



**Helicopter of Christ Church & 4 others v National Environment Management Authority & 4 others (Environment & Land Case E003 of 2023) [2023] KEELC 18927 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18927 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E003 OF 2023**

**J OMANGE, J  
JULY 13, 2023**

**BETWEEN**

**HELICOPTER OF CHRIST CHURCH ..... 1<sup>ST</sup> PLAINTIFF  
THOMAS WAHOME NJUGUNA ..... 2<sup>ND</sup> PLAINTIFF  
MARY NJERI NJUGUNA ..... 3<sup>RD</sup> PLAINTIFF  
GRACE MUTHONI NJUGUNA & 800 OTHERS ..... 4<sup>TH</sup> PLAINTIFF  
DAM ESTAE HOME OWNERS ALLIANCE ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 1<sup>ST</sup>  
DEFENDANT  
REGISTRAR OF LANDS ..... 2<sup>ND</sup> DEFENDANT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT  
DAM ESTAE ASSOCIATION RESIDENCE ..... 4<sup>TH</sup> DEFENDANT  
NAIROBI CITY COUNTY GOVERNMENT ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is the plaintiffs’ application dated January 5, 2023 prays for the following orders;
  1. Spent.
  2. That interim orders be issued granting temporary injunction against the respondents or any other person claiming under them from, interfering, dealing, seizing, evicting and/ or demolishing of the applicants’ property or interfering with the applicants’ peaceful



occupation of the property Land Parcel Nairobi/Block/106 (Nairobi Dam) pending hearing and determination of this Application.

3. That interim orders be issued granting temporary injunction against the respondents or any other person claiming under them from, interfering, dealing, seizing, evicting and/or demolishing of the applicants' property or interfering with the applicants' peaceful occupation of the property Land Parcel Nairobi/Block/106 (Nairobi Dam) pending hearing and determination of this suit.
  4. That interim orders be issued granting temporary injunction against hearing, debating and issuance of directions on the Petition by the 4<sup>th</sup> Defendant dated November 14, 2022 pending hearing and determination of this application.
  5. That interim orders be issued granting temporary injunction against hearing, debating and issuance of directions on the Petition by the 4<sup>th</sup> Defendant dated November 14<sup>th</sup> November 2022 pending hearing and determination of this suit.
  6. That the court visits the church site and examines for itself the status of the matter.
  7. That the area OCS or officer of similar rank do ensure compliance of these orders.
  8. That the honourable court is free to make any and all such orders in furtherance of the above as it deem fit.
2. The application is supported by the affidavit of Thomas Njuguna the 2<sup>nd</sup> applicant in which he depones that the church has been in occupation of Nairobi/Block/106 by dint of a Temporary Occupation License that was granted on September 1, 2018. The 2<sup>nd</sup> applicant depones that the chairman of the 4<sup>th</sup> Respondent has had altercations with the church members over their occupation of the suit property.
  3. The applicant avers that in furtherance of the simmering dispute that the applicants had with the 4<sup>th</sup> Respondent the Respondent filed a petition to the 1<sup>st</sup> Respondent who has now issued a directive that the Plaintiffs vacate the said property. This is in spite of the fact that the Plaintiffs are in lawful occupation and are paying rates for the said property. The plaintiffs pray for injunctive orders.
  4. The 1<sup>st</sup> Defendant filed a notice of preliminary objection that the court lacks jurisdiction to handle this matter in view of Sections 125 and Section 129 of the [Environmental Management and Coordination Act](#). Counsel for the 1<sup>st</sup> Defendant filed submissions in which it was deponed that any decision by the 1<sup>st</sup> Defendant should at first instance be heard by the Tribunal. Counsel referred the court to numerous decisions where the courts have held as much.
  5. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed a defence in which they admitted the court has jurisdiction. They did not file any response or submissions.
  6. The 4<sup>th</sup> Defendant through its chairman filed a Replying Affidavit which centered around the argument that this court does not at first instance have jurisdiction to hear the matter.
  7. The counsel for the 5<sup>th</sup> Defendant filed submissions in which he cited numerous case law that the courts have given on this issue.
  8. From the foregoing the only issue the court has to determine at this stage is whether the court has jurisdiction to determine this matter.
  9. In determining the question of jurisdiction, it is important to appreciate the prayers sought by the plaintiffs. The plaint seeks an order injunction restraining the Defendants and or any other person



from interfering, dealing, seizing, evicting and or demolishing the plaintiffs property or interfering with the plaintiffs peaceful occupation of Nairobi/ Block / 106 ( Nairobi Dam).

10. Section 129 of the [Environmental Management and Co-ordination Act](#) provides that:-

(1) Any person who is aggrieved by—

- a. the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulation;
  - b. the imposition of any condition, limitation or restriction on his licence under this Act or regulations;
  - c. the revocation, suspension or variation of his licence under this Act or regulations;
  - d. the amount of money which he is required to pay as a fee under this Act or regulations;
  - e. the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or regulations;
- may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

11. It is evident that the National Environmental Tribunal is the body that is clothed with jurisdiction to determine at first instance the any appeals against a grant of a licence. The jurisdiction of the Environment and Land Court is appellate as provided by Section 130 of the Environmental Management and Coordination Act.

12. This court and other Superior Courts have had occasion to speak loudly and clearly on this issue.

13. In the case of [Prof. Albert Mumba vs Director General NEMA & 2 Others](#) Tribunal Appeal No. NET/005/2018 as cited in [David Awori & 2 Others on behalf of Gigiri Village Association vs Director General \(NEMA\) & 2 Others](#) [2018] eKLR, it was held that:-

“Any appeal that seeks to challenge or touch on matters surrounding inter alia, the grant or refusal to grant a licence falls within the ambit of Section 129 (1) section 129 (2) covers appeals against acts of omissions of the Director General or the committee of the authority or its agents or matters outside the issue of licence”.

14. Similarly, in the case of [Patrick Musumba vs NLC & 4 Others](#) [2016] eKLR the court relied on the Court of Appeal decision in [Republic vs NEMA Experte Sound Equipment Ltd](#) [2011] eKLR where the court was categorical that:-

“challenges to Environmental Impact Assessment study report and/or Environmental Impact Assessment Licenses shall be made to the National Environment Tribunal established under section 125 of Environment Management and Coordination Act. The tribunal should have been given the first opportunity and option to consider the matter. The Tribunal is the specialized body with capacity to minutely scrutinize the Environmental Impact Assessment study report as well as the licences”.

15. In the case of [Kibos Distillers Ltd & 4 Others vs Benson Ambuti Adega & 3 Others](#) [2020] eKLR the Court of Appeal observed in part:-

“.....As aptly stated by the Supreme Court in [Samuel Kamau Macharia and Another-vs-Kenya Commercial Bank Ltd and 2 Others](#) (Supra), jurisdiction cannot be conferred by



way of judicial craft and innovation. Likewise, I state jurisdiction cannot be conferred by the art and craft of counsel or a litigant drawing pleadings to confer or oust the jurisdiction conferred on a Tribunal or another institution by the Constitution or statute.....”.

The court went further to state:

“.....Further, I observe that the jurisdiction of the ELC is appellate under Section 130 EMCA. The ELC also has appellate jurisdiction under Section 15, 19 and 38 of the Physical Planning Act. An original jurisdiction is not an appellate jurisdiction. A court with original jurisdiction in some matters and appellate jurisdiction in others cannot by virtue of its appellate jurisdiction usurp original jurisdiction of other competent organs. I note that original jurisdiction is not the same thing as unlimited jurisdiction.....”

16. The Supreme Court had the last word on this issue. In the case of Benard Ambuti Andega & 2 Others Vs Kibos Distillers Ltd and 5 others (2020) eKLR the Court restated the importance of a court exercising jurisdiction strictly in accordance to the law....

“This principle has been replicated in a plethora of determinations by this Court, of common cause being that, a Court, even this Court, cannot arrogate itself jurisdiction through crafts of interpretation (see Interim Independent Electoral Commission Constitutional (Advisory Opinion) Application No. 2 of 2011) and a Court ought to exercise its powers strictly within the jurisdictional limits (Peter Oduor Ngoge v. Francis Ole Kaparo & 5 others (supra)).”

17. The question then is whether the plaintiffs in this suit have brought before this court an issue which should be addressed in the tribunal. It is clear from a plain reading of the plaint that the issues giving rise to the cause of action in this case go far beyond the issues which can be addressed at the Tribunal. There are issues around several acts by the 4<sup>th</sup> Defendant which have interfered with the Plaintiffs quiet possession of the suit property. These averments are uncontroverted in entirety by the 4<sup>th</sup> Defendant who chose to only address the jurisdiction issue.
18. Having considered the foregoing, I find that the cause of action is largely due to a dispute between the plaintiffs and the 4<sup>th</sup> Defendant arising from an occupational license granted to the plaintiffs. This court is the right forum to hear the matter.
19. Consequently, I find that the Preliminary Objection has no merit and is dismissed. Costs to abide the determination of the suit.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 13TH DAY OF JULY 2023.**

**JUDY OMANGE**

**JUDGE**

In the presence of: -

Ms Mwangi for the 1<sup>st</sup> Plaintiff

Ms Chepkoech for the 5<sup>th</sup> Defendant

Steve -Court Assistant

