CM ADVOCATES LLP



RIPARIAN LAND. THE TRENDS WRA RIPARIAN NOTICES:

Testing the Authority's case - and your own - before litigation begins

INTRODUCTION

In the beginning, man's movement towards rivers was instinctive. Water sustained life, fertile riverbanks supported cultivation, and streams supplied households, livestock and trade. Communities therefore settled as close to water as the seasons allowed, long before survey coordinates, hydrological models or statutory buffer zones existed. What is now described as riparian encroachment often began, not as calculated defiance of public law, but as the natural human impulse to live beside the resource upon which survival depended.

That instinct became dangerous when technology and land pressure changed both the scale and permanence of occupation. Concrete walls replaced temporary boundaries; roads, apartments and commercial structures narrowed channels; engineered drainage carried storm water rapidly into already constrained rivers; and urban values encouraged construction upon every available metre. Modern hydrology has made the consequences measurable: an obstruction on one parcel may divert flood water onto hundreds of neighbours. Public safety could no longer be left to the preference, optimism or whim of each proprietor. The law was compelled to intervene, not merely to protect water, but to protect life, property and the city itself.

Kenya's response developed through the Constitution, environmental and planning legislation, the Water Act, 2016 and the Water (Resources) Regulations, 2025. The present enforcement phase intensified after the Nairobi Rivers Corridor demarcation notice of 12 December 2025 and Gazette Notice No. 18375 of 19 December 2025. During 2026, coordinated surveys, inspections and boundary marking moved from policy to individual consequence as WRA and the wider multi-agency programme issued notices to owners and occupiers adjoining mapped rivers, tributaries, wetlands and springs, and required production of ownership and planning documents.

It is against that history that this advisory is written. The legitimacy of protecting river corridors does not make every measurement correct, every notice lawful or every proposed demolition proportionate. Equally, defects in enforcement do not convert a genuine obstruction into lawful development. The discussion therefore tests both sides: WRA must prove the watercourse, boundary, jurisdiction, procedure and remedy; the landowner must confront the parcel's history, the accuracy of the approvals relied upon and the actual footprint of development.

A defective notice may delay enforcement; it rarely converts a genuine riparian encroachment into lawful development. Conversely, environmental urgency does not excuse WRA from proving the boundary, acting within jurisdiction and observing fair procedure. Preserve both positions immediately: protect the fourteen-day Tribunal deadline while forcing disclosure of the technical and legal basis of the notice.

1. The real legal trend: stricter conservation, sharper evidential scrutiny

The Water (Resources) Regulations, 2025 strengthen WRA's ability to demarcate riparian reserves, prohibit harmful activities, order cessation or rehabilitation and recover remedial costs. Courts increasingly treat rivers, wetlands and flood corridors as constitutional assets rather than vacant margins available for development. The practical consequence is severe: judges are unlikely to preserve a structure merely because its removal is expensive, politically inconvenient or inconsistent with an earlier county approval where credible evidence shows actual occupation or obstruction of a protected reserve.

Yet enforcement now attracts sharper scrutiny. The applicable boundary is technical and site-specific, not an administrative slogan. For a watercourse, the reserve is generally a minimum of six metres or the full width of the watercourse, up to thirty metres on either side, measured from the top edge of the bank. A bare thirty-metre assertion, unsupported by coordinates, measurement points, inspection material and the applicable rule, should be challenged. Equally, a landowner should not mistake the absence of a universal thirty-metre rule for permission to build within six metres or within the hydrologically justified reserve.

2. The landowner's case before attacking the notice

The most common defence - "I have title and approvals" - is incomplete. A registered proprietor may retain ownership while remaining subject to statutory restrictions on use. County permission, approved plans, an occupation certificate or a NEMA licence may prove good faith and expose failures by public agencies, but they do not necessarily estop WRA from enforcing the Water Act. Article 40(6) also weakens compensation arguments where the disputed portion was unlawfully acquired. If the riverbank was filled, diverted, narrowed or concealed before the current owner purchased, the physical and historical evidence may defeat a defence based only on present-day beacons.

3. WRA's case: authority, boundary, reasons and remedy

WRA should be required to prove four matters. First, that the feature is legally and factually a watercourse or water body governed by the cited rule. Second, that the reserve was measured from the correct bank or high-water reference using an intelligible method. Third, that the decision was made or adopted by the competent Authority and properly served. Fourth, that the ordered remedy is authorised and proportionate to the demonstrated harm. *Kental Enterprises Ltd v Attorney General & 4 others [2025] KEELC 1470* confirms the importance of a valid enforcement notice; but its lesson is procedural, not a licence to encroach.

THE DEFENSIBLE RESPONSE STRATEGY

1. First 48 hours: stop creating adverse evidence

Record service, scan the complete notice, photograph and video the site, back up historic records and halt further works within the disputed area. Do not move beacons, alter the channel, clear vegetation, demolish selectively or coach contractors. Do not send an emotional

admission that the structure is "on riparian land." Identify whether the instrument is a preliminary notice, inspection demand, cessation order, restoration direction, demarcation decision or final decision. Section 121 of the Water Act may require an appeal to the Water Tribunal within fourteen days; negotiations do not safely suspend that clock.

2. Force WRA's case into a provable record

Acknowledge receipt without conceding the boundary. Demand the statutory provision invoked, the decision-maker's authority, inspection report, coordinates, pegging notes, maps, photographs, measurements, hydrological basis, reasons and remedial specification. Ask WRA to identify precisely which part of which structure breaches which prohibition. Offer a joint inspection attended by counsel, a licensed surveyor and, if the flood line or historical channel is disputed, a hydrologist. Refusing access may damage credibility; uncontrolled access without a record may damage the evidence.

3. Build an evidence matrix, not a bundle of impressive papers

- **Boundary:** deed plan, mutation, Registry Index Map, survey coordinates, bank points and competing overlays.
- **Watercourse:** historic imagery, flood data, drainage designs and evidence of filling, diversion or channel migration.
- **Approvals:** county, NEMA, NCA and WRA records - matched to the exact footprint actually constructed.
- **Remedy:** engineering evidence on obstruction, flood risk, partial removal, setbacks, rehabilitation and proportional alternatives.

4. Do not lose on forum before the evidence is heard

A technical or statutory challenge to WRA's decision ordinarily begins in the Water Tribunal. A premature constitutional petition may be struck out for failure to exhaust the statutory remedy even where demolition is threatened. Lodge the appeal within fourteen days where section 121 applies, and seek an express stay or preservation order; filing alone should not be assumed to stop implementation. The Environment and Land Court remains important on appeal or where a genuine constitutional wrong falls outside an effective statutory remedy, but urgency does not itself create jurisdiction.

5. Plead for the outcome the evidence can sustain

If WRA's boundary is technically wrong, seek cancellation or fresh joint demarcation. If the boundary is right but procedure is defective, seek a stay, disclosure and lawful reconsideration - not a declaration that the structure is permanently lawful. If only part of the development encroaches, advance a surveyed, engineered and monitorable remedial alternative. If encroachment is undeniable, early rehabilitation negotiations may preserve value and reduce exposure to coercive removal and recoverable costs. A case framed only around inconvenience or investment value is vulnerable.

BOTTOM LINE

The strongest landowner response is not blanket denial. It is a disciplined contest that asks WRA to prove the legal feature, boundary, authority, procedure and remedy while subjecting the owner's title history, approvals and construction footprint to the same scrutiny. Win the deadline first, preserve the site, obtain independent technical evidence and pursue the correct forum. Where the facts are adverse, reposition quickly from "no encroachment" to proportionate remediation before the Authority controls both the timetable and the remedy.

HOW WE CAN ASSIST

CM Advocates LLP provides integrated support in relation to:

- Compulsory-acquisition audits;
- Challenges to acquisition notices and procedures;
- Representation at compensation inquiries;
- Valuation and compensation disputes;
- Enforcement of unpaid compensation awards;

- Claims for interest arising from delayed payment;
- Proceedings before the Land Acquisition Tribunal;
- Constitutional and judicial-review proceedings;
- •Mandamus and Government Proceedings Act enforcement;
- Land-registry rectification;
- Estate and succession-related compensation claims; and
- Appeals before the Environment and Land Court and superior courts.

The Firm's **Real Estate, Infrastructure & Environmental Disputes Unit (RIEDU)** works closely with the **Constitutional, Administrative & Regulatory Unit (CARU)** and the **Dispute Resolution & Appellate Practice Group** to provide seamless support from the initial acquisition audit, valuation and demand stages through Tribunal proceedings, constitutional litigation, judicial review, appellate advocacy and enforcement.

Contact Us:

For advice concerning real estate development, project finance, property acquisitions, secured lending, distressed developments, debt restructuring, insolvency proceedings, enforcement or related litigation, please contact:

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