

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL APPEAL NO. 176 OF 2014

COUNTY GOVERNMENT OF MACHAKOS APPELLANT

VERSUS

EXPORT PROCESSING ZONE AUTHORITY RESPONDENT

DIRECTIONS UNDER SECTION 79B OF THE CIVIL PROCEDURE ACT

1. I have considered the two principal grounds of appeal set out in the Memorandum of Appeal herein dated 13th August 2014, that the lower court erred in holding that it had no jurisdiction in matter and that the suit was bad for lack of a substantive suit.
2. While the intending appellant may have a case that the subject matter of the suit before the lower court was not one that the provisions of the Water Act 2002 require that it be lodged with the Water Appeal Board, and therefore the Magistrate's Court may have jurisdiction, the application by Notice of Motion dated 24th June 2014 which originated the proceedings seeking "*an injunction restraining he respondent form preventing or obstructing exhausters using Kinanie water treatment plant from disposing their waste water in the plant or disconnecting any connections to the trunk sewer pending hearing and determination of this application*" had no substratum in the form of a substantive suit in that behalf upon which such relief could be sought.
3. The overriding objective under section 1A (1) of the Civil Procedure Act is set out as follows:

"The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

4. The summary rejection of this appeal meets the requirements of the overriding objective by facilitating the expeditious disposal, proportionate and cost effective resolution of the dispute herein without the cost and time taken in lengthy appeal process in a matter where the appeal is as here unmeritorious as without a substantive suit the Notice of Motion of 24th June 2014 was wholly incompetent.
5. Accordingly, the Appeal is rejected summarily pursuant to section 79B of the Civil Procedure Act.

Dated the 7th day of October 2015.

EDWARD M. MURIITHI

JUDGE