting of a development that comprises 288 residential apartments is located within Nyayo Highrise Estate along Mbagathi Road and was constructed by Edermann Property Limited in 2011. The apartments were home to a population of about 1000 people residing there having acquired the houses through mortgages and loans from various financial institutions.

The said apartments had been earmarked for demolition by the National Environmental Management Authority (NEMA) under the Improvement Notice (NEMA/5/4/Vol.II) and the Water Resources Authority (WRA) Order Serial Number 30366. The development of the apartments was approved by NEMA vide letters Reference Nos .Appl. Ref. No. PR/8208 dated 29<sup>th</sup> June, 2011 and WARMA's letter Ref. No. WRMA/NRB/RIPARIAN/1(56) dated 17<sup>th</sup> April, 2015 respectively. NEMA and WARMA contrary to the initial approvals alleged that Seefar Apartments had been constructed on the riparian land that is along the Nairobi Dam and Ngong River.

On 12<sup>th</sup> October, 2018, Inspectors from NEMA visited the apartments and issued an Improvement Notice requiring Edermann Property Limited to demolish the structure within 14 days. This was contrary to its earlier admission that the same was not on the riparian reserve vide a Stop Order Ref. No. WRMA/NRB/RIPARIAN/1/(55) dated 25<sup>th</sup> July, 2011. According to the Petitioner, the Notice and Order issued did not specify provisions breached either in the Environmental Management and Coordination Act (EMCA Cap 387) Act or the Water Act.

The residents in the said apartment were of the opinion that impending demolition was against the spirit of the Government's 'Big Four Agenda' which aimed at ensuring affordable housing for all Kenyans and it will affect the individual home owners who innocently and willfully bought the said houses as investment and never anticipated uncertainties.

The Petitioners therefore prayed that the Departmental Committee on Environment and Natural Resources: -

- i. Intervenes and causes stay of the earmarked demolition pending conclusive investigations;
- ii. Makes any other order or direction that it deems fit in the circumstance of the matter.

The Committee consequently seized the matter raised in the Petition and invited the Hon. Nixon Korir, the Ministry of Water and Sanitation, the Ministry of Environment and Forestry, the National Environment Management Authority, the Water Resources Authority, the Home owners

representatives and the Representative of Edermann Property Limited to a meeting on Thursday, 22<sup>nd</sup> November, 2018.

The petition however lapsed with the end of the second session. It was however resubmitted to the House on 3<sup>rd</sup> April, 2019 and referred to the Committee. The Committee observed that there were no changes on the ground and that petitioners' prayers remained the same. Therefore, no new evidence was adduced in regards to the petition.

### **3.0 SUBMISSIONS BY THE PETIONERS AND STAKEHOLDERS**

The Petition regarding demolition notice issued by WRA and NEMA to home owners of Seefar apartments was committed to the Committee for consideration pursuant to Standing Order 227. Consequently, the Committee held a Sitting with the Petitioners (Seefar apartments homeowners), Ministry of Environment and Forestry and the Water Resources Authority. The Committee also undertook an inspection visit to assess the situation on the ground.

#### **3.1 Submission by the Petitioners, Seefar Apartments Homeowners**

Mr. Otieno Paul Peter, Chairman Seefar Homeowners appeared before the Committee on Thursday, 22<sup>nd</sup> November, 2018 and submitted as follows, that:-

- i. Seefar Apartments comprise a three-joined-blocks of 12 storey building situated on a piece of land L/ R No.209/12108 located right inside Nyayo Highrise F/R No.351/27.
- ii. The building was developed by Edermann Properties Limited (EPL) between 2011 and 2013, got all the required approvals, and was launched by the then Minister for Housing, the Late, Hon. Soita Shitanda, as part of governments agenda for affordable housing.
- iii. Seefar Apartments consisted of 288 houses (2-bedroom houses - 264- and 3-bedroom houses - 24), having a total population of about 1500, taking an average of 5 people per unit for a total of 288 units, with majority being young women and school going children. These were people whose livelihoods affected directly or indirectly thousands of others across the country and in various work places. Seefar also has about 150 daily casual workers.
- iv. Seefar community was horrified by the notices that were issued by staff from NEMA and WRA to the developer of this building and writings put on its walls on Friday, 12<sup>th</sup> October, 2018 afternoon. The notices claimed that the building was on riparian reserve and thus should be removed within 14 days.
- v. This building, despite being developed by EPL, was no longer owned by the developer, but rather by ordinary Kenyans who were struggling to make ends meet. Majority of the buyers were first-time home-owners, some of whom had risen from homelessness. Over 60% were serving mortgages with various financial institutions. EPL only owned a single unit, No. 119.
- vi. The ownership of Seefar comprised of 2 Women Groups (with total membership of about 25), a charity home (for orphans and rehabilitated street children), investment groups (mostly comprising youths and women), individual owners (99 of whom were women, mostly single mothers). Only 28 out of the 288 units were co-owned by couples. The majority age of these home owners was between 28 to 35 years.
- vii. Upon visiting NEMA and WRA (regional) offices in Industrial Area on 15<sup>th</sup> and 16<sup>th</sup> of October, 2018 respectively, to demand explanations and armed with documents of

approvals, the Authorities could not confirm or deny the sanctity of the approvals of this building. Instead, they opted to change the notices to 30 days, from 14 days. They further suggested a joint inspection to establish the facts on the ground, which was to happen within the week, between 16<sup>th</sup> and 19<sup>th</sup> of October, 2018, before making a decision. This did not happen.

- viii. In one of the consultative meetings with WRA on 22<sup>nd</sup> October, 2018, attended by CEO, Mr. Mohamed Shuriye and Engineer Boniface Mwaniki, they suggested that the residents could go ahead and do their own survey. They stated that there were "emerging issues" they were looking at on an "imminent danger" posed by the dam. They however did not have a technical report to back their allegations of an imminent danger.
- ix. The Seefar residents commissioned a survey which established that the closest distance from Seefar Apartments, to the highest water mark of the dam (contour 1669, which should be the level of the spillway, scientifically speaking,) was 42m. This was way outside the 6m-30m stated by the Physical Planning Act (Regulations) Section 15 C, the Environmental Management and Co-ordination Act (Regulations) Section 6 and the Survey Act, Regulations 112 of the Laws of Kenya.
- x. As a result of the safety concerns raised, Eng. J.K. Rutere, a renowned dam expert in Kenya, was requested, through the developer, to inspect and give a technical and professional opinion on the safety of the said dam. In his report, he stated, based on his evaluation, that the dam was safe.
- xi. The notices were issued without a technical report. The fact that the Agencies were compiling the report after the Notice was illegal, unprocedural and inconsiderate to the many Kenyans who live in Seefar Apartments.

### **3.2 Submission by the Cabinet Secretary Ministry of Environment and Forestry**

The Hon. Mohamed Elmi, Chief Administrative Secretary, Ministry of Environment and Forestry appeared before the committee on 22<sup>nd</sup> November, 2018 and informed it that:

1. Edermann Property Limited submitted an Environmental Impact Assessment for the development of 3 blocks of Apartments on Plot L.R. No. 209/12108 in Kibera Highrise, off Mbagathi Way on 18<sup>th</sup> February, 2011.
2. As required by law, the report was dispatched to the following lead agencies seeking their comments, recommendations or objections on the proposed project:
  - a) The Director of Housing, Nairobi.
  - b) The Director, Directorate of Occupational Health and Safety Services, Nairobi
  - c) Department of Physical Planning, Ministry of Lands, Nairobi
  - d) The Managing Director, Nairobi City Water and Sewerage Company Limited
  - e) Karen and Lang'ata District Association

- f) Chief Architect, Ministry of Public Works, Nairobi.
  - g) District Environment Committee/District Environment Officer, Westlands and Lang'ata
  - h) The Town Clerk, City Council of Nairobi,
- 3 A technical review was undertaken on 23<sup>rd</sup> May, 2011 taking into consideration the public disclosure and use of the decision-making principles.
  - 4 Conditions for licensing the project were prepared on 31<sup>st</sup> May, 2011 and the proponent consented to adhere to the conditions of the license on 7<sup>th</sup> June, 2011.
  - 5 The project was issued with an EIA license with conditions on 29<sup>th</sup> June 2011 vide License No. 0008382 and given the following conditions amongst others:
    - (a) Condition 2.1 which stated that the proponent shall ensure protection of the Nairobi Dam and the Ngong River by maintaining a 30M riparian reserve from the water bodies
    - (b) Condition 1.5 which stated that the Authority shall take appropriate action against the proponent in the event of breach of any of the conditions stated herein or any contravention to the Environmental Management and Coordination Act, 1999 and Regulations thereunder.
    - (c) Condition 1.6 which states that the license shall not be taken as a statutory defense against charges of environmental degradation or pollution in respect of any manner of degradation/ pollution not specified herein.
    - (d) Condition 1.9 which states that the proponent shall comply with NEMA's improvement orders throughout the project cycle.
  6. On 14<sup>th</sup> January, 2013, the developer was issued with an Improvement Notice by NEMA Environmental Inspectors requiring them to stop dumping of excavated materials on the riparian land.
  7. During the ongoing Nairobi Regeneration Program, a team of Environmental Inspectors, jointly with officers from Water Resources Authority (WRA) undertaking inspections along Ngong River on 12<sup>th</sup> October, 2018, observed that Erdemann Property had encroached into the riparian reserve of the Nairobi Dam as well as Ngong River. The Apartments, as was the case with other structures on riparian reserve, was marked and an Order issued to Erdemann Property Ltd as the proponent in the EIA process. Several structures along Ngong River observed to be within the riparian reserve were also marked and issued with orders, for example 6 houses within the Civil Servant Estate in South "C" and Godowns near Mater Hospital. The identification and marking of structures on the riparian reserve was on-going.

8. Further investigations indicated that there was violation of Condition 2.1 of the EIA license and hence the order issued was in accordance with Section 117(3)(g) of the Environmental Management and Coordination Act Cap 387;
9. On 15<sup>th</sup> October, 2018, Seefar Homeowners wrote to the Authority challenging the orders by NEMA and WRA. They proposed a joint inspection with NEMA and WRA officers to ascertain their compliance level to condition 2.1. NEMA responded, and informed the home owners on the extension of the order pending consultation with relevant Lead Agencies.
10. On 15<sup>th</sup> October, 2018, Erdemann Property Limited also wrote to NEMA asking that the Order issued to them on 12<sup>th</sup> October, 2018 be revoked immediately. NEMA responded to Erdemann Limited indicating that NEMA would organize and invite their representatives for the requested joint inspection. Further, the Authority extended the Notice for thirty (30) days upto 15<sup>th</sup> November, 2018 to allow consultation and investigation to guide its decision. However, the Assessment and Technical reports were taking a longer time and therefore the ministry had requested the Director General NEMA, to extend the Order from 30 days for a further 90 days upto 15<sup>th</sup> February, 2019 to allow conclusive engagement.

### **3.3 Submission by the Ministry of Water and Sanitation**

Mr. Mohamed Shuriye the CEO, Water Resources Authority representing the Ministry of Water and Sanitation appeared before the Committee on 22<sup>nd</sup> November, 2018 and informed it that:

1. Between June and August 2011, there were media reports on the impending collapse of Nairobi dam due to excavation done on the Dam embankment during construction works of Seefar Apartments. WRMA responded to this by undertaking an inspection that revealed the following:
  - a) It is true while the Seefar Apartments were being constructed, excavations were made into the dam embankment to create space for the building. In accordance with normal practice, excavating a dam wall weakens it. In this regard a stop was issued on 05/March/ 2011.
  - b) The building site was located on the immediate downstream of the dam wall which is not advisable in law for safety reasons.

As a result:

- i. WRA issued Order No 315 on 20<sup>th</sup> July, 2011 stopping excavation on the plot until Nairobi Dam and Ngong River riparian areas were demarcated and pegged;
- ii. On 22<sup>nd</sup> July, 2011, WRA pegged and demarcated as well as 22m from the highest water mark from Nairobi dam and 15m from Ngong River.
- iii. In 2012 WARMA issued another further order in April stopping further backfilling of the reservoir and returning the water flow through original spillway.
- iv. Erdeman Properties wrote to WRA vide letter Ref. EPL/0172/PRT dated 10<sup>th</sup> April, 2015 requesting for confirmation of the pegging of the riparian land and their compliance with



the same. Consequently, WRA staff visited the site on 13<sup>th</sup> and 14<sup>th</sup> April, 2015 and inspected both the riparian and dam repair works. The staff confirmed compliance by the developer. However, the request by the developer and the subsequent inspection and confirmation were not tallying with earlier determinations of the riparian area in 2011. Disciplinary action against the concerned staff was being pursued.

- v. On 12<sup>th</sup> October, 2018, Mr. Michael Muturi, a Surface Water Officer with WRA had earlier inspected on 13<sup>th</sup> and 14<sup>th</sup> April, 2015 and confirmed compliance by the developer again issued a demolition order. Consequently, a compliance letter was issued by the then Sub-Regional Manager Samson Oiro to the developer.
- vi. WRA had extended the validity of its Order No 30365 for 90 days from 13<sup>th</sup> November 2018 to give room for further consultations, survey work and investigations before the execution of the order; However, caution needed to be taken because of the eminent danger posed by the dam.
- vii. Due to the complexity of the matter, the developer and house owners requested for a joint multi agency (NEMA, WRA and Survey of Kenya) inspection of the Nairobi Dam and Ngong River riparian reserve in order to address the issue exhaustively. WRA had already written to Survey of Kenya to establish the exact river course of Ngong River.
- viii. On 25<sup>th</sup> October, 2018, WRA wrote to the dam owner (Nairobi City County Government) requesting for a dam safety analysis report within 21 days expiring on 25<sup>th</sup> November 2018.
- ix. There was need to consider the usefulness of the Nairobi dam considering its current status and propose the next course of action for the dam;
- x. In conclusion he stated that:
  - Seefar Apartments were within the riparian land as per 2011 determination. But the original course of Ngong River would be determined by the Survey of Kenya.
  - There was eminent threat to lives, environment and property due to the likelihood of Nairobi dam breaking since its bank has been weakened by excavation and construction works as per the 2012 order.

### **3.4 Inspection Visit to the Seefar Apartment.**

The Committee undertook an inspection visit to the Seefar Apartment to assess the situation on the ground on Wednesday, 6<sup>th</sup> March, 2019. During the Visit, Mr. Joel Kitili, Ministry of Environment and Forestry briefed the Committee on site that:

1. The Seefar Apartments were sitting on part of the dam embarkment hence compromising the integrity off the embarkment and the safety of the residents.
2. There was need to rehabilitate the dam and were plans to have independent engineers to make a technical assessment of the dam before charting the way forward.
3. The dam was initially used for recreational purposes.

### 3.4.1 Members' Observations from the Visit

After assessing the state of the Nairobi Dam /Seefar Apartments Members observed that:

1. The dam was not operational as it was choked by vegetation and including the water hyacinth. It was serving as a sewage repository from the neighbouring residents.
2. On the proposal for seeking to have independent consultants to assess the status of the dam, it was noted that it was wasteful of public resources when there existed public institutions whose mandate would identify the same.
3. The ministry ought to urgently ensure the technical report on the dam was provided to the National Assembly as the way forward is charted.

### 3.5 Submission by the Ministry of Environment and Forestry

The Cabinet Secretary for Environment and Forestry, Mr. Keriako Tobiko appeared before the Committee on Thursday, 7<sup>th</sup> March, 2019 and informed it that:

1. On the Status of the Notice issued for the demolition of the Seefar Apartment he stated that:
  - a) Both the Water Resources Authority (WRA) and the National Environment Management Authority (NEMA), extended the period of their respective Orders for a further ninety (90) days. The extension was effective from 13<sup>th</sup> February 2019, the date when the period of previous Orders expired.
  - b) The Notices were extended in order to give time to the Multi-Agency Technical Team to carry out a comprehensive study on the safety of the Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it as agreed upon during the meeting held between the Ministry and the Committee on 4<sup>th</sup> December, 2018.
2. On the Multi-Agency Comprehensive report on Safety of Nairobi Dam and the Socio-Economic Implications of Sustaining the Dam he stated that:
  - a) The Committee had given the Ministry a time line of up to end of February to finish the report. However, the report had not been finalized because the Technical Committee resolved to engage a dam expert to carry out the study since two of the key members of the Multi-Agency Technical Team namely WRA and NEMA, were interested parties in the issue. It is therefore prudent to have independent experts to carry out the study to avoid possible conflict of interest.
  - b) The Inter-Agency Technical Team had drawn the Terms of Reference for the study and the process of procuring the dam expert was ongoing. Among the outputs expected from the Study were: -
    - i) Report on Inspection and safety review of the Dam
    - ii) Current built engineering drawings for the Dam infrastructure

- iii) Dam break analysis and inundation maps: - to show the residences and investments that are at risk should the Dam break and recommend the best way of protecting them
- iv) A detailed analysis on the economic value of the Dam and recommendations on its future existence and use.

### **3.6 Submission by the Joint Secretary, Inter-Agency Steering Committee on The Nairobi Regeneration.**

Mr. Moses Nyakiongora, CEO/Secretary, National Buildings Inspectorate on behalf of the Principal Secretary for Housing/Joint Secretary Inter-Agency Steering Committee on the Nairobi Regeneration appeared before the Committee and informed it that:

1. The Seefar Apartment was structurally sound and therefore safe for habitation.
2. The process of technical assessment of the status of the Nairobi dam was ongoing in order to determine the next course of action.

#### 4.0 COMMITTEE OBSERVATIONS

Having reviewed the evidence submitted to it by the stakeholders', the Committee observed that:

- i. The notices for demolition issued by NEMA and WRA were wanting since the same entities gave approvals for the construction of the apartments. The doublespeak by the government agencies was scaring away the investors in real estate in the country.
- ii. There was manifest laxity and lack of diligence among some officers at NEMA and WRA since it had taken too long to establish the alleged encroachment on the said riparian zone. The officers directly involved in the approvals that were being questioned ought to take responsibility for their laxity.
- iii. It was important for the government to establish who ought to compensate the homeowners in case the Seefar Apartments were demolished since the owners were servicing mortgages used to acquire units in the apartments. The proposed demotion was against the government's Big Four Agenda on affordable housing.
- iv. The dam was upstream while the Seefar Apartments were down stream. This posed a danger in case of collapse of the dam.
- v. There was need to consider the usefulness of the Nairobi dam considering its current status and propose the next course of action for the dam;
- vi. The residents of Seefar Apartment had hired Eng. J.K. Rutere, a dam expert through the developer, to inspect and give a technical and professional opinion on the safety of the said dam. The Engineer gave the dam a clean bill of health. However, the same had not been authenticated by the relevant government agencies.
- vii. Various laws such as the Water Act, the Environmental Management and Coordination Act, the Survey Act, the Physical Planning Act and the Agriculture Act provided various definition to the riparian land thereby causing confusion in the implementation of law.
- viii. There was need for definite timelines for conclusion of the report on the status of the dam by the independent expert. Such timelines ought to tally with the timelines in the extended demolition order.
- ix. The technical team was working on the technical report on the safety of the dam, yet demolition orders had been issued against Seefar Apartment without any technical report. This was a sign of casualness in handling of matters among the state agencies involved.
- x. There was need to lift the demolition orders until such a time that the government had come up with a comprehensive technical report to chart the way forward.
- xi. The government was engaged in erratic demolition of buildings and therefore there was a need for a structured, systematic demolition of identified structures. Otherwise the entire exercise risked being viewed as discriminatory.

## 5.0 COMMITTEE RECOMMENDATIONS

### 1. Prayer One:

The Committee intervenes and causes stay of the earmarked demolition pending conclusive investigations.

#### Recommendations

The Committee recommends that:

The Water Resources Authority (WRA) and the National Environment Management Authority (NEMA), *should indefinitely* extend the suspension of demolition orders of Seefar Apartments until submission to the Committee of:

- (a) the report of the Multi-Agency Technical Team relating to a comprehensive study on the safety of the Nairobi Dam, its potential and the socio-economic implications of rehabilitating or decommissioning it as agreed upon during the meeting held between the Ministry of Environment and Forestry and the Committee on 4<sup>th</sup> December, 2018; and
- (b) the report of dam safety analysis commissioned by WRA on the 25<sup>th</sup> October, 2018,

### 2. Prayer Two

The Committee makes any other order or direction that it deems fit in the circumstance of the matter.

#### Recommendations:

The Committee recommends that:

- I. NEMA and WRA undertakes an audit of all the licences issued across the country to verify the levels of compliance with licence conditions, the extent and reasons for causes of non-compliance, if any, with a view to taking appropriate action against any person whose actions are established to be inconsistent with the law, and table a report before the National Assembly within three months of the tabling of the Report.
- II. The Ministry of Environment and Forestry, the Ministry of Water and Sanitation and the County Government of Nairobi should set up a taskforce to undertake a comprehensive study on the safety of the Nairobi Dam, its potential and the socio-economic implications

of rehabilitating or decommissioning it, and table a report before the National Assembly within three months of the tabling of the Report.

- III. The Inter-Agency Technical Team commissioned to assess the safety and viability of the dam should expedite its report to facilitate for further discussion between the home owners and the government to determine the way forward. In the meantime, the Team should address any immediate safety concerns.
- IV. The Ministry of Water and Sanitation and the Ministry of Environment and Forestry should spearhead consultations with the Ministry of Lands and Ministry of Agriculture to harmonize the definition of the riparian land and subsequently submit an amendment to Parliament for consideration and enactment, and table a report before the National Assembly within three months of the tabling of the Report.
- V. The Government should adopt a harmonized position relating to the principles and process of the demolition exercise so as to assure the investors that the exercise is being undertaken in a manner that is not discriminatory.
- VI. The Ministry of Water and Sanitation should expedite the installation of sewer line/facilities under the Nairobi Regeneration Programme to mitigate the pollution of the Nairobi Dam by effluent from the neighbouring residential areas.