



**Ola Energy Kenya Limited v Nyiro & 5 others (Environment and Land Appeal
33 of 2023) [2023] KEELC 20140 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20140 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL 33 OF 2023
NA MATHEKA, J
SEPTEMBER 26, 2023**

BETWEEN

OLA ENERGY KENYA LIMITED APPELLANT

AND

RAPHAEL MWANDOE NYIRO 1ST RESPONDENT

ATHMAN MZEE HAJI 2ND RESPONDENT

OSBORN AMULIODO SENA 3RD RESPONDENT

KOMORO MORRIS 4TH RESPONDENT

BRIAN OTIENO OMONDI 5TH RESPONDENT

NATIONAL ENVIRONMENT 6TH RESPONDENT

RULING

1. The application is dated 24th April 2023 and is brought under Order 42 Rule 11, and Order 51 Rule 1 of the [Civil Procedure Rules](#), Sections IA, 1B, 3A and 79B of The [Civil Procedure Act](#), Article 159 of [the Constitution](#) seeking the following {orders: -
 1. That service of this application be dispensed with in the first instance,
 2. That this application be heard ex-parte in the first instance due to the urgency of the relief sought herein,
 3. That the Honourable Court be pleased to make and order/direction that the hearing of the appeal filed herein does proceed on a priority basis and before lapse of the Development Approval/Permit and Construction Permit granted to the Appellant.



4. That in the alternative, the Honourable Court be pleased to direct and/or make an order that the Development Approval/Permit No. P/2022/00355 issued by the County Government of Mombasa and Construction Permit Nov EPRA/PET/5/349 issued by the Energy Petroleum Regulatory Authority be extended pending the hearing, determination and outcome of this Appeal.
5. That the costs of this application be provided for.
2. It is based on the grounds that the Appellant/Applicant, being dissatisfied with the decision of the National Environmental Tribunal delivered on 19th October 2022, has preferred an appeal to the Environmental and Land Court against both the decision and order to cancel/revoke the ETA License, Which Appeal has a prima facie chance of success. That the outcome of the Appellant's Appeal/ if successful, will enable it to continue the development of the site and construction of its Marine Terminal Project the subject of this Appeal by decommissioning and erecting a new LPG terminal as per the terms of the EIA License which was revoked/cancelled by order of the impugned Judgment. That however the Development Approval/Permit issued by the County Government of Mombasa and the Construction Permit issued by the Energy & Petroleum Regulatory Authority, which are time-bound are set to lapse on
3. June 2023 and 12th July, 2023 respectively, unless this appeal will have been concluded before those dates. That the Appellant/Applicant is apprehensive that if the orders sought herein are not granted to have the Appeal herein determined in good time and the development approval/permit construction permit lapses the outcome of the appeal, if successful will be rendered otiose and an academic exercise. That the Applicant has done all that is within its powers and moved Court without unreasonable delay to have the Appeal herein progress in good time and be determined expeditiously.

The Respondent in their ground of opposition stated that the application is frivolous, scandalous and vexatious. That this application has no merit and is an abuse of the court process. That the application is not founded on any known provision of the law. That the application purports to place financial gain before environmental wellness. That the order sought is directed at the County Government of Mombasa and EPPRA who are not parties to this case and would therefore have been condemned unheard thus an illegality. That no effort t been made to serve the said parties with the present application whatsoever. That the said licenses can be applied for afresh if there was need to. That there is no evidence placed before the court to show that the licenses fees for these permits are astronomical. In fact, the statutory fees for these licenses are very minimal. That there is currently no EIA license for the impugned project the same having been cancelled by the National Environment Tribunal through a process of law and therefore the idea that the appellant can be entertained to imagine constructing without the said license cannot arise. That the application is premature and has not been filed in ignorance of the law.

4. This court has considered the application and submissions therein. The Applicant stated that the Development Approval/Permit issued by the County Government of Mombasa and the Construction Permit issued by the Energy & Petroleum Regulatory Authority, which are time-bound are set to lapse on June 2023 and 12th July, 2023 respectively, unless this appeal will have been concluded before those dates. This are third parties not included in the instant appeal and the court cannot make orders extending orders issued by them pending the hearing and outcome of this appeal. These parties have not been heard. Secondly it is noted that the appeal revolves around the EIA License issued by NEMA on the 31st May 2021 and the orders sought are



- a. That the appeal against the judgement of the learned Chairperson and members of the National Environmental Tribunal in Mombasa N.E.T.A No. 19 of 2021 delivered on 19th October, 2022 be varied and/or set aside.
 - b. That the decision of the National Environmental Management Authority made on 31st May, 2021 granting an EIA License to the Appellant be confirmed.
 - c. That the EIA License issued on the 31st May, 2021 to the Appellant be reinstated.
 - d. That the Appellant be awarded costs of the Appeal.
5. A party is bound by their pleadings and this court has no jurisdiction to make orders against third parties not enjoined in this suit. I find that this application is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26TH DAY OF SEPTEMBER 2023.

N.A. MATHEKA

JUDGE

