



**Nyauke v Homa-Bay Sub-County Administrator & 5 others (Environment & Land Petition E001 of 2022) [2022] KEELC 2433 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 2433 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT & LAND PETITION E001 OF 2022  
GMA ONGONDO, J  
APRIL 28, 2022**

**BETWEEN**

**SAMUEL NYAUKE ..... PETITIONER**

**AND**

**HOMA-BAY SUB-COUNTY ADMINISTRATOR ..... 1<sup>ST</sup> RESPONDENT**

**OFFICER COMANDING POLICE DIVISION HOMA-BAY ... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**EARNEST BIN AMITO ..... 4<sup>TH</sup> RESPONDENT**

**JOINT BASE NAVA ENTERPRISES LIMITED ..... 5<sup>TH</sup> RESPONDENT**

**DIRECTOR GENERAL NATIONAL ENVIRONMENT MANGEMENT  
AUTHORITY (NEMA) ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. The instant ruling has been precipitated by the twin pending matters namely;
  - a) Judgment in respect of this petition dated February 2, 2022 and duly lodged in court on February 3, 2022 set for delivery today (the pending judgment herein)
  - b) An application by way of notice of motion dated 2March 1, 2022 and filed herein on March 25, 2022 by the petitioner, Samwel O. Nyauke (the pending application herein).
2. As at March 2, 2022, the petitioner and the 1<sup>st</sup> to 5<sup>th</sup> respondents had filed their submissions in regard to this petition. Therefore, judgment was set as noted in paragraph 1 (a) hereinabove and the 6<sup>th</sup> respondent's counsel was ordered and directed to file and serve submissions within three (3) days from that date. Accordingly, on March 8, 2022, the 6<sup>th</sup> respondent's counsel filed the submissions dated March 1, 2022.



3. On March 25, 2022, the petitioner mounted the pending application seeking review of this court's orders made on March 2, 2022. The pending application targets to arrest the pending judgment.
4. Notably, the pending application is an interlocutory matter in the present petition. Naturally, it calls for fair hearing and determination on merits even before the disposal of the petition by virtue of articles 48, 50 (1) and 25 (c) of the Constitution of Kenya, 2010.
5. A fair opportunity to be heard (the audi alterman partem Rule) is a fundamental principle of justice; see Halsbury's Laws of England 5<sup>th</sup> Edition 2010 volume 61 paragraph 639.
6. It is trite law that the right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system; see the decision in *Onyango Oloo-vs-Attorney General* (1986-1989) EA 456 applied in the case of James Kanyiiita Nderitu and another-vs-Marios Philotas Gbikas and another (2016) eKLR.
7. Moreover, this court is guided by sections 1A, 1B, 3 and 3A of the Civil Procedure Act Chapter 21 Laws of Kenya alongside section 3 of the Environment and Land Court Act, 2015 (2011) in this matter. The bottom line is to meet the best ends of justice.
8. Wherefore, I hereby order and direct thus;
  - a) There be stay of the pending judgment to pave way for hearing on merits the pending application dated March 21, 2022 and filed in court on March 21, 2022.
  - b) The pending application be heard by way of written submissions. The applicant/Petitioner to file and serve submissions within three (3) days from this date while the respondents' counsel to file and serve submissions within seven (7) days from the date of service of the applicant's submissions.
  - c) The parties are still encouraged to embrace Alternative forms of dispute resolution under articles 60(1) (g) and 159 (2) (b) of the Constitution of Kenya, 2010
  - d) Ruling on the pending application dated March 21, 2022 and filed in court on March 25, 2022 fixed for May 31, 2022.

**RULING DATED, DELIVERED AND SIGNED AT HOMA BAY THIS 28<sup>TH</sup> DAY OF APRIL 2022.**

**G.M.A ONG'ONDO**

**JUDGE**

The Petitioner, present in person.

Mr. A. Oluoch, learned counsel for the 5<sup>th</sup> respondent and holding brief for learned counsel Mr. R. Ochieng for the 4<sup>th</sup> respondent.

Mr. Ngararu Maina, learned counsel for the 6<sup>th</sup> respondent

Terence, court assistant.

**G.M.A ONG'ONDO**

**JUDGE**

