



**Titan Limited v Qiye Company Limited & another (Environment & Land
Case 524 of 2013) [2023] KEELC 20354 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 524 OF 2013
LN MBUGUA, J
SEPTEMBER 28, 2023**

BETWEEN

TITAN LIMITED PLAINTIFF

AND

QIYE COMPANY LIMITED 1ST DEFENDANT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 2ND
DEFENDANT**

RULING

1. This ruling relates to the 2nd Defendant's preliminary objection dated 23.2.2023 as well as the 1st Defendant's Notice of Motion application dated 9.3.2023.
2. The 2nd Defendant's preliminary objection is based on grounds that the Plaintiff's amended plaint dated 9.6.2014 is fatally defective as it offends the provisions of Section 125 and 129 of the *Environmental Management and coordination Act*, 1999 (EMCA) which establishes the National Environment Tribunal to determine matters that have been raised by the Plaintiff herein.
3. The 1st Defendant's application seeks orders that this court lacks jurisdiction to hear and determine the suit by virtue of the provisions of Section 129 (1) of the *Environmental Management and Coordination Act* as read together with regulation 46 of the *Environmental (Impact Assessment and Audit) Regulations*, 2003 thus this suit should be struck out.
4. The Plaintiff has opposed both the application and the Preliminary objection *vide* its replying affidavit sworn on 5.5.2023 by Payal Pareesh Dave, advocate employed by LJA Associates LLP which has conduct of this matter on behalf of the Plaintiff. He avers that that the original jurisdiction of this court is properly invoked under Section 13 of the *Environment and Land Court Act*.



5. He argues that this suit does not seek to challenge the decision by the National Environment Tribunal, but it was necessitated by the flawed procedure characterized by fraud and illegality on the part of the Defendants in obtaining relevant approvals for authorizing the development on the Defendant's suit property. He added that the National Environment Tribunal has no mandate to compensate the plaintiff for any loss suffered.
6. The Preliminary objection and the Notice of Motion application herein were argued orally on 14.6.2023.
7. It was argued for the 2nd defendant that issues relating to Licence under the [Environmental Management and Co-ordination Act](#) (EMCA) fall under the ambit of the National Environment Tribunal. Thus the court cannot arrogate itself jurisdiction due to multifaceted nature of a dispute.
8. In support of their case, the 2nd Defendant relied on the authorities of; [Geoffrey Muthinja Kabiru v Samuel Munga Henry & 1756 others](#) [2015] eKLR, [Jason Edward Matus & Another v Summit Geblot & another; National Environment Authority & 2 others \(Interested Parties\)](#) [2021] eKLR as well as the case of [Benson Ambuti Adega & 2 others v Kibos Distillers Limited & 5 others](#) [2020] eKLR.
9. The 1st Defendant argued that the jurisdiction of this court was ousted by Section 130 of EMCA, and they also adopted the submissions proffered by the 2nd defendant. They relied on the cases of [County Government of Nyeri v National Environment Management Authority](#) [2014] eKLR as well as the case of [Salat Aden Mohamed & Another v Noor Aden Abdullahi & 4 others](#) [2022] eKLR to buttress their case.
10. In opposition, the Plaintiff argued that the reliefs sought by the Plaintiff can only be granted by this court as it seeks such orders as compensation and demolition of structures. Adding that the Plaintiff was not involved on issues of issuance of License, so they don't fall in the category of aggrieved persons under Section 129 of EMCA. In support of their case, the plaintiff relied on the case of [R v National Environmental Tribunal & 2 others Ex parte Athi Water Services Board](#) [2015] eKLR where it was stated that a person who didn't participate in issuance of a License is not an aggrieved person and cant appeal to the tribunal.
11. Other cases proffered by the plaintiff are; [Republic v National Environmental Tribunal & 4 others Ex parte China Road and Bridge Corporation](#) [2016] eKLR, [Owners of Motor vessel 'Lilian S' v Caltex Oil \(Kenya\) Limited](#) [1989] KLR 1, [Sylvester Munyalo Makundi v George Mutemi Makundi & 2 others](#) [2015] e KLR as well as the case of [DT Dobie & Company \(Kenya\) Ltd v Muchina](#) [1982] KLR1.
12. I have considered all the arguments raised herein. The question falling for determination is whether this court has jurisdiction to determine this suit in light of the provisions of Section 129 (1) and 130 of EMCA.
13. The Court has considered the plaint dated 3.5.2013 and amended on 9.6.2014. The Plaintiff enjoined the 2nd Defendant to this suit vide the amendments of 9.6.2014.
14. The Plaintiff's claim is that the 1st Defendant's development on the property known as LR No. 3734/22 contravenes Nairobi City Council Planning and Zoning policy and decreases the quality of the environment surrounding the Plaintiffs' adjacent property known as LR No.3734/23.
15. One of the key consideration in this matter is " the passage of time". This suit is now 10 years old. The defence of the 1st defendant was filed close to 9 years ago on 16.10.2014, wherein they indicated that the proper forum to ventilate the matter would be the NET and " will at the earliest available opportunity raise a Preliminary Objection for the suit to be struck out". The 1st defendant certainly did



not raise the issue at the earliest opportunity. As for the 2nd defendant, they didn't even raise the issue in their pleading equally filed 9 years ago on 12.11.2014. The defendants have not given any plausible explanation as to why the issues are being raised at this stage of the suit, when the matter has marked time in court for almost a decade.

16. It is common ground that the dispute resolution mechanisms set out under Section 129 and 130 of EMCA have defined timelines. The passage of time would certainly not allow the ventilation of the dispute through the laid down mechanisms set out under the aforementioned statute. On this point alone, I would disallow both the application and the preliminary objection.
17. It is also pertinent to note that there are developmental and licensing issues as well as issues of rights to a clean and healthy environment raised by the plaintiff which are intertwined and cannot be severed. What more, some of the reliefs sought by the plaintiff includes a claim for damages, of which the NET cannot grant such orders.
18. Faced with a similar issue in *Taib Investment Ltd v Fahim Salim Said & 5 Others* [2016] eKLR, the court held that it had jurisdiction under Article 162(2)(b) of the *Constitution* to determine the case.
19. Further, in the case of *Dominic G. Ng'ang'a & another v Director General National Environment Management Authority & 4 others* [2020] eKLR it was held that:

“The court finds that the claim herein is a claim relating to violation of right to clean environment and even though numerous tribunals dealt with the issuance of licenses and approvals, those issues cannot be dealt separately and thus this Court is clothed with jurisdiction to deal with the claim herein as provided in Article 162 (2) (b) of the *Constitution*”.
20. The upshot of this ruling is that the Preliminary Objection dated 23.2.2023 and the Application dated 9.3.2023 are found to have no merits. They are hereby dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

