



**Sikalieh (Suing on Behalf of Karen Lang'ata District Association) v National Environment Management Authority & another (Miscellaneous Application E142 of 2023) [2023] KEELC 18145 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18145 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E142 OF 2023**

**MD MWANGI, J**

**JUNE 21, 2023**

**BETWEEN**

**SAMORA SIKALIEH (CHAIRMAN) SUING ON BEHALF OF KAREN LANG'ATA DISTRICT ASSOCIATION ..... APPLICANT**

**AND**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 1<sup>ST</sup> RESPONDENT**

**NAIROBI WALDORF SCHOOL TRUST ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. On June 6, 2023, this court allowed the Applicant's application dated May 23, 2023 in terms of prayer 2 thereof, thereby restraining the 2<sup>nd</sup> Respondent from cutting down indigenous trees, excavating and undertaking any construction on the L R 7336/76 (Suit property) pending the hearing and determination of the application *inter partes*.
2. By an *ex parte* Notice of Motion application dated June 19, 2023, filed under Certificate of urgency, the 2<sup>nd</sup> Respondent moved the court seeking that the court stays its earlier *ex parte* orders granted on June 6, 2023 on an undertaking not to cut down any trees or undertake excavation works pending the *inter partes* hearing of its application dated June 15, 2023 and the Applicant's application dated May 23, 2023.
3. The 2<sup>nd</sup> Respondent cited safety concerns for the students who are in session as well as the preservation of building materials that were already on site. The 2<sup>nd</sup> Respondent further undertook not to cut any trees or undertake any excavations.
4. The Advocate for the 2<sup>nd</sup> Respondent appeared before the court virtually on June 21, 2023 and make arguments in support of the *ex parte* application.



## **Determination.**

5. I have no doubt in my mind that this court has the discretion to either discharge, set aside or vary interim injunctive orders. Discretion however; as has repeatedly been said, must at all times be exercised judiciously and in the interest of justice. This court's business is to do justice at all times.
6. In the case of *St. Patricks Hill School Ltd v Bank of Africa* [2018] eKLR, it was held that a court has an unfettered discretion to discharge, vary or even set aside an injunction order where the ends of justice so demand.
7. In making such a decision, the court is requested to consider if it is unjust to maintain the injunction in force or it is otherwise unjust and inequitable to let the order remain. A similar holding was made in the case of *Bent Development Ltd v 1<sup>st</sup> Community Bank Ltd* [2021] eKLR.
8. Having carefully perused the 2<sup>nd</sup> Respondent's application dated June 19, 2023 and the averments in the supporting affidavit of James Kioko Muthusi as well as the oral arguments of the Advocate for the 2<sup>nd</sup> Respondent, I consider it just and expedient to vary the orders of June 6, 2023 especially so for the sake of the safety of the students in the school. I therefore hereby vary the orders issued by this court on June 6, 2023 and allow the 2<sup>nd</sup> Respondent to continue with the construction on condition that there shall be no cutting down of trees and or excavations pending the hearing and determination of the applications by the Applicant and the 2<sup>nd</sup> Respondent.
9. NEMA is directed to send an inspector to the 2<sup>nd</sup> Respondent's school to prepare a report and file it in this court in the next 14 days on the ongoing constructions and compliance with this court's order.
10. The costs of this application shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JUNE 2023.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

**Mr. Madowo for the 2<sup>nd</sup> Defendant/Applicant.**

**No appearance by the Plaintiff and the 1<sup>st</sup> Defendant.**

**Court Assistant – Yvette.**

**M.D. MWANGI**

**JUDGE**

