



**Simba Corporation Limited v Director-General, National Environment Management Authority (NEMA) & Avic International Real Estate (EA) Ltd (Environment and Land Appeal 7 of 2020) [2022] KEELC 246 (KLR) (20 April 2022) (Judgment)**

*Simba Corporation Limited v Director-General, National Environment Management Authority (NEMA) & another [2022] eKLR*

Neutral citation: [2022] KEELC 246 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL 7 OF 2020**

**JO MBOYA, J**

**APRIL 20, 2022**

**BETWEEN**

**SIMBA CORPORATION LIMITED ..... APPELLANT**

**AND**

**THE DIRECTOR GENERAL, NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) ..... 1<sup>ST</sup> RESPONDENT**

**AVIC INTERNATIONAL REAL ESTATE (EA) LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction:**

1. The subject matter herein has had a long and chequered history. For clarity, the matter herein began when the current Appellant filed a Notice of Appeal dated the 15<sup>th</sup> September 2015, before the National Environment Tribunal, whereby same challenged the grant of the Environmental Impact Assessment License number NEMA/EIA/PSL/2038, to and in favor of the 2<sup>nd</sup> Respondent herein.
2. Upon the filing and/or lodgment of the said Notice of Appeal, the 2<sup>nd</sup> Respondent filed a Notice of Preliminary Objection before the National Environmental Tribunal, seeking to have the Notice of Appeal filed and/or lodged by the Appellant herein to be struck out on account of having been filed out of time, albeit without leave of the Tribunal.
3. It is imperative to note that the Notice of Preliminary Objection under reference was thereafter heard and disposed of by the tribunal, culminating into a ruling, which was rendered on the 18<sup>th</sup> December



2015, whereby the Preliminary objection was upheld. Consequently, the Notice of Appeal filed by the Appellant was struck out.

4. Following the striking out of the Notice of Appeal by the tribunal, the current Appellant, felt aggrieved and/or dissatisfied and thereafter proceeded to and filed an Appeal to this court vide ELC CIVIL APPEAL NO. 100 OF 2015, wherein same challenged the Decision and/or Ruling of the tribunal rendered on the 18<sup>th</sup> December 2015.
5. Suffice it to note, that the Appeal under reference was indeed heard and same was allowed vide judgment rendered on the 20<sup>th</sup> December 2017, whereupon this court, (differently constituted), set aside the order of the National Environment Tribunal and reinstated the Notice of Appeal for hearing and determination on merits.
6. Premised on the judgment of the court,( details in terms in the preceding paragraph), the matter was returned to the National Environment Tribunal to be heard and determined on merit.
7. However, after several failed attempts to have the matter heard and determined on merits, the Tribunal yet again rendered itself on the 31<sup>st</sup> January 2020, this time dismissing the Appeal for Want of prosecution and failure to comply with the directives of the Tribunal.
8. It is the ruling and/or decision of the National Environment Tribunal rendered on the 31<sup>st</sup> January 2020, whereby same dismissed the Appeal for want of prosecution and non- compliance with the directions of the Tribunal that has provoked the subject Appeal.

#### **Background:**

9. Vide Memorandum of Appeal dated the 26<sup>th</sup> February 2020, the Appellant herein has appealed against the Ruling and or Decision of the National Environment Tribunal on various grounds, namely;
  - i. The Honourable Members of the Tribunal erred in law and fact by dismissing the Appeal while failing to hear and determine a pending Application seeking orders that the 2<sup>nd</sup> Respondent be found and held in Contempt of the Tribunal's Orders dated the 15<sup>th</sup> November 2019.
  - ii. The Honourable Members of the Tribunal erred in law and fact by disregarding the Parties Mutual Consent not to proceed with the hearing on the 29<sup>th</sup> January 2020 and 31<sup>st</sup> January 2020, due to ongoing discussions between the Appellant and the 2<sup>nd</sup> Respondent as to resolving issues arising from the Appeal, as well as the need for the Appellant to respond to the 2<sup>nd</sup> Respondent's List of Documents and the 2<sup>nd</sup> Respondent to respond to the Application for Contempt.
  - iii. The Honourable Members of the Tribunal erred in law and fact by denying to the Appellant the opportunity to respond the List of documents by the Respondent served upon them on the 28<sup>th</sup> January 2020 and also to make a available the Appellant's witnesses before hearing on the 3<sup>st</sup> January 2020.
  - iv. The Honourable Members of the Tribunal erred in Law and in fact in failing to find and hold that the chequered appeal was not entirely due to the Appellant's request, but that all the adjournments were as a result of the Respondents' mutual consent or tribunal's lack of quorum.
  - v. The Honourable Members of the Tribunal erred in law and fact by failing to send a Notice to the Appellant for Non-compliance before Dismissing the Appeal and thus denying the



Appellant an opportunity to Show cause why its witnesses did not appear on the 31<sup>st</sup> January 2020.

- vi. The Honourable Members of the Tribunal erred in law and in fact in dismissing the Appeal and consequently denying the Appellant an opportunity to have her Appeal heard on merits and thereby causing a grave injustice to the Appellant.
- vii. The Honourable Members of the Tribunal erred in Law and in fact in denying the Appellant's request for adjournment without giving any basis for that refusal.
- viii. The Honourable Members of the Tribunal, Misinterpreted the appeal by dismissing same in the circumstances which were extreme and hence the cause taken by the tribunal should not have been applied.
- ix. The Honourable Members of the Tribunal should not have been suite in giving a short notice on 29<sup>th</sup> January 2020 for hearing to be held on 31 January 2020, and as such erred in law and fact by failing to give the Appellant reasonable time to prepare its case, which is a cardinal rule of Natural Justice and thus the Appellants appearance on the 31<sup>st</sup> January 2020, was made under extreme, but unfair pressure from the tribunal.
- x. The Honourable Members of the Tribunal erred in law and fact by deeming the Appellant's request for adjournment as unnecessary and dismissing the Appeal at the expense of proper and judicious administration of justice with fairness to the Appellant.

#### **Submissions:**

10. The Appeal herein came up for directions on the 25<sup>th</sup> October 2021, when directions were given that same be canvased and /or be disposed of by way of written submissions. In this regard, timelines were thereafter prescribed for the filing and exchange of the written submissions.
11. Nevertheless, despite the clear stipulations as pertains to timelines for the filing and service of written submissions, which had been capped at 21 days for and on behalf of the Appellant, the Appellant herein was only able to file the written submission on the 24<sup>th</sup> January, 2022, after a duration of three months from the date, when directions were first issued.
12. On the other hand, the 1<sup>st</sup> Respondent filed her written submissions on the 25<sup>th</sup> January 2022, that is within one day from the date, when same was served with the Appellant's Written submissions.
13. On the part of the 2<sup>nd</sup> Respondent, the written submissions were filed on the 11<sup>th</sup> March 2022, and with the filling of the written submissions, by and/or on behalf of the 2<sup>nd</sup> Respondent, the stage was thus set, for the crafting and delivery of the Judgment.
14. Briefly, the Appellant herein has submitted that the Honourable Members of the National Environmental Tribunal erred in law and in fact by dismissing the Appeal while failing to hear and determine a pending Application by the Appellant in respect of which the Appellant was seeking orders that the 2<sup>nd</sup> Respondent be found and held in Contempt of the Tribunal's orders dated the 25<sup>th</sup> November 2019.
15. According to the Appellant, it was incumbent upon the National Environment Tribunal to hear and dispose of the Application for contempt, which had (sic) been filed before proceeding to hear and deal with the Appeal.
16. In the premises, the Appellant contends that in declining and/or refusing to hear the Application for Contempt and in lieu thereof proceeding to entertain and/or deal with the Appeal, the Members of



the Tribunal erred in fact and in law and in this regard, the decision and/or ruling by the tribunal ought to be set aside, reviewed and/or vacated.

17. In support of the foregoing submissions, the Appellant has relied on various decisions including the case of Econet Wireless (K) Ltd v The Minister for Information and Communication & Another (2005) eKLR, Teachers Service Commission v Kenya National Union of Teachers & 2 Others (2013) eKLR.
18. In respect of other grounds of appeal, the Appellant has submitted that the Honourable Members of the Tribunal erred in declining to grant to and in favor of the Appellant an adjournment and reasonable opportunity to enable the Appellant to ready her witness and prepare her case.
19. In this regard, the Appellant has contended that by denying and or depriving the Appellant of an adjournment, the Honourable Members of the Tribunal thereby denied the Appellant the right to Fair Hearing which is critical and paramount.
20. It is the Appellant's further submissions that in dismissing the Appellant's Appeal for Want of prosecution and for non-compliance with the directions of the tribunal, the tribunal failed to comply with and/or abide by own Rules and in particular, Rules 19, 21 and 22 of the National Environment Procedure Rules, 2003.
21. In the premises, the Appellant herein has submitted that the dismissal of the Appeal by and/or at the instance of the tribunal has denied and/or deprived same of a legitimate right to have the Appeal heard and determined on merits.
22. Consequently, the Appellant has contended that her rights to Natural Justice, Fair Hearing and Fair Administrative Action, which are paramount, have therefore been breached, infringed upon and/or violated.
23. On her part, the 1<sup>st</sup> Respondent herein has submitted that the Appellant herein has hitherto been afforded sufficient latitude and/or opportunity to prosecute the Appeal, but despite the opportunity being availed, the Appellant has been non-committal in prosecuting the Appeal.
24. It has been submitted that as a result of the conduct of the Appellant, the Tribunal has heard to grant various adjournments, albeit with warnings that the Appeal shall no longer be adjourned. For clarity, the 1<sup>st</sup> Respondent pointed out the proceedings of 27<sup>th</sup> January 2019.
25. It was the 1<sup>st</sup> Respondent's further submissions that borne out of the many adjournments, which had occasioned prolonged delay in the hearing and determination of the Appeal, the subject matter was mentioned before the tribunal on the 27<sup>th</sup> September 2019, when the tribunal issued directions as to the hearing and disposal of the Appeal. Besides, the Tribunal thereafter ordered and or directed that the Appeal be mentioned on the 25<sup>th</sup> November 2019, for purposes of fixing a date for hearing.
26. Further, counsel submitted that come the 25<sup>th</sup> November 2019, the matter was indeed mentioned and same was fixed for hearing on the 29<sup>th</sup> January 2020 and the tribunal issued directions to the Parties to ensure that same were ready for the hearing of the Appeal.
27. Be that as it may, counsel for the 1<sup>st</sup> Respondent submitted that on the 29<sup>th</sup> January 2020, counsel for the Appellant herein was not ready to proceed with the hearing of the Appeal and same sought for an adjournment, which was reluctantly granted by the Tribunal, but with further directions that the Appeal shall proceed for hearing on the 31<sup>st</sup> January 2020.
28. The 1<sup>st</sup> Respondent has further submitted that despite the clear orders and/or directions by the Tribunal, the Appellant herein, failed to ready herself and come the 31<sup>st</sup> January 2020, the counsel



- for the Appellant, yet again applied for an adjournment, but which application was declined by the tribunal. For clarity, the reasons for the refusal to grant the adjournment were explained and are contained in the elaborate ruling rendered on the 31<sup>st</sup> January 2020.
29. Based on the foregoing, the 1<sup>st</sup> Respondent has submitted that the Appellant herein has been afforded more than ample latitude and/or opportunity to prosecute and/or ventilate her Appeal, but instead of doing so, same has engaged the Tribunal in procrastinations, dithering and merry go round, with the net effect of delaying the hearing and eventual disposal of the Appeal.
  30. In the premises, the 1<sup>st</sup> Respondent has submitted that what is essential is for a Party to be afforded an opportunity to be heard and that once a Party has been afforded an opportunity to be heard, it is for such a Party to appropriate the opportunity and that, if the Party is not keen to do so, then the Party can only blame herself and not otherwise.
  31. In the support of the foregoing submissions, the 1<sup>st</sup> Respondent has invoked and relied in the decision in the case of *Mbithuka Titus v Jackline Mutindi* (2020) eKLR, where the Court of Appeal considered the importance of the Concept of Natural Justice and the opportunity to be heard and the consequences of the failure by a Party to appropriate the opportunities being granted.
  32. Finally, the 1<sup>st</sup> Respondent further submitted that the issue of grant of an adjournment is a matter of the discretion of the court and that in the circumstances, the tribunal properly took into account the age of the appeal, the number of times the Appellant had been afforded indulgence, the nature of directions that the tribunal had hitherto issued and the general conduct of the Appellant and that the tribunal was right to decline to grant the adjournment in favor of the Appellant.
  33. In the premises, the 1<sup>st</sup> Respondent, has therefore submitted that the Appellant's Appeal herein, is devoid and/or bereft of merits and that indeed same is an abuse of the Due Process of the court.
  34. On her part, the 2<sup>nd</sup> Respondent submitted that the subject Appeal before the court is an academic exercise taking into account that the Appellant herein had complained against the issuance of the NEMA license by the 1<sup>st</sup> Respondent herein, in favor of the 2<sup>ND</sup> Respondent and which license was issued in respect of the intended project which was to be carried out and/or undertaken on L.R No's 209/71/1, 209/73/6, 209/74/3, 209,74/4 and 209/74/6.
  35. It is the 2<sup>nd</sup> Respondent's submissions that following the checkered history of the subject matter, including the dismissal of the Notice of Appeal which was hitherto filed before the National Environment Tribunal, which was latter on reversed by the Environment and Land Court and the subsequent dismissal of the Appeal on the 31<sup>st</sup> January 2020, the Project complained of, comprising of the Iconic 43 Floor building situated in Westlands, was concluded and is currently operational.
  36. Based on the foregoing, it is the 2<sup>nd</sup> Respondent's submissions that the NEMA license, which was the subject of the Appeal before the National Environment Tribunal, which Appeal was dismissed, has since been subsumed by the completion of the Project and hence the continuation of the proceedings herein is an academic exercise.
  37. On the other hand, the 2<sup>nd</sup> Respondent has further submitted that the Appellant herein was afforded sufficient latitude and/or opportunity, to prosecute her appeal by the tribunal, but despite all the opportunity which was granted, the Appellant herein, was neither keen nor ready to proceed with the Appeal and thus occasioned several adjournments over and in respect of the matter.
  38. Be that as it may, the 2<sup>nd</sup> Respondent has submitted that on the 25<sup>th</sup> November 2019, the Appeal was mentioned before the Tribunal and the Tribunal proceeded to and fixed the matter for hearing in the



presence of all the Parties. Besides, it has been submitted that the Tribunal also proceeded to and issued directions advising the Parties to ready their respective witnesses for hearing.

39. For clarity, the 2<sup>nd</sup> Respondent has further pointed out that all the Parties were afforded sufficient opportunities to prepare their respective cases.
40. Nevertheless, the 2<sup>nd</sup> Respondent has submitted that come the scheduled hearing date, namely, the 29<sup>th</sup> January 2020, the Appellant herein was not ready and same sought for an adjournment, which adjournment was reluctantly granted by the tribunal, but with a caution that the matter shall proceed on the 31<sup>st</sup> January 2020.
41. It is the 2<sup>nd</sup> Respondent's further submissions that despite the directions by the tribunal that the matter shall proceed for hearing on the 31<sup>st</sup> January 2020, the Appellant herein did not appear to take the directions and/or orders of the tribunal seriously and when the hearing date reached, the Appellant returned to court with yet another application for adjournment.
42. It is the 2<sup>nd</sup> Respondent's submissions that the tribunal was well within her mandate and/or jurisdiction to decline to grant the adjournment and thereafter to proceed to dismiss the Appeal for Want of prosecution and non-compliance with the directions and/or orders of the tribunal.
43. Based on the foregoing, the 2<sup>nd</sup> Respondent has submitted that the Appellant like all other Parties are enjoined to adhere to and/or comply with the orders and/or directive of the court and in this case, the Orders of the Tribunal.
44. Further, the 2<sup>ND</sup> Respondent submitted that Court orders are not mere suggestions, opinions or points or views, which Parties can chose to obey or not to obey. In this regard, counsel for the 2<sup>nd</sup> Respondent invited the court to take cognizance of the decision in the case of Teachers Service Commission v Kenya National Union of Teachers & 2 Others (2013) eKLR.

#### **Issues For Determination:**

45. Having reviewed the Grounds of Appeal at the foot of the Memorandum of Appeal dated the 26<sup>th</sup> February 2020 and having considered the Record of Proceedings before the National Environment Tribunal and having similarly, considered the written submissions filed by and on behalf of the Parties herein, the following issues do arise and are germane for determination;
  - a. Whether the Honourable Court was enjoined to hear the pending Application by the Appellant seeking orders that the 2<sup>nd</sup> Respondent be found and held in contempt of the tribunals orders dated 25<sup>th</sup> November 2019, when such Application had not been fixed for hearing and had not attracted any directions by the Tribunal.
  - b. Whether the failure to hear the pending Application for Contempt, which had no hearing date, but was brought to the notice of the Tribunal on the 29<sup>th</sup> January 2020, can form the basis of a Ground of Appeal in respect of orders issued on the 31<sup>st</sup> January 2020.
  - c. Whether the Tribunal properly exercised her discretion to decline the adjournment sought by the Appellant and whether the consequential orders Dismissing the appeal were lawful.

#### **Analysis And Determination**

**Issue Number 1 & 2 Whether the Honourable Court was enjoined to hear the pending Application by the Appellant seeking orders that the 2<sup>nd</sup> Respondent be found and held in Contempt of**



**the Tribunals orders dated 25<sup>th</sup> November 2019, when such Application had not been fixed for hearing and had not attracted any directions by the tribunal.**

Whether the failure to hear the pending Application for Contempt, which had no hearing date, but was brought to the Notice of the tribunal on the 29<sup>th</sup> January 2020 can form the basis of a Ground of Appeal in respect of orders issued on the 31<sup>st</sup> January 2020.

46. It is common ground that the Appeal before the National Environment Tribunal was fixed for mention on the 27<sup>th</sup> September 2019, on which date the tribunal issued directions pertaining to the hearing and disposal of the Appeal. For clarity, part of the directions that were given included that the Parties were to ready their respective cases and that there were to be no further adjournments.
47. On the other hand, after the directions which were issued on the 27<sup>th</sup> September 2019, the matter was ordered and/or directed to be mentioned on the 25<sup>th</sup> November 2020 for purposes of fixing a hearing date.
48. Suffice it to note, that when the matter was mentioned on the 25<sup>th</sup> November 2019, the Appeal herein was fixed and/or scheduled for hearing on the 29<sup>th</sup> January 2020 and the Hearing Date was fixed in the presence of all the Parties.
49. Be that as it may, when the Appeal came up for hearing on the 29<sup>th</sup> January 2020, the Appellant herein raised the issue of Contempt which have been filed by and/or on behalf of the Appellant and which Application had not attracted any directions and had no hearing date in respect thereof.
50. Nevertheless, even though no directions had been issued on the Application which had just been filed by the Appellant and no hearing date had not been given, the Appellant opined that the mere filing of such an Application would abate and/ or avert the scheduled hearing before the tribunal.
51. In my humble view, the Appellant herein cannot be allowed to use an orthodox tactic to curtail and/ or avert the scheduled hearing, by throwing an Application for Contempt on the face of an imminent hearing and thereby seeking to use and/or rely on such Application to delay, defeat and or otherwise, obstruct the hearing.
52. If such mechanism were allowed, then litigants, who are not keen to proceed with scheduled hearing, will consciously and/or deliberately throw in an Interlocutory Application on the face of the scheduled hearing and thereby seek to defeat the scheduled hearing, albeit on the basis of such belated Applications.
53. Whereas there certain instances that may require Applications to be filed on the face of imminent hearing, but a court of law, should be alive to the antics used and applied by Parties, to delay, obstruct and/or defeat hearings and to evaluate such applications on a case by case basis, before issuing appropriate directions as to whether to proceed with the scheduled hearing or otherwise.
54. In respect of the subject matter, it must not be lost on the court that the Appeal was mounted in the year 2015, and that it had previously, been dismissed on a technicality, before the court reinstated and/ or restored the Appeal and directed that same be heard and disposed of on merits.
55. It is also worthy to note, that between the time the Appeal was reinstated for hearing and determination on merits, same came up for hearing on various occasions before the Tribunal, but more often than not, the Appellant was never ready to prosecute the Appeal. Consequently, the Appeal was variously adjourned.
56. In a nutshell, taking into account the antecedent background and coupled with the fact that the Application for contempt had just been filed on the face of the scheduled hearing, I find and hold that



the honourable tribunal was within her jurisdiction to direct that the Appeal shall proceed for hearing and not otherwise.

57. Notwithstanding the foregoing, another perspective that does arise is that the directive that the Appeal shall proceed to hearing as opposed to Application, was made on the 29<sup>th</sup> January 2020. Consequently, if the Appellant was aggrieved by the directions, made by the tribunal, it was incumbent upon the Appellant to file her appeal against the orders made on the 29<sup>th</sup> January 2020.
58. Suffice it to note, that no Appeal was ever filed and/or mounted against the directions and/or the orders made on the 29<sup>th</sup> January 2020 and in this regard, Ground one of the Appeal is therefore misconceived and legally untenable.
59. In the premises, I would dismiss ground one of the appeal.

### **Issue Number 3**

#### **Whether the Tribunal properly exercised her Discretion to decline the adjournment sought by the Appellant and whether the consequential orders Dismissing the Appeal were lawful.**

60. As concerns issue number three herein, it is worthy to note that same encompasses Grounds 2 to 10 of the Memorandum of Appeal. For clarity, the said grounds, seek to challenge the exercise of the Tribunal's discretion in granting and/or refusing to grant an adjournment.
61. Be that as it may, the starting point in dealing with grounds 2 to 10 of the Memorandum of Appeal lies in appreciating that the grant of an adjournment is an exercise of judicial discretion, belonging to the tribunal, judicial officer and the concerned court and that the Judicial officer is obliged to exercise such discretion, albeit in a judicious manner.
62. On the other hand, it is also important to note that in matters pertaining to exercise of discretion, the first Appellate court or better still an appellate court, would be reluctant to interfere with the Discretion of the Court of first instance, unless certain circumscribed conditions are met, established and/or satisfied.
63. In support of the foregoing observation, I beg to adopt and restate the holding in the case of Mbogo v Shah [1968] EA page 93 in which De Lestang VP (as he then was) observed at page 94:

“I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
64. In respect of the subject matter, the Appellant herein was duly informed and/or advised, as early as the 27<sup>th</sup> September 2019, that the tribunal shall no longer grant any further adjournment in respect of the Appeal, given the age of the appeal and the length of delay in the hearing and determination of the Appeal.
65. Secondly, on the 25<sup>th</sup> November 2019, the tribunal again reiterated the same position to the Parties that no further adjournment would be granted in respect of the Appeal and the Parties were advised to ready their respective witnesses for hearing.



66. It is worthy to note, that these directives and/ or Orders by the court/tribunal were aimed by fast tracking of hearing and disposal of the appeal before it, taking account the age of the Appeal, as well as the gravity of the project that was at the foot of the dispute.
67. It is my humble view, that the orders and/or directives of the tribunal, which were issued on the 27<sup>th</sup> September 2019 and repeated on the 25<sup>th</sup> November 2019, were not mere opinions or suggestion, which could be ignored, disregarded and/or side stepped by the Parties, the Appellant no excepted.
68. Simply put, the Parties herein were bound to heed and/or comply with the directives of the tribunal and in the event of failure to comply, it was obvious that the Tribunal was seized of capacity to enforce her directions and/ or implement same.
69. As concerns the importance of compliance with the directives of the court/tribunal, I can do no better than to invoke and endorse the holding of the Court in the case of Teachers Service Commission v Kenya National Union of Teachers & 2 Others (2013) eKLR, where the Court held as hereunder;

“ A court order is not a mere suggestion or an opinion or a point of view.

It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door.

If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

70. Notwithstanding the foregoing, come the 29<sup>th</sup> January 2020, the Appellant herein made an Application for adjournment before the tribunal, even though same was privy to and/or alive to the previous directions by the Tribunal on fast tracking the hearing and disposal of the Appeal.
71. Reluctantly though, the Tribunal acceded to and/or granted the Application for adjournment by the Appellant but made further directions that the Appeal was to proceed for hearing on the return date, namely, the 31<sup>st</sup> January 2020 and in default, the tribunal shall be at liberty to make appropriate directions and/or orders.
72. Suffice it to state, that the Tribunal was making further orders or directives, which ought to have guided the Appellant and place same on notice, (sic) of the dire consequences of failure to comply.
73. However, it appears that the Appellant was still note taking the cue and was content in the manner in which same was prosecuting and/or progressing the Appeal.
74. I must observe, that Courts and tribunals are exercising their authority on behalf of the people of the Republic of Kenya and hence the directive and orders of the Court ought to be taken with the seriousness that they deserve.
75. Simply put, Parties, including the Appellant herein, cannot be allowed to adopt a wait and see, or a leisure fare kind of approach, in matters dealing with court orders.
76. As pertains to the foregoing observation, I am not alone and I beg to adopt and endorse the decision in the case of Kenya Human Rights Commission v The Attorney General & Another (2018) eKLR, where the Court observed as hereunder;

“ Article 159 of *the constitution* recognizes the judicial authority of courts and tribunals established under *the constitution*. Courts and tribunals exercise this authority on behalf



of the people. The decisions courts make are for and on behalf of the people and for that reason, they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the judiciary which is vital for the preservation of our constitutional democracy.

77. The point that I am making is that the Honourable Tribunal was well within her right and/or mandate to consider the age of the appeal before it, the antecedent conduct of the Appellant and the flagrant non-compliance with the directions that same had hitherto granted and that having duly considered the foregoing issues, the tribunal was well within her Jurisdiction to decline to grant the adjournment.
78. In my humble view, the Appellant herein has not persuaded me on any single issue, to show that the Tribunal failed to properly exercise her discretion in declining to grant the adjournment.
79. Contrarily and on my own account, I would have come to the same conclusion as the Honourable Members of the Tribunal that the Appellant was not deserving of exercise of Judicial discretion in her favor, given the slovenliness and lethargic manner in which same was prosecuting the Appeal.
80. Perhaps, before I pen of, it is timely to state that litigation must no longer be conducted in a leisurely manner as it were so many years back, when backlog was un-heard of. At any rate, the Appellant must be warned that litigants and their advocates cannot reach a mutual consent not to proceed with the hearing and expect a court of law and/or tribunal to rubberstamp such kind of mutual consent.
81. For coherence, Court business and I must add that of the tribunal, shall no longer be controlled by the Parties and their advocates, who fix hearing Dates and when the Scheduled Date arrives, same reach a Consent not to proceed.
82. Finally, it is appropriate to take note of the decision in the case of Said Sweilem Gheithan Saanum v Commissioner Of Lands (being sued through Attorney General) & 5 others [2015] eKLR, where the Court Of Appeal stated as hereunder;

“Justice shall not be delayed” is no longer a mere legal maxim in Kenya but a constitutional principle that emphasizes the duty of the advocates, litigants and other court users to assist the court to ensure the timely and efficient disposal of cases. The principles which are reiterated by sections 1A and 1B of the *Civil Procedure Act* are intended to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The principle cannot therefore be a panacea which heals every sore in litigation, neither is it a licence to parties to ignore or contravene the law and rules of procedure. We agree, with respect, with the learned Judge’s conclusion that the suit in the High Court was not properly handled by the appellant’s advocate.

83. In my humble view, there are certain matters, which must not be allowed to continue littering the shelves of this Honourable court as well as those of the statutory tribunal, including the National Environment Tribunal, if the litigants in respect thereof are not keen to exercise Due diligence in the prosecution and finalization thereof.
84. Consequently, the second cluster of grounds of Appeal, which dealt with the manner in which the Tribunal exercised her discretion in declining to grant an adjournment, are also devoid of Merits.



**Final Disposition:**

85. Having reviewed the Grounds of Appeal and having considered the proceedings before the National Environment Tribunal, including the impugned decision rendered on the 31<sup>st</sup> January 2020, I come to the conclusion that the Appeal herein is not meritorious.
86. Consequently and in the premises, the Appeal be and is hereby Dismissed with costs to the Respondents.
87. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF APRIL, 2022**

**HON. JUSTICE OGUTTU MBOYA**

**JUDGE**

In the Presence of;

June Nafula Court Assistant

Ms. Wangu H/B for Mr. Kago for the Appellant

Ms. Akal H/B for Mr. E K Gitonga for the 1<sup>st</sup> Respondent

Ms. Akal appearing for the 2<sup>nd</sup> Respondent

